



## MEETING AGENDA

TIME/DATE: 9:30 a.m. / Wednesday, February 9, 2022

This meeting is being conducted virtually in accordance with AB 361 due to state or local officials recommending measures to promote social distancing.

### COMMISSIONERS

**Chair** – V. Manuel Perez  
**Vice Chair** – Bob Magee  
**Second Vice Chair** – Lloyd White

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Kevin Jeffries, County of Riverside, District 1  
Karen Spiegel, County of Riverside, District 2  
Chuck Washington, County of Riverside, District 3  
V. Manuel Perez, County of Riverside, District 4  
Jeff Hewitt, County of Riverside, District 5  
Mary Hamlin / Alberto Sanchez, City of Banning  
Lloyd White / David Fenn, City of Beaumont  
Joseph DeConinck / Johnny Rodriguez, City of Blythe  
Linda Molina / Wendy Hewitt, City of Calimesa  
Jeremy Smith / Larry Greene, City of Canyon Lake  
Raymond Gregory / Mark Carnevale, City of Cathedral City  
Steven Hernandez / Denise Delgado, City of Coachella  
Wes Speake / Jim Steiner, City of Corona  
Scott Matas / Russell Betts, City of Desert Hot Springs  
Clint Lorimore / Todd Rigby, City of Eastvale  
Linda Krupa / Malcolm Lilienthal, City of Hemet  
Dana Reed / Donna Griffith, City of Indian Wells

Waymond Fermon / Oscar Ortiz, City of Indio  
Brian Berkson / Guillermo Silva, City of Jurupa Valley  
Kathleen Fitzpatrick / Robert Radi, City of La Quinta  
Bob Magee / Natasha Johnson, City of Lake Elsinore  
Bill Zimmerman / Dean Deines, City of Menifee  
Yxstain Gutierrez / Edward Delgado, City of Moreno Valley  
To Be Appointed / Lisa DeForest, City of Murrieta  
Ted Hoffman / Katherine Aleman, City of Norco  
Jan Harnik / Kathleen Kelly, City of Palm Desert  
Lisa Middleton / Dennis Woods, City of Palm Springs  
Michael M. Vargas / Rita Rogers, City of Perris  
Ted Weill / Charles Townsend, City of Rancho Mirage  
Chuck Conder / Patricia Lock Dawson, City of Riverside  
Michael Heath / Alonso Ledezma, City of San Jacinto  
Maryann Edwards / Zak Schwank, City of Temecula  
Ben J. Benoit / Joseph Morabito, City of Wildomar  
Mike Beauchamp, Governor's Appointee Caltrans District 8



# **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

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

## **MEETING AGENDA\***

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

**9:30 a.m.**

**Wednesday, February 9, 2022**

This meeting is being conducted virtually in accordance with AB 361 due to state or local officials recommending measures to promote social distancing.

## **INSTRUCTIONS FOR ELECTRONIC PARTICIPATION**

Join Zoom Meeting

<https://rctc.zoom.us/j/83891855574>

Meeting ID: 838 9185 5574

One tap mobile

+16699006833,,83891855574# US (San Jose)

Dial by your location

+1 669 900 6833 US (San Jose)

For members of the public wishing to submit comment in connection with the Commission Meeting please email written comments to the Clerk of the Board at [lmobley@rctc.org](mailto:lmobley@rctc.org) and your comments will be made part of the official record of the proceedings as long as the comment is received before the end of the meeting's public comment period. Members of the public may also make public comments in person or through their telephone or Zoom connection when recognized by the Chair.

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

*In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, Executive Order N-29-20, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a 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** – Under the Brown Act, the Commission should not take action on or discuss matters raised during public comment portion of the agenda that are not listed on the agenda. Commission members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.
5. **ADDITIONS / REVISIONS** – *The Commission may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Commission subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Commission. If there are less than 2/3 of the Commission members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.*
6. **CONSENT CALENDAR** – *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

**6A. RESOLUTION NO. 21-020, AUTHORIZING VIRTUAL BOARD AND COMMITTEE MEETINGS PURSUANT TO AB 361**

**Page 1**

**Overview**

This item is for the Commission to:

- 1) Reaffirm the findings in *Resolution No. 21-020, "A Resolution of the Board of Commissioner of the Riverside County Transportation Commission Authorizing Virtual Board and Committee Meetings Pursuant to AB 361"*. Those findings are as follows:
  - a) The Governor proclaimed a State of Emergency on March 4, 2020 related to the COVID-19 pandemic, which state of emergency continues to existing today; and
  - b) State or local officials have recommended measures to promote social distancing.

**6B. APPROVAL OF MINUTES – JANUARY 12, 2022**

**Page 5**

**6C. SINGLE SIGNATURE AUTHORITY REPORT**

**Page 15**

**Overview**

This item is for the Commission to receive and file the Single Signature Authority report for the second quarter ended December 31, 2021.



**6D. 2022 TITLE VI PROGRAM REPORT UPDATE, INCLUDING PUBLIC PARTICIPATION PLAN AND LANGUAGE ASSISTANCE PLAN**

***Page 17***

***Overview***

This item is for the Commission to: approve the 2022 Title VI Program Report, including the Public Participation Plan and Language Assistance Plan in compliance with Federal Transit Administration (FTA) requirements.

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

***Page 79***

***Overview***

This item is for the Commission to receive and file an update on state and federal legislation.

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

***Page 92***

***Overview***

This item is for the Commission to:

- 1) Award the following agreements to provide on-call right of way appraisal review services for a three-year term, in an amount not to exceed an aggregate value of \$500,000;
  - a) Agreement No. 22-31-030-00 with Hawran & Malm, LLC;
  - b) Agreement No. 22-31-052-00 with Integra Realty Resources – Los Angeles;
  - c) Agreement No. 22-31-053-00 with R.P. Laurain & Associates, Inc.; and
  - d) Agreement No. 22-31-054-00 with Santolucito Dorè Group, Inc.
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

**6G. AGREEMENT FOR STATION ELECTRICAL SERVICES**

***Page 319***

***Overview***

This item is for the Commission to:

- 1) Award Agreement No. 22-24-006-00 to Elite Electric, Inc. for station electrical maintenance services and capital improvements, for a five-year term, in an amount of \$825,000 for maintenance and repairs, and \$2,500,000 for capital improvements, for a total not to exceed amount of \$3,325,000;

- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the contractor under the terms of the agreements.

**6H. CHANGE ORDER TO AMEND THE INTERSTATE 15 EXPRESS LANES PROJECT TOLL SERVICES AGREEMENT WITH KAPSCH TRAFFICOM USA TO PROVIDE FOR THE DESIGN AND INSTALLATION OF THE TOLLING SYSTEM FOR THE INTERSTATE 15/STATE ROUTE 91 EXPRESS LANES CONNECTOR**

**Page 372**

**Overview**

This item is for the Commission to:

- 1) Approve Change Order No. 8B to Agreement No. 16-31-043-00 for the Interstate 15 Express Lanes Project (I-15 ELP) with Kapsch TrafficCom USA Inc. (Kapsch) to provide for the design and installation of the Tolling System for the I-15/SR-91 Express Lanes Connector (15/91 ELC) in the amount of \$6,203,750, plus a contingency amount of \$620,000, for a total amount not to exceed \$6,823,750;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the change order on behalf of the Commission; and
- 3) Authorize the Executive Director or designee to approve contingency work up to the total amount not to exceed as required for the project.

**6I. ADOPTION OF RESOLUTION NO. 22-004 AUTHORIZING THE COMMISSION TO DECERTIFY AS THE LOCAL ACCESS FUND ADMINISTRATOR FOR THE TRANSPORTATION NETWORK COMPANIES ACCESS FOR ALL PROGRAM**

**Page 412**

**Overview**

This item is for the Commission to:

- 1) Adopt Resolution No. 22-004, *"A Resolution of the Riverside County Transportation Commission Decertifying itself to serve as the Local Access Fund Administrator for the Access for All Program for the County of Riverside"*;
- 2) Approve an increase of \$326,500 in the FY 2021/22 budget for Transportation Network Companies (TNC) Access for All revenues based on revenue received; and
- 3) Authorize the Executive Director or designee, pursuant to legal counsel review, to execute agreements and/or documents related to the TNC Access for All program on behalf of the Commission.

**7. RIGHT OF WAY POLICIES AND PROCEDURES MANUAL**

***Page 417***

***Overview***

This item is for the Commission to:

- 1) Adopt Resolution No. 22-003, *“Resolution of the Riverside County Transportation Commission (RCTC) Approving and Adopting the RCTC/RCA Right of Way Policies and Procedures Manual”*; and
- 2) Approve the updated RCTC/RCA Right of Way Policies and Procedures Manual, pursuant to legal counsel review as to conformance to federal and state law.

**8. ADDITIONAL AWARDS FISCAL YEAR 2021/22 SB 821 BICYCLE AND PEDESTRIAN FACILITIES PROGRAM FUNDING RECOMMENDATIONS**

***Page 982***

***Overview***

This item is for the Commission to:

- 1) Approve additional project awards for the Fiscal Year 2021/22 SB 821 Bicycle and Pedestrian Facilities (SB 821) program for an additional amount of \$1,668,071, and a total amount not to exceed \$5,995,543;
- 2) Direct staff to prepare memorandums of understanding (MOUs) with the project sponsors to outline the project schedules and local funding commitments; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the MOUs with the project sponsors.

**9. COUNTY OF RIVERSIDE FUNDING REQUEST FOR DESIGN OF THE INTERSTATE 10 BYPASS PROJECT**

***Page 986***

***Overview***

This item is for the Commission to:

- 1) Approve programming \$8 million of Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds for the County of Riverside’s (County) Interstate 10 (I-10) Bypass Project;
- 2) Approve Agreement No. 22-72-048-00 between the Commission and County for the programming of \$6 million of TUMF Regional Arterial funding for the design phase and \$2 million for the right of way phase of the I-10 Bypass Project; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement.

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

**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. CLOSED SESSION**

**13A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8

Agency Negotiator: Executive Director or Designee

Item	Property Description	Property Owner	Buyer(s)
1	225-350-006 & 033	RCTC	Kingsfield Development (David Peery, President) KW Commercial for Imad A. Boukai CEO & President of GP Development, Inc. J&L Properties (Joe Tavaglione)

**14. ADJOURNMENT**

The next Commission meeting is scheduled to be held at 9:30 a.m. on **Wednesday, March 9, 2022.**

# **AGENDA ITEM 6A**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Lisa Mobley, Administrative Services Manager/Clerk of the Board
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Resolution No. 21-020, Authorizing Virtual Board and Committee Meetings Pursuant to AB 361

**STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Reaffirm the findings in *Resolution No. 21-020, "A Resolution of the Board of Commissioners of the Riverside County Transportation Commission Authorizing Virtual Board and Committee Meetings Pursuant to AB 361"*. Those findings are as follows:
  - a) The Governor proclaimed a State of Emergency on March 4, 2020 related to the COVID-19 pandemic, which state of emergency continues to existing today; and
  - b) State or local officials have recommended measures to promote social distancing.

**BACKGROUND INFORMATION:**

Since the onset of the COVID-19 in early 2020, California government agencies have been able to continue to discharge their legal responsibilities through the use of virtual teleconferencing platforms such as Zoom to hold public meetings that enabled agencies to meet and conduct business, comply with social distancing orders and most importantly, provide access to the public. In many cases, virtual meetings have actually enhanced public participation, particularly in larger counties including Riverside County where traveling to a public meeting can be inconvenient or require traveling a long distance. Both the RCA and RCTC have been meeting on Zoom since March of 2020, when many Executive Orders were issued by Governor Newsom in response to the pandemic. One such order altered Brown Act requirements to allow for virtual meetings.

Although transmission, hospitalization and death rates from COVID-19 have sharply declined since the original onset of the pandemic and subsequent Delta Variant surge, an air or uncertainty remains regarding the pandemic and many counties continue to recommend masking inside and social distancing. Given that environment and a desire to continue allowing for the flexibility of holding virtual meetings, the Legislature recently approved, and Governor Newsom signed, Assembly Bill 361 to temporarily allow for virtual meeting under proscribed circumstances.

## **AB 361**

Effective immediately, AB 361 amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology in certain circumstances. Under the Bill, legislative bodies can continue to meet remotely as long as there is a “proclaimed state of emergency” and the Commission can make either of the following findings: (a) state or local officials have imposed or recommended measures to promote social distancing or (b) whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The Governor proclaimed a State of Emergency on March 4, 2020 related to the COVID-19 pandemic, which State of Emergency continues to exist to this day. Further, both State and Riverside County officials continue to recommend the social distancing.

AB 361 requires specific procedural safeguards for the public. To accommodate individuals during these teleconferences and virtual meetings, a public comment period will be offered where the public can address the legislative body directly in real time. Additionally, public comments will be allowed up until the public comment period is closed at the meetings. The agenda will include information on the manner in which the public may access the meeting and provide comments remotely. If technical problems arise that result in the public’s access being disrupted, the legislative body will not take any vote or other official action until the technical disruption is corrected and public access is restored.

The attached Resolution allows the Board to implement AB 361 by making the findings discussed above. This findings will be in effect for 30 days or until the Board makes findings that the conditions listed therein long longer exist, whichever is shorter. The findings can be extended by the Board upon a finding that conditions supporting the findings included in the Resolution still exist. The authorization to meet remotely will apply to any Committees that meet during the 30-day effective period.

AB 361 will allow for virtual meetings during other state-proclaim emergencies, such as earthquakes or wildfires, where physical attendance may present a risk. AB 361 is scheduled to sunset January 1, 2024.

### **STAFF RECOMMENDATION:**

Reaffirm the findings in *Resolution No. 21-020, “A Resolution of the Board of Commissioners of the Riverside County Transportation Commission Authorizing Virtual Board and Committee Meetings Pursuant to AB 361”*.

Attachment: Resolution No. 21-020



**RESOLUTION NO. 21-020**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION AUTHORIZING VIRTUAL BOARD AND  
COMMITTEE MEETINGS PURSUANT TO AB 361**

**WHEREAS**, the Riverside County Transportation Commission (“Commission”) is committed to preserving and nurturing public access and participation in meetings of the Board of Commissioners, Executive Committee, Budget and Implementation Committee, and Western Riverside County Programs and Projects Committee; and

**WHEREAS**, all meetings of the Commission’s legislative bodies, including its Board of Commissioners, Executive Committee, Budget and Implementation Committee, and Western Riverside County Programs and Projects Committee are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in the Authority’s meetings; and

**WHEREAS**, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing the COVID-19 virus; and

**WHEREAS**, among other things, these orders waived certain requirements of the Brown Act to allow legislative bodies to meet virtually; and

**WHEREAS**, pursuant to the Governor’s executive orders, the Commission has been holding virtual meetings during the pandemic in the interest of protecting the health and safety of the public, Commission staff and Commissioners; and

**WHEREAS**, the Governor’s executive order related to the suspension of certain provisions of the Brown Act expired on September 30, 2021; and

**WHEREAS**, on September 16, 2021 the Governor signed AB 361 (in effect as of October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, such conditions now exist in the Commission, specifically, a state of emergency has been proclaimed related to COVID-19 and state or local officials are recommending measures to promote social distancing,

**NOW, THEREFORE, BE IT RESOLVED THAT THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Findings. Consistent with the provisions of Government Code Section 54953(e), the Board of Commissioners finds and determines that (1) a state of emergency related to COVID-19 is currently in effect and (2) state or local officials have recommended measures to promote social distancing in connection with COVID-19.

Section 3. Remote Teleconference Meetings: Based on the findings and determinations included herein, the Board of Commissioners authorizes and directs any of its legislative bodies, including without limitation its Board of Commissioners, Executive Committee, Budget and Implementation Committee, Western Riverside County Programs and Projects Committee, Technical Advisory Committee, and Citizens and Specialized Transit Advisory Committee to conduct remote teleconference meetings under the provisions of Government Code Section 54953(e) and that such bodies shall provide public access to their meetings as provided in Section 54953(e).

Section 4. Effective Date of Resolution. This Resolution shall take effect upon adoption and shall be effective for 30 days unless earlier extended by a majority vote of the Board of Commissioners in accordance with Section 5 of this Resolution.


Section 5. Extension by Motion. The Board of Commissioners may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3). Any such extension may be made before or after the expiration of the preceding 30 day period.

PASSED AND ADOPTED by the Board of Commissioners of the Riverside County Transportation Commission this 10th day of November 2021, by the following vote:

APPROVED AND ADOPTED this 10<sup>th</sup> day of November, 2021.

  
\_\_\_\_\_  
Jan C. Harnik, Chair  
Riverside County Transportation Commission

ATTEST:

  
\_\_\_\_\_  
Lisa Mobley, Clerk of the Board  
Riverside County Transportation Commission

# **AGENDA ITEM 6B**

## **MINUTES**



# ***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

## **MEETING MINUTES**

Wednesday January 12, 2022

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

The Riverside County Transportation Commission was called to order by Chair V. Manuel Perez at 9:30 a.m., via Zoom Meeting ID 850 9340 0228. This meeting was conducted virtually in accordance with AB 361 due to state or local officials recommending measures to promote social distancing.

Chair V. Manuel Perez expressed appreciation to former Chair Jan Harnik for a great job that she did in 2021 during the good times and the tough times. He stated he only hopes to meet her level of good work as he conducts these meetings as the Chair. He then thanked staff for the good work being done and stated let's hope for a better 2022 then in 2021 and 2020.

### **2. ROLL CALL**

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

Ben J. Benoit  
Brian Berkson  
Chuck Conder  
Lisa DeForest  
Ray Desselle  
Maryann Edwards  
Waymond Fermon  
Kathleen Fitzpatrick  
Raymond Gregory  
Yxstain Gutierrez  
Mary Hamlin  
Jan Harnik  
Jeff Hewitt  
Ted Hoffman  
Kevin Jeffries  
Linda Krupa  
Clint Lorimore

Bob Magee  
Scott Matas  
Lisa Middleton  
Linda Molina  
V. Manuel Perez  
Dana Reed  
Jeremy Smith  
Wes Speake  
Karen Spiegel  
Michael M. Vargas  
Chuck Washington  
Ted Weill  
Lloyd White  
Bill Zimmerman

#### **Commissioners Absent**

Joseph DeConinck  
Michael Heath  
Steven Hernandez

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

Commissioner Bob Magee led the Commission in a flag salute.

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

Council Member Clarissa Cervantes expressed appreciation for being able to speak. Council Member Cervantes expressed concern as the Ward 2 Council Member representing the city of Riverside about the project proposal, which is the RCTC Riverside Downtown Metrolink Expansion Project. Council Member Cervantes stated there was a presentation that came to their city council in December 2021 and the comments that will be shared have been comments from the community in terms of them providing feedback on the item. In having meetings with these residents and constituents from Ward 2 and the city of Riverside there has been some concerns that questions have been raised around the project are not met with the openness and transparency the community would hope to receive. There has been some resistance from some of the individuals who have come out to give presentations to the community at some of their neighborhood meetings. Council Member Cervantes expressed as the community has been learning about this project, there have been some concerns around the surrounding area and referred to the eastside neighborhood that is going to be impacted by this project. In addition, there is a possible eastside elementary school that is being proposed by Riverside Unified School District that could be heavily impacted by this project. Council Member Cervantes requested to consider these aspects as they look to consider how to partner with RCTC. There was a conversation with their city manager and Anne Mayer about the possibility of going out with a joint request for proposals (RFP) with the city of Riverside and RCTC. Council Member Cervantes also suggested to explore this more, as well as make sure they explore all of the adaptive reuse scenarios that really impact the historic preservation of one of the buildings they are looking at. Council Member Cervantes reiterated the main concern is about transparency and to make sure when they have these community meetings, they are open and supportive to listening to resident's concerns as this supports their neighborhoods and their homes. As the elected official of this area, Council Member Cervantes would be happy to set aside some time if anyone wanted to meet.

Miguel Lujano, Legislative Representative city of Riverside, expressed appreciation for being allowed to make a public comment. Mr. Lujano referred to Council Member Cervantes' comments and stated the eastside is an underserved community and a low-income community. The development project that was noted was one that their residents have been asking for quite some time to revisit to make sure it is an appropriate development to what the future surrounding projects are going to be as there is going to be an elementary school. Mr. Lujano expressed they want to make sure that their voices are heard that they are not put off to the side and currently that is how they are feeling. He has engaged several times with their residents, neighbors, and community members they need to do more, and it is their duty as a Board when making decisions like this, things that will impact the future generations to come. It is their duty to go above and beyond to make sure that their voices are heard and did everything possible to make sure that this project was envisioned the way it was most appropriate. Mr. Lujano suggested

for the Board to take this time to meet with these residents as this is a very important project to them.

Chair Perez noted the Commission cannot take action or discuss this matter, but staff will follow up.

**5. ADDITIONS / REVISIONS**

There were no additions or revisions to the agenda.

**6. CONSENT CALENDAR**

**M/S/C (Molina/Gregory) to approve the following Consent Calendar items.**

**Abstain: DeForest and Edwards**

**6A. RESOLUTION NO. 21-020, AUTHORIZING VIRTUAL BOARD AND COMMITTEE MEETINGS PURSUANT TO AB 361**

- 1) Reaffirm the findings in *Resolution No. 21-020, "A Resolution of the Board of Commissioner of the Riverside County Transportation Commission Authorizing Virtual Board and Committee Meetings Pursuant to AB 361"*. Those findings are as follows:
  - a) The Governor proclaimed a State of Emergency on March 4, 2020 related to the COVID-19 pandemic, which state of emergency continues to existing today; and
  - b) State or local officials have recommended measures to promote social distancing.

**6B. APPROVAL OF MINUTES – DECEMBER 8, 2021**

**6C. QUARTERLY FINANCIAL STATEMENTS**

Receive and file the Quarterly Financial Statements for the three months ended September 30, 2021.

**6D. RIVERSIDE COUNTY 2023 FEDERAL TRANSPORTATION IMPROVEMENT PROGRAM FINANCIAL RESOLUTION**

Adopt Resolution No. 22-001, *"Resolution of the Riverside County Transportation Commission Certifying Riverside County has Resources to Fund Projects in the Federal Fiscal Years 2022/23 Through 2027/28 Transportation Improvement Program and Affirming Commitment to Implement All Projects and Phases as Applicable in the Program"*.

**6E. RESOLUTION NO. 22-002, AMENDED AND RESTATED COMMUTER ASSISTANCE PROGRAM RESOLUTION**

*Adopt Resolution No. 22-002, "Amended and Restated Resolution of the Riverside County Transportation Commission Adopting Amended Guidelines for the Administration of the Measure A Funded Commuter Incentive Projects as Part of Its Commuter Assistance Program."*

**7. FISCAL YEAR 2021/22 MID-YEAR REVISED REVENUE PROJECTIONS**

Chair Perez noted that staff would like to take Agenda Item 7, *"Fiscal Year 2021/22 Mid-Year Revised Revenue Projects"*, and Agenda Item 8, *"Fiscal Year 2022/23 Revenue Projections"* concurrently.

John Standiford, Deputy Executive Director, clarified that staff is presenting Agenda Items 7 and 8 concurrently, as well as requesting one motion for both agenda items. He then presented the FY 2021/22 Mid-Year revised Revenue Projections and the FY 2022/23 Revenue Projections, highlighting the following areas:

- Revenue Projections: Analysis – Current trends, economic data and historical data; Revenues – Measure A, Local Transportation Funds (LTF), and Transportation Uniform Mitigation Fees (TUMF); and Projections – FY 2021/22 Mid-Year Revision and FY 2022/23 Budget development
- Economic Category Trends for Measure A Sales Tax Revenues by Category and the Top 11 Segments
- Measure A Revenue Allocations by Geographic Area – Western County, Coachella Valley, and Palo Verde Valley based on taxable sales tax by area
- Average monthly Measure A – Comparison of monthly Revenue
- Sales Tax Revenue projections for Measure A and LTF
- Measure A by Geographic Area and LTF apportionment details
- TUMF Revenue projection
- Next steps

John Standiford acknowledged and thanked Michele Cisneros, Deputy Director of Finance, as she prepared this presentation, and the staff reports and is doing a great job as she has done for many years and usually gives this presentation.

Commissioner Jan Harnik requested to receive a copy of the presentation.

Commissioner Ted Hoffman expressed appreciation to John Standiford for an excellent report and stated that a large increase in the amounts were seen. He then expressed cautioned because a year ago they were at a 3 percent Consumer Price Index (CPI) and now it is at 7.9 percent CPI according to the U.S. Bureau of Labor Statistics and even



though there was an increase in his city and other areas they are seeing about a 30 percent increase in the costs of doing construction. He suggested even though these numbers are high that they do not get a false sense they are doing all that great because the cost of everything has raised tremendously.

John Standiford replied it also reflects why they are trying to be pretty conservative with the projections going forward as well.

Commissioner Chuck Washington clarified John Standiford presented on Agenda Items 7 and 8 it is just the revenue side not the expenditure side and noted Mr. Standiford's point is well taken about being conservative on the projections, so they do not plan to spend more money than RCTC actually has. He stated an accurate projection is a value as well and Mr. Standiford as well as Michele Cisneros have done a pretty good job at doing this and clarified if the Commissioners are being asked to vote on these two items together or separately.

John Standiford replied staff's intent was to have one motion for the two agenda items, however the Board can choose to approve them separately. In terms of expenditures moving forward that will be part of their budget process in the next fiscal year as they continue.

Commissioner Washington clarified when the expenditures come back to the Commission they will expect to step forward and weigh in enthusiastically on the expenditure side. He then moved staff's recommendations for Agenda Items 7 and 8.

Anne Mayer, Executive Director, clarified that there will be some increased expenditures under Agenda Item 7 this year to distribute the increased revenue to each of their member jurisdictions per the formula. Staff is making sure they pass through the increased revenues but as John Standiford mentioned anything related to expenditures for next year outside of Local Streets and Roads will come back in the budget process.

Chair Perez clarified if this motion can be for both Agenda Items 7 and 8 and do one roll call.

Commissioner Washington stated that was his motion was for Agenda Items 7 and 8.

**M/S/C (Washington/Benoit) to:**

- 1) Approve the mid-year Fiscal Year (FY) 2021/22 revenue projections of \$250 million for Measure A revenues, \$127 million for Local Transportation Fund (LTF) revenues, and \$30 million for Transportation Uniform Mitigation Fee (TUMF) revenues;**

- 2) Approve the budget increase adjustments to Measure A revenues of \$40 million and expenditures of \$16,479,000 to reflect the revised Measure A projection;
- 3) Approve the budget increase adjustments to LTF revenues of \$22 million, transfers in of \$1,543,000, and expenditures and transfers out of \$1,928,000 to reflect the revised LTF projection; and
- 4) Approve the budget increase adjustment to TUMF revenues of \$19 million to reflect the revised TUMF projection.

## 8. FISCAL YEAR 2022/23 REVENUE PROJECTIONS

M/S/C (Washington/Benoit) to:

- 1) Approve the projection for Measure A revenues of \$255 million for Fiscal Year 2022/23;
- 2) Approve the projection for Local Transportation Fund (LTF) apportionment of \$130 million for the Western Riverside County, Coachella Valley, and Palo Verde Valley areas for FY 2022/23; and
- 3) Approve the projection for Transportation Uniform Mitigation Fee (TUMF) revenues of \$30 million for FY 2022/23.

## 9. STATE AND FEDERAL LEGISLATIVE UPDATE

David Knudsen, Interim External Affairs Director, presented an update for the state and federal legislative activities.

Chair Perez expressed appreciation for David Knudsen's report and concurred as it does seem like the Inland Empire Caucus is much more united and willing to work with them. He asked when did RCTC last meet with Senator Rosilicie Ochoa Bogh or anybody from the Inland Empire Caucus. David Knudsen replied they have been working at a staff level for quite some time and Anne Mayer had a conversation with Senator Bogh.

Anne Mayer explained the conversation started with a couple of their delegation members probably in November 2021, RCTC and San Bernardino County Transportation Authority (SBCTA) staff were invited to the caucuses meeting in December to present their input on transportation issues and goods movement in the Inland Empire and they had asked them for a list of projects. She noted from the time they were invited to come to the meeting and when this letter went out it was probably about four or five weeks. It moved pretty quickly probably because other areas of the state were starting to gather their caucuses and sending in letters, so the Inland Empire Caucus clearly decided to act so they moved pretty quickly from November 2021 until January 2022.

Commissioner Wes Speake stated the State Highway Operation and Protection Program (SHOPP) funds seems to be a pretty large number and wanted to see how that was going

to be prioritized. It is a decent number and he was hoping to see some additional projects at least that were held back in 2019 like the dropped lanes on I-15.

Anne Mayer replied as she waits to see if Caltrans is going to respond she explained that Caltrans and the California Transportation Commission (CTC) released the draft 2022 SHOPP for consideration or approval by the CTC this spring. RCTC staff is currently reviewing their proposal and there are some pavement rehabilitation projects included. The Temecula Auxiliary Lane Project is included and a contribution to the Coachella Valley Multiple-Species Habitat Conservation Plan. RCTC will provide a letter commentary on the SHOPP and recommend the auxiliary lanes that had been studied by Caltrans District 8 for I-15 in the area Commissioner Speake mentioned be considered for the SHOPP and they are also making recommendations for pavement rehabilitation on multiple corridors throughout Riverside County as well as focus on operational improvements. She noted, while they do not have any control over the SHOPP RCTC will be submitting a letter of recommendations that will be following along the theme they are speaking about now.

Commissioner Speake expressed appreciation to Anne Mayer for her comments and stated he is pleased to see all the projects that were submitted as well.

Commissioner Maryann Edwards expressed appreciation on behalf of the city of Temecula for the wonderful legislative advocacy and congratulations on getting the support from the Inland Empire Caucus.

**M/S/C to receive and file an update on state and federal legislation.**

**10. APPOINTMENT OF EXECUTIVE COMMITTEE MEMBERS**

Chair Perez called on Lisa Mobley, Administrative Services Manager/Clerk of the Board and Legal Counsel to explain the process for the appointment to the Executive Committee.

Lisa Mobley stated this item is for the cities of Banning, Beaumont, Calimesa, Canyon Lake, Eastvale, Hemet, Lake Elsinore, Menifee, Norco, Perris, San Jacinto, and Wildomar to appoint a representative to be on the Executive Committee. In January 2021 Commissioner Lloyd White was selected as a representative of those cities, however with the election the Second Vice Chair of the Commission last month a new vacancy has been created.

Steve DeBaun, Legal Counsel, explained the caucus process for the cities of Banning, Beaumont, Calimesa, Canyon Lake, Eastvale, Hemet, Lake Elsinore, Menifee, Norco, Perris, San Jacinto, and Wildomar to appoint a new representative to fill Commissioner White's unexpired term and the representative will fill the vacancy for the remainder of his term, which is one year. Members of the public were invited to join the breakout session.

Lisa Mobley explained she created a breakout room on Zoom for the above-listed cities to join to caucus and to click on the leave breakout session when they are done to return to the meeting. Also, to have a spokesperson announce their appointee. Lisa Mobley noted that there were no members from the public that requested to join the breakout session.

Commissioner Bill Zimmerman reported out from their caucus that it was a unanimous decision to recommend and nominate Commissioner Ben Benoit to serve on the Executive Committee from the remainder of 2021.

Chair Perez congratulated Commissioner Benoit.

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

There were no items pulled from the consent calendar.

## **12. EXECUTIVE DIRECTOR'S REPORT**

### **12A. Anne Mayer announced:**

- Wished everyone a Happy New Year.
- January 20 the WTS Inland Empire Chapter Annual meeting will be held virtually. She was pleased to announce the Innovative Transportation Solution of the Year Award is going to the RCTC I-15 Express Lane Project, the Secretary Ray LaHood Award is going to Aaron Hake, and the Employer of the Year Award is going to Riverside Transit Agency. She then congratulated Aaron Hake and the team.
- California State Transportation Agency Secretary David Kim has announced his resignation, this will be his last week as the Secretary of Transportation for California. She expressed appreciation for his partnership and friendship, he has been a terrific partner to RCTC, and she wished Secretary Kim very well and looked forward to seeing him in the future.
- Announced that the Commission completed its first year as managing agency for the Western Riverside County Regional Conservation Authority (RCA), there was also an update given at the January 10 RCA Board meeting, all of the initial transition items that were planned for this year have been accomplishment, there has been a lot of progress focusing on streamlining and efficiencies, in the coming year there will be more consolidation of policies and procedures, and consulting contracts. She expressed it has been a good first year, but there is a lot of work to do and appreciates the opportunity to serve RCA.
- Public comments were made earlier about the Riverside Downtown Station Project, she can assure them the RCTC team is doing everything they can to ensure a lot of public outreach. Not only did RCTC have two

public hearings in December 2021, but they also met with the neighborhood three times over the past seven months, as well as a multitude of neighborhood interest group and community interest groups. They met with Riverside City Council last month and encouraged their participation in the public process, the environmental document is currently available for public review and comment. Comments are due on February 3, 2022, and they are encouraging the public as well as the city to provide their comments to the Commission so that the Commission can decide whether to proceed with this project. She assured the Commissioners that staff takes these comments earlier today to heart and they will continue to foster their relationship with the city of Riverside. Anne Mayer reaffirmed that they did have a planned solution of coming to the Commission with a request to do a joint RFP with the city of Riverside for Community Development that it would involve a community envisioning process. They are actively engaged on the Riverside Downtown Station Project as a part of this public process it will come back to the Commission for discussion, and they will be provided all the feedback and comments from the neighborhood, the community, and the city council.

Chair Perez expressed appreciation for Ms. Mayer's report and to keep moving forward with the public comments that were made earlier and would like to be helpful in that. He suggested to set up a couple of community meetings on the east end with staff as something is getting lost along the way, he is uncertain why and they need to figure that out and make sure that they are present.

### **13. COMMISSIONER COMMENTS**

- 13A.** Commissioner Speake expressed appreciation also on behalf of the city of Corona to his colleagues, the staff, Anne Mayer, and David Thomas for an amazing job getting the 91 Corridor Operations Project up and running in record time. He expressed specially to start with nothing, to a project where people are driving on it. He has been monitoring the traffic every day and it has been open, and it has been a lovely shade of green the entire time. He thanked the staff and the Commission for prioritizing this project because it does affect all of Western Riverside County.
- 13B.** Commissioner Hoffman concurred with Commissioner Speake's comments and expressed appreciation that RCTC came to their city council meeting and explained to them the 91 closures for that weekend along with the I-15. He stated just like Commissioner Speake said for their end of the county it is a big plus and it is flowing green. This is a good example of when the County, the state and all of the entities get together and do a project right and he expressed appreciation to Anne Mayer and staff for a good job in keeping their residents informed of all the closures.

**14. CLOSED SESSION**

**14A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8

Agency Negotiator: Executive Director or Designee

Item	Property Description	Property Owner	Buyer(s)
1	117-111-005	RCTC	Kevin Russell

There were no announcements for the Closed Session items.

**14. ADJOURNMENT**

There being no further business for consideration by the Riverside County Transportation Commission, Chair Harnik adjourned the meeting at 10:39 a.m. The next Commission meeting is scheduled to be held at 9:30 a.m., Wednesday, February 9, 2022.

Respectfully submitted,



Lisa Mobley  
Administrative Services Manager/  
Clerk of the Board

# **AGENDA ITEM 6C**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Alicia Johnson, Senior Procurement Analyst Jose Mendoza, Procurement Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Single Signature Authority Report

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to receive and file the Single Signature Authority report for the second quarter ended December 31, 2021.

**BACKGROUND INFORMATION:**

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

The attached report details all contracts that have been executed for the second quarter ended December 31, 2021, under the single signature authority granted to the Executive Director. The unused capacity of single signature authority for services at December 31, 2021 is \$1,627,625.

Attachment: Single Signature Authority Report as of December 31, 2021



**SINGLE SIGNATURE AUTHORITY  
AS OF DECEMBER 31, 2021**

CONTRACT #	CONSULTANT	DESCRIPTION OF SERVICES	ORIGINAL CONTRACT AMOUNT	PAID AMOUNT	REMAINING CONTRACT AMOUNT
	AMOUNT AVAILABLE July 1, 2021		\$2,000,000.00		
18-24-067-00	Ultimate Maintenance Service	Janitorial Services for Stations and Toll Facilities	120,000.00	55,000.00	65,000.00
22-31-016-00	Globic Advisors	Information and Tender/Exchange Agent services related to 91 Express Lanes refinancing	20,000.00	0.00	20,000.00
22-18-010-00	Ralph Andersen & Associates	Professional recruitment search for CFO position	28,000.00	16,800.00	11,200.00
09-31-081-08A	Parsons Transportation Group	Project and Construction Management Services for SR-91 Corridor Improvements	126,000.00	0.00	126,000.00
21-31-023-02	HGN Corona Partners	Parking Agreement for SR-91 COP	3,000.00	3,000.00	0.00
22-19-021-00	Eide Bailly LLP	Finance Department Consulting Services	55,000.00	0.00	55,000.00
22-18-037-00	CVS Pharmacy, Inc.	COVID-19 Testing Services	8,000.00	0.00	8,000.00
22-66-044-00	Ecointeractive	Planning & Programming Database	12,375.00	0.00	12,375.00
			</		



# **AGENDA ITEM 6D**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Beatris Megerdichian, Management Analyst Lorelle Moe Luna, Multimodal Services Director
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	2022 Title VI Program Report Update, Including Public Participation Plan and Language Assistance Plan

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to approve the 2022 Title VI Program Report, including the Public Participation Plan and Language Assistance Plan in compliance with Federal Transit Administration (FTA) requirements.

**BACKGROUND INFORMATION:**

Title VI of the Civil Rights Act of 1964 and subsequent amendments protect persons in the United States from being excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

The Commission's commitment to ensuring that its services are delivered and implemented in accordance with Title VI is described in the Non-Discrimination notice and procedures that were adopted by the Commission on October 10, 2012. The existing practices conform to Caltrans' requirements for implementing Title VI and the Americans with Disabilities Act regulations. However, as a recipient of FTA funds, requirements for implementing Title VI are more extensive and include the adoption of a Title VI Program under the guidelines set forth in FTA Circular 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*.

The Commission is unique in that it is not a traditional transit operator or a Metropolitan Planning Organization (MPO), but receives FTA funds for vanpool, station maintenance and capital projects, and Metrolink capital. Nevertheless, since FTA funds were utilized for the development of various RCTC-owned Metrolink stations, the FTA Title VI requirements and guidelines apply. The institution-wide application of Title VI has been emphasized at FTA workshops since the Circular was revised in 2016 with the assertion that, *"Title VI covers all of the operations of covered entities without regard to whether specific portions of the covered program or activity are federally funded...Recipients are responsible for ensuring that all of their activities are in compliance with Title VI. In other words, a recipient may engage in activities not described in the Circular, such as ridesharing program, roadway incident response program, or*

*other programs not funded by FTA, and those programs must also be administered in a nondiscriminatory manner.” (p. II-1)*

The Circular has general requirements and guidelines for all recipients and additional requirements for fixed route transit providers, states, and MPOs. As the regional transportation planning agency and county transportation commission, only the general requirements and guidelines, as listed below, are applicable to the Commission.

- 1) **Title VI Notice to the Public** – A notice shall be posted in public locations and website, including language that the recipient complies with Title VI and instructions on how to file a Title VI complaint to the Commission and directly to the FTA.
- 2) **Title VI Complaint Procedures and Complaint Form** – Procedures on filing a complaint shall be developed for investigating and tracking Title VI complaints. A complaint form must also include the necessary information and questions to conduct an investigation.
- 3) **List of transit-related Title VI investigations, complaints, or lawsuits** – FTA requires that files of investigations, complaints, or lawsuits that pertain to allegations of discrimination on the basis of race, color, or national origin in transit-related activities and programs be maintained for three years and a list of cases be held for five years.
- 4) **Public Participation Plan** – An established process or plan shall promote inclusive public participation and describe the proactive strategies, procedures, and desired outcomes of a recipient’s public participation activities.
- 5) **Language Assistance Plan** – Recipients are required to take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of its programs or activities for persons who are limited-English proficient.
- 6) **A table depicting the membership on non-elected committees and councils, broken down by race** – This pertains to transit-related, non-elected planning boards, advisory councils or committees.
- 7) **Monitoring procedures for subrecipients** – The Commission had two subrecipients during this reporting period, Metrolink and Riverside Transit Agency. Since both subrecipients are also direct recipients of FTA funds and submit a Title VI report directly, the Commission is not required to monitor their Title VI procedures.
- 8) **Title VI equity analysis for the site and location of facilities** – “Facilities” included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. Recipients are required to complete an equity analysis, including the impacts of various siting alternatives, during the planning stage with regard to where a project is located or sited to ensure that the location is selected without regard to race, color, or national origin.
- 9) **Documentation that the governing board has reviewed and approved the Title VI Program** – A copy of meeting minutes or a resolution must be submitted with the Title VI Program Report.



The Title VI Program was last updated in 2019 and is required to be updated every three years, or as necessary, when guidelines are revised or as compliance reviews require. FTA requires a review and update of the Title VI Program Report at least triennially.

Upon approval of the Title VI Program, staff will submit the report to FTA via the Transit Award Management System. Concurrence and approval of the report by the FTA Regional Civil Rights Office is anticipated within 30 days.

There is no financial impact to the Commission budget with the adoption of this program.

Attachment: Title VI Program Report

*Approved by the Budget and Implementation Committee on January 24, 2022*

In Favor: 10 Abstain: 0 No: 0



*JUNE 2022*

# TITLE VI PROGRAM REPORT



**RIVERSIDE  
COUNTY  
TRANSPORTATION  
COMMISSION**

4080 Lemon Street, 3rd Floor  
Riverside, CA 92501

If information is needed in another language, please contact (951) 787-7141 for free translation services.  
Si se necesita este documento en Español, llame al 951-787-7141 para servicios de traducción gratuitos.

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- Appendix A: Title VI Policy, Procedures, and Complaint Form (English and Spanish)
- Appendix B: Public Participation Plan
- Appendix C: Language Assistance Plan
- Appendix D: Documentation of Governing Body Approval

## Introduction and Purpose

Title VI of the Civil Rights Act of 1964 protects persons in the United States from being excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

The Riverside County Transportation Commission (RCTC or Commission) is committed to ensuring that its services are delivered and implemented in accordance with Title VI and other non-discriminatory regulations from the state and federal levels. As a state recipient, RCTC complies with the guidelines set forth by the State of California's (State) Department of Transportation (Caltrans). Caltrans requires local agencies to adopt a non-discriminatory notice, grievance procedures, complaint form, and a Coordinator of the program. These were approved by the Commission on October 10, 2012 for implementing Title VI and Title II of the Americans with Disabilities Act (ADA). RCTC is also a recipient under the federal Department of Transportation (DOT). Under the DOT, the Federal Transit Administration (FTA) requirements for implementing Title VI include the adoption of a Title VI Program report pursuant to FTA Circular 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*.

The purpose of this report is to certify RCTC's compliance with FTA Circular 4702.1B every three years. As stated in Chapter II, page 1 of the Circular, RCTC will ensure that Title VI compliance is carried out in all of its programs and services, whether federally-funded or not, *"Title VI covers all of the operations of covered entities without regard to whether specific portions of the covered program or activity are federally funded". In other words, a recipient may engage in activities not described in the Circular, such as ridesharing program, roadway incident response program, or other programs not funded by FTA, and those programs must also be administered in a nondiscriminatory manner."*

The Circular has general requirements for all recipients and additional guidelines for Fixed Route Transit Providers, States, and Metropolitan Planning Organizations (MPOs). As the Regional Transportation Planning Agency (RTPA) and County Transportation Commission (CTC), the following general requirements and guidelines apply:

- 1) Title VI Notice to the Public
- 2) Title VI Complaint Procedures
- 3) Title VI Complaint Form
- 4) List of transit-related Title VI investigations, complaints, or lawsuits
- 5) Public Participation Plan
- 6) Language Assistance Plan

- 7) A table depicting the membership on non-elected committees broken down by race
- 8) Monitoring procedures for Subrecipients
- 9) Title VI equity analysis for the site and location of facilities
- 10) Documentation that the governing board has reviewed and approved the Title VI Program

The following sections of this report document how the Commission is in compliance with each requirement.

## Background of RCTC

The Commission was established in 1976 by the State to oversee the funding and coordination of all public transportation services within Riverside County. The governing body consists of all five members of the County Board of Supervisors, one elected official from each of the County's 28 cities, and one non-voting member appointed by the Governor of California. As the designated RTPA and CTC, its responsibilities include setting policies, establishing priorities, coordinating activities among the County's various transit operators and local jurisdictions.

The public is most familiar with RCTC for its capital projects and motorist aid services. The various regional capital projects that RCTC is involved in throughout the County include the following:

- ✓ 91 Express Lanes
- ✓ 15 Express Lanes
- ✓ 15/91 Express Lanes Connector
- ✓ Interstate 15 Interim Corridor Operations Project
- ✓ Interstate 15 Corridor Operations Project
- ✓ Interstate 15 Express Lanes Southern Extension
- ✓ State Route 91 Corridor Operations Project
- ✓ State Route 71/91 Interchange Project
- ✓ State Route 60 Truck Lanes Project
- ✓ Mid-County Parkway/Interstate 215 Placentia Avenue Interchange
- ✓ Interstate 15/Railroad Canyon Interchange Project
- ✓ Coachella Valley-San Gorgonio Pass Rail Corridor Service Project
- ✓ Riverside-Downtown Station Improvements Project
- ✓ Moreno Valley/March Field Station Improvements Project
- ✓ Santa Ana River Trail Extension Projects

The Commission also provides motorist aid services designed to expedite traffic flow. These services include the Service Authority for Freeway Emergencies (SAFE), a program that provides call box service for motorists; the Freeway Service Patrol (FSP), a roving tow truck service that assist motorists with disabled vehicles on the main highways of western Riverside County during peak rush hour traffic periods; and rideshare programs such as Inland Empire 511 (IE511), a traveler information system.

These programs and projects are funded with various local, state, and federal sources. Local funding sources consist of Measure A, the countywide sales tax; Debt proceeds, derived from issuing bonds; and Transportation Uniform Mitigation Fees (TUMF), derived from developer impact fees. State funding sources for projects are derived from the State Transportation Improvement Program (STIP). RCTC also receives apportionments of federal Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds from the Federal Highway Administration (FHWA); and FTA Sections 5307, 5309, 5337 formula funds.

In May 2018, the Commission expanded its Commuter Assistance Program to launch a new Vanpool subsidy program called VanClub for commuters who travel to a workplace in Western Riverside County. Vanpools can be especially effective in providing transportation options in areas that are hard to serve by transit and can be an amenity for employers to attract and retain their employees. Regardless of funding source, RCTC is committed to ensuring that its projects and services are delivered and implemented in a non-discriminatory manner.

## Title VI Notice to the Public

Recipients must notify beneficiaries of protections under Title VI by posting a notice in public locations that confirms that the recipient complies with Title VI and provides instructions on how to file a Title VI complaint to RCTC and directly to the FTA.

The following notice is available on RCTC's website, RCTC owned Metrolink stations, and in the lobby of RCTC's offices at 4080 Lemon Street, 3rd Floor, Riverside, CA 92501.

*RCTC operates its programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act. Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with RCTC.*

*For more information on RCTC's Title VI program, and the procedures to file a complaint, contact (951) 787-7141; email [jstandiford@rctc.org](mailto:jstandiford@rctc.org); or visit our*

*administrative office at 4080 Lemon Street, 3<sup>rd</sup> Floor, Riverside, CA 92501. For more information, you may also visit our website at [www.rctc.org](http://www.rctc.org) for additional information and to download a complaint form under “About Us”.*

*A complainant may file a complaint directly with the Federal Transit Administration by filing a complaint with the Office of Civil Rights, Attention: Title VI Program Coordinator, East Building, 5<sup>th</sup> Floor – TCR, 1200 New Jersey Avenue., SE, Washington, DC 20590.*

*If information is needed in another language, contact (951) 787-7141.  
Si se necesita la información en otro idioma, llame al (951) 787- 7141.*

The notice is considered a vital document and is available in Spanish, consistent with DOT limited-English proficient (LEP) guidance and RCTC’s Language Assistance Plan (LAP). The Spanish translation is also posted where English versions are located. See Appendix A for a complete English and Spanish version the Commission’s Title VI Notice, Procedures, and Complaint form.

## **Title VI Complaint Procedures and Complaint Form**

Requirements stipulate that recipients develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public. Recipients must also develop a Title VI complaint form and make this form available. RCTC’s Complaint Procedures and Complaint Form are provided in Appendix A.

Similar to the Non-Discrimination policy requirements of Caltrans, the Deputy Executive Director, John Standiford, has been identified as the Civil Rights Liaison and is the primary contact for addressing Title VI complaints. The procedures explain that any person, or group of persons, who believes that they have been subjected to discrimination on the basis of race, color, or national origin may file a complaint to RCTC, or directly to FTA. RCTC will render a decision within 15 days upon follow-up with the complainant. The Circular also requires that the recipient explicitly state that a complainant has the opportunity to submit a complaint directly to FTA and must provide the contact information for submitting a complaint.

These documents are available on RCTC’s website and at the front desk of RCTC’s offices at 4080 Lemon Street, 3rd Floor, Riverside, CA 92501. In addition to the public notice, the complaint procedures and form are considered vital documents and as such are available in Spanish, consistent with the DOT LEP Guidance and RCTC’s LAP.



## List of Transit-Related Title VI Investigations, Complaints, or Lawsuits

FTA requires that files of investigations, complaints, or lawsuits that pertain to allegations of discrimination on the basis of race, color, or national origin in transit-related activities and programs be maintained for three years and a list of cases be held for five years.

RCTC has not received any transit-related Title VI complaints, nor has it been involved in any transit-related Title VI investigations or lawsuits.

## Public Participation Plan

Recipients are required to promote inclusive public participation and seek out and consider the needs and input of the general public, including interested parties and those traditionally underserved by existing transportation systems, such as minority and LEP persons.

The Public Participation Plan is the established process or plan that describes the proactive strategies, procedures, and desired outcomes of a recipient's public participation activities. RCTC developed its Public Participation Plan by considering the demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available to the Commission.

The Public Participation Plan is provided as Appendix B.

## Language Assistance Plan

Recipients are required to take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of its programs or activities for LEP populations. FTA Circular 4702.1B details the components of the Language Assistance Plan, including the Four Factor Analysis, which provides a careful analysis of LEP persons that the recipient may encounter to determine the specific language services that are appropriate to provide.

RCTC undertook the Four Factor Analysis and developed appropriate language assistance planning based on the results. The Commission then developed a Language Assistance Plan to assist it in effectively implementing the requirements and communicating with LEP individuals.

The Language Assistance Plan is provided as Appendix C.

## Membership of Non-Elected Committees and Councils

Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, in which the membership is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils.

RCTC has one transit-related committee that is applicable to this requirement, the Citizens and Specialized Transit Advisory Committee (CSTAC). Section 99238 of the State Transportation Development Act (TDA) regulations requires the Commission to have a CSTAC as part of the oversight process in administering the TDA funds. The TDA allows stipulates the membership of this body:

- 1) One representative of a potential transit user 60 years of age and older;
- 2) One representative of a potential transit user who is disabled;
- 3) Two representatives of the social service providers for seniors; including one representative of a social service transportation provider, if one exists
- 4) Two representatives of the social service providers for the disabled, including one representative of a social service transportation provider, if one exists;
- 5) One representative of a social service provider for persons of limited means; and
- 6) Two representatives of a Consolidated Transportation Service Agency(s) designated as such pursuant to subdivision (a) of Section 15975 of the Government Code, including one representative from an operator, if one exists. The CSTAC serves the Commission by participating in the transit needs hearing and reviewing the Short-Range Transit Plans developed by public transit operators as part of the Commission's annual budget development process. Most importantly, the CSTAC provides a dialogue between citizen appointee representatives and the public transit and specialized transit programs of Riverside County around matters of mutual concern and provides the Commission with invaluable community feedback.

Appointments are for a three-year term and some are extended to ensure continuity of service for the CSTAC. The selection process of CSTAC members was broadly noticed in media, on the RCTC website, and in various outreach settings, including asking Commissioners for input and conducting individualized outreach to social service providers.

In 2019, CSTAC bylaws were revised to expand the committee membership to include more social service agencies and transit providers to develop a more robust network that is more representative of the various populations in the county. In 2021, 15 members were approved by the Commission.

Citizens and Specialized Transit Advisory Committee					
Race	Caucasian	Latino	African American	Asian American	Native American
CSTAC*	60.0%**	33.3%**	0%	0%	0%

\*One CSTAC member did not respond.

\*\*One member identified as both Caucasian and Latino.

## Subrecipient Compliance

If a recipient is a primary recipient, which means any FTA recipient that extends federal financial assistance to a subrecipient, then it is required to ensure that subrecipients are complying with Title VI, including the submittal of a subrecipient's Title VI documents.

In the last three years, the Southern California Regional Rail Authority (SCRRA), better known as Metrolink, was a subrecipient. The Riverside Transit Agency was a subrecipient until July 2019. Both agencies are also direct recipients of FTA funds and submit a Title VI report directly. Per FTA Circular 4702.1B, Chapter III, page 11: *"When a subrecipient is also a direct recipient of FTA funds, that is, applies for funds directly from FTA in addition to receiving funds from a primary recipient, the subrecipient/direct recipient reports directly to FTA and the primary recipient/designated recipient is not responsible for monitoring compliance of that subrecipient."*

## **Title VI Equity Analysis for Determining the Site or Location of Facilities**

This requirement stipulates that recipients should complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. The equity analysis must include:

- Outreach to persons potentially impacted by the siting of facilities.
- Comparison of the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

The purpose of completing a Title VI analysis during the project development stage is to determine if a project will have disparate impacts on the basis of race, color, or national origin. If such impacts exist then the project may move forward with the proposed location if there is substantial legitimate justification for locating the project there, and there are no alternative locations that would have a less adverse impact on members of a group protected under Title VI.

For purposes of this requirement, the Circular states that “facilities” do not include bus shelters, as they are transit amenities and are covered under the additional requirements for fixed route transit operators, nor do they include transit stations, power substations, etc., as those are evaluated during project development and the National Environmental Policy Act (NEPA) process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc.

There have not been any projects in the last three years requiring an equity analysis.

## **Approval of the Title VI Program**

All recipients are required to provide documentation such as meeting minutes, resolution, or other appropriate documentation showing that the governing body reviewed and approved the Title VI Program prior to submission to FTA. RCTC’s Title VI Program was reviewed and approved by the Budget and Implementation Committee on January 24, 2022, and forwarded to the full Commission for approval on February 9, 2022. Appendix D includes a copy of the meeting agenda and staff report.

## **TITLE VI NOTICE, COMPLAINT PROCEDURES, AND COMPLAINT FORM**

In accordance with the requirements of Title VI of the Civil Rights Act of 1964 and the Federal Transit Administration (FTA) Circular 4702.1B, the Riverside County Transportation Commission (Commission or RCTC) is required to notify beneficiaries of protection under Title VI, develop complaint procedures, and develop a complaint form.

These documents are considered vital and are translated into languages other than English, as needed and consistent with the Department of Transportation's (DOT) Limited English Proficiency (LEP) Guidance and the Commission's Language Assistance Plan (LAP).

### **I. POLICY AND NOTICE TO THE PUBLIC**

The Commission does not discriminate or exclude individuals from its programs, services, or activities on the basis of race, color, or national origin.

The following notice shall be posted on the Commission's website, main reception area, and relevant publication materials:

*RCTC operates its programs and services without regard to race, color, and national origin in accordance with Title VI of the Civil Rights Act. Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with RCTC.*

*For more information on RCTC's Title VI program, and the procedures to file a complaint, contact (951) 787-7141; email [jstandiford@rctc.org](mailto:jstandiford@rctc.org); or visit our administrative office at 4080 Lemon Street, 3<sup>rd</sup> Floor, Riverside, CA 92501. For more information, you may also visit our website at [www.rctc.org](http://www.rctc.org) for additional information and to download a complaint form under "About Us".*

*A complainant may file a complaint directly with the Federal Transit Administration by filing a complaint with the Office of Civil Rights, Attention: Title VI Program Coordinator, East Building, 5<sup>th</sup> Floor – TCR, 1200 New Jersey Avenue., SE, Washington, DC 20590.*

*If information is needed in another language, contact (951) 787-7141.*

*Si se necesita la información en otro idioma, llame al (951) 787-7141.*

## II. PROCEDURES FOR FILING, INVESTIGATING, AND TRACKING COMPLAINTS

Any person, group of individuals, or entity that believes it has been subjected to discrimination on the basis of race, color, or national origin by the Commission may file a complaint directly or through a representative with the Commission or the DOT FTA.

### **Submission of Complaint to RCTC**

To file a complaint with RCTC, the complainant may contact the main reception at (951) 787-7141 to request a copy of the complaint form and procedures, or visit the website at [www.rctc.org](http://www.rctc.org) to download the complaint form and procedures.

When possible, the complainant should complete the complaint form, or in writing provide information about the alleged discrimination containing the following:

- Name of Complainant;
- Address of Complainant;
- Phone number of Complainant;
- Date of incident;
- Location of incident; and
- Description of incident

In cases where the complainant is unable or incapable of providing a written statement, the complainant may be interviewed or the complaint form may also be provided in alternative means such as audio or Braille. The complaint should be submitted as soon as possible but no later than 180 calendar days after the alleged violation to the Deputy Executive Director by email at [jstandiford@rctc.org](mailto:jstandiford@rctc.org), postal mail, or in person at the following:

Riverside County Transportation Commission  
John Standiford, Deputy Executive Director  
4080 Lemon Street, Third Floor  
P. O. Box 12008  
Riverside, CA 92502-2208

If the information provided is insufficient to conduct an investigation or render a decision, RCTC may request additional information from the complainant. Failure of the complainant to submit additional information within the designated time frame may be considered good cause to administratively close the case on the basis of lack of investigative merit.

Within 15 calendar days after receipt of the complaint, RCTC's Deputy Executive Director, or designee, will request a meeting to discuss the alleged incident with the complainant. Within 15 calendar days of the discussion, RCTC will respond in writing, and where appropriate, in a format accessible to the complainant. The response will explain the position of RCTC and offer options for resolution of the complaint.

If the complainant is not satisfied with the decision of the Deputy Executive Director, or designee, an appeal may be filed within 15 calendar days after receipt of the response, to RCTC's Executive Director.

Within 15 calendar days after receipt of the appeal, the Executive Director, or designee, will request a meeting to discuss the alleged incident with the complainant. Within 15 calendar days after the meeting, the Executive Director or designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final decision of the complaint.

### **Submission of Complaint to FTA**

The complainant has the right to submit a complaint directly to the FTA, however, is encouraged to initially file with RCTC. As described in FTA Circular 4702.1B, Chapter IX, to file with the FTA, the complaint must be submitted no later than 180 days after the date of alleged discrimination at the address below, unless the time for filing is extended by FTA.

Federal Transit Administration, Office of Civil Rights  
Title VI Program Coordinator  
East Building, 5<sup>th</sup> Floor – TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Once a complaint has been accepted by FTA for investigation, FTA will notify RCTC that it is the subject of a Title VI complaint and ask RCTC to respond in writing to the complainant's allegations. If the complainant agrees to release the complaint to RCTC, FTA will provide RCTC with the complaint, which may have personal information redacted at the request of the complainant. If the complainant does not agree to release the complaint to RCTC, FTA may choose to close the complaint.

FTA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with DOT's Title VI regulations. The investigation will include, where

appropriate, a review of the pertinent practices and policies of RCTC, the circumstances under which the possible noncompliance with DOT's Title VI regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with DOT's Title VI regulations.

After FTA has concluded the investigation, FTA's Office of Civil Rights will transmit to the complainant and RCTC one of the following letters based on its findings:

- a. A letter of finding indicating FTA did not find a violation of DOT's Title VI regulations. This letter will include an explanation of why FTA did not find a violation. If applicable, the letter may include a list of procedural violations or concerns, which will put RCTC on notice that certain practices are questionable and that without corrective steps, a future violation finding is possible.
- b. A letter of finding indicating RCTC is in violation of DOT's Title VI regulations. The letter will include each violation referenced to the applicable regulation, a brief description of proposed remedies, notice of the time limit on coming into compliance, the consequences of failure to achieve voluntary compliance, and an offer of assistance to RCTC in devising a remedial plan for compliance, if appropriate.

FTA will administratively close Title VI complaints before a resolution is reached where (1) the complainant decides to withdraw the case; (2) the complainant is not responsive to FTA's requests for information or to sign a consent release form; (3) FTA has conducted or plans to conduct a related compliance review of the agency against which the complaint is lodged; (4) litigation has been filed raising similar allegations involved in the complaint; (5) the complaint was not filed within 180 days of the alleged discrimination; (6) the complaint does not indicate a possible violation of 49 CFR part 21; (7) the complaint is so weak, insubstantial, or lacking in detail that FTA determines it is without merit, or so replete with incoherent or unreadable statements that it, as a whole, cannot be considered to be grounded in fact; (8) the complaint has been investigated by another agency and the resolution of the complaint meets DOT regulatory standards; (9) the complaint allegations are foreclosed by previous decisions of the Federal courts, the Secretary, DOT policy determinations, or the U.S. DOT's Office of Civil Rights; (10) FTA obtains credible information that the allegations raised by the complaint have been resolved; (11) the complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that have been found factually or legally insubstantial by FTA; (12) the same complaint allegations have been filed with another Federal, state, or local agency, and FTA anticipates that the recipient will provide the complainant with a comparable resolution process under comparable legal standards; or



(13) the death of the complainant or injured party makes it impossible to investigate the allegations fully.

### **Tracking of Complaints**

As required by FTA, all written complaints received by RCTC's Deputy Executive Director, or designee, appeals to the Executive Director, or designee, and responses from these two offices will be retained by RCTC for three years. In addition, a summary list of complaints will be tracked for five years as required.

### **III. COMPLAINT FORM**

See Attachment A.

*If information is needed in another language, contact (951) 787-7141.*

*Si se necesita la información en otro idioma, llame al (951) 787-7141.*

## ATTACHMENT A: TITLE VI DISCRIMINATION COMPLAINT FORM

The Riverside County Transportation Commission (RCTC) is committed to ensuring that no person is excluded from participating in or denied the benefits of its services on the basis of race, color, or national origin as provided by Title VI of the Civil Rights Act of 1964, as amended. Complaints must be filed within 180 days from the date of the alleged discrimination. The following information is necessary to assist RCTC in processing your complaint. If you require any assistance in completing this form, please contact the Civil Rights Officer, John Standiford, by calling (951) 787-7141.

**When completed, submit the original signed form or letter in person or by mail to:**

**John Standiford, Deputy Executive Director  
Riverside County Transportation Commission  
4080 Lemon Street, Third Floor  
P. O. Box 12008  
Riverside, CA 92502-2208**

**FOR QUESTIONS OR ASSISTANCE IN OTHER ACCESSIBLE FORMATS SUCH AS LARGE PRINT, TDD, AUDIO, OR OTHER PLEASE CALL: (951) 787-7141. USERS WITH HEARING OR SPEECH IMPAIRMENTS, USE THE CALIFORNIA RELAY SERVICE, 711, AND THEN THE NUMBER YOU NEED**

**1. Contact Information:**

Complainant's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State and Zip Code: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ (home/work) \_\_\_\_\_ (cell)

**What are the most convenient days and times for RCTC to contact you about this complaint?**

\_\_\_\_\_

**2. Are you filing this complaint on your own behalf? Yes: ☐ No: ☐**

If you answered yes, please go to question #3.

If you answered no, please explain why you have filed for a third party:

\_\_\_\_\_

\_\_\_\_\_

If you answered no, please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party. Yes: ☐ No: ☐

**3. Basis of discriminatory action(s):**

Check ( ☐ ) all categories below that apply to the act(s) of discrimination.

a.		Race
b.		Color
c.		National Origin

**4. Date and place of alleged discriminatory action(s):**


Include the earliest date of discrimination and the most recent date of discrimination:

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

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

**5. How were you discriminated against?**

Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status was a factor in the discrimination. Include how other persons were treated differently from you. (Attach additional page(s) if necessary).



**6. Names of individuals responsible for the discriminatory action(s):**

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7. **Names of individuals (witnesses, fellow employees, supervisors, or others) whom we may contact for additional information to support or clarify your complains:**

Name

Address

Telephone No.

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8. **Has this complaint been filed with any other Federal, State, or local investigative agency?**  
**No** ☐ **Yes** ☐ **If “yes,” please provide the following information:**

Agency: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Date Filed: \_\_\_\_\_

9. **Please provide any additional information that you believe would assist in the investigation:**

**You may attach any written materials or other information that you think is relevant to your complaint.**

**Please sign and date this form:**

\_\_\_\_\_  
**Signature of Complainant**

\_\_\_\_\_  
**Date**

**Si se necesita la información en otro idioma, llame al (951) 787- 7141.**

## **AVISO, PROCEDIMIENTO DE QUEJAS Y FORMATO DE QUEJA DE TÍTULO VI**

De conformidad con los requisitos del Título VI del Decreto de Derechos Civiles de 1964 y la Circular 4702 .1B de la Administración Federal de Tránsito ( FTA, en inglés), la Comisión de Transporte del Condado de Riverside ( Comisión o RCTC, por sus siglas en inglés) está obligada a notificar a los beneficiarios de las protecciones bajo el Título VI, desarrollar procedimientos de queja y desarrollar un formato de queja.

Estos documentos se consideran vitales y se traducen a otros idiomas diferentes al inglés, según se considere necesario y de forma consistente con la Orientación para el Dominio Limitado del Inglés (LEP, en inglés) del Departamento de Transporte (DOT, en inglés) y el Plan de Asistencia de Lenguaje de la Comisión (LAP, en inglés).

### **I. POLÍTICAS Y AVISO AL PÚBLICO**

Es política de la Comisión de no discrimina o excluye a personas sobre la base de raza, color, u origen nacional en la admisión a sus programas, servicios o actividades, en el acceso a ellas, en el tratamiento o en cualquier aspecto de las operaciones.

El siguiente aviso debe colocarse en el sitio web de la Comisión, en la zona de recepción principal y en los materiales impresos relevantes:

*La RCTC opera sus programas y servicios sin tomar en cuenta el grupo étnico ni el origen nacional de conformidad con el Título VI del Decreto de Derechos Civiles. Cualquier persona que considere que ha sido objeto de cualquier práctica discriminatoria ilegal bajo el Título VI puede presentar una queja contra la RCTC.*

*Para mayor información sobre el programa de Título VI de la RCTC y los procedimientos para presentar una queja, comuníquese al (951)787-7141; envíe un correo electrónico a [jstandiford@rctc.org](mailto:jstandiford@rctc.org); o visite nuestras oficinas administrativas ubicadas en 4080 Lemon Street, 3rd Floor, Riverside, CA 92501. También puede visitar nuestra página web en [www.rctc.org](http://www.rctc.org) para información adicional y para descargar el formulario de queja bajo el apartado “Acerca de nosotros”(About Us, en inglés).*

*También puede presentar una queja directamente con la Administración Federal de Transporte, por medio de la Oficina de Derechos Civiles, a la atención del Coordinador del Programa de Título VI, East Building, 5th Floor TCR, 1200 New Jersey Avenue, SE,*

Washington, DC 20590.

*Si requiere información en otro idioma, favor de comunicarse al  
(951)787- 7141.*

## **II. PROCEDIMIENTOS PARA PRESENTAR, INVESTIGAR Y HACER SEGUIMIENTO DE LAS QUEJAS**

Cualquier persona, grupo de personas o entidad que considere haber sido sometido a discriminación por motivos de grupo étnico u origen nacional por parte de la Comisión, puede presentar una queja directamente o por medio de un representante ante la comisión o la FTA del DOT.

### **Presentación de una queja contra la RCTC**

Para presentar una queja contra la RCTC, el reclamante puede ponerse en contacto con la recepción principal al (951)787-7141 para solicitar una copia del formulario de queja y sus procedimientos, o puede visitar la página web [www.rctc.org](http://www.rctc.org) para descargar el formulario de queja y sus procedimientos.

Siempre que sea posible, el reclamante debe completar el formulario, o proporcionar por escrito la información sobre la presunta discriminación, la cual debe incluir lo siguiente:

- Nombre del reclamante;
- Domicilio del reclamante;
- Número telefónico del reclamante;
- Fecha del incidente;
- Ubicación del incidente; y
- Descripción del incidente

En casos en los que el reclamante no pueda o sea incapaz de proporcionar una declaración por escrito, se puede entrevistar al reclamante o este puede presentar su declaración por un medio alternativo como audio o Braille. La queja debe presentarse ante el Subdirector Ejecutivo lo antes posible, pero no más de 180 días naturales después de la presunta infracción, por correo electrónico a [jstandiford@rctc.org](mailto:jstandiford@rctc.org), por correo postal o en persona en el siguiente domicilio:

Riverside County Transportation Commission  
John Standiford, Deputy Executive Director  
4080 Lemon Street, Third Floor  
P. O. Box 12008  
Riverside, CA92502-2208

Si la información proporcionada es insuficiente para realizar una investigación o generar una decisión, la RCTC puede solicitar al reclamante información adicional. De no presentar el reclamante la información adicional dentro del plazo designado, se puede considerar que hay suficiente causa administrativa para cerrar el caso debido a la falta de mérito investigativo.

Dentro 15 días calendario después de haber recibido la queja, el Director Ejecutivo de la RCTC, o su representante, solicitarán una reunión para abordar el presunto incidente con el reclamante. Dentro 15 días calendario después de la reunión, la RCTC responderá por escrito, y en los casos en que sea apropiado, en un formato accesible al reclamante. La respuesta explicará la postura de la RCTC y ofrecerá opciones para la resolución de la queja.

Si el reclamante no está satisfecho con la decisión del Subdirector Ejecutivo, o su representante, se puede presentar una apelación ante el Director Ejecutivo de la RCTC dentro de los 15 días calendario después de haber recibido la respuesta.

Dentro 15 días calendario siguientes después de haber recibido la apelación, el Director Ejecutivo, o su representante, solicitarán una reunión para abordar el presunto incidente con el reclamante. Dentro 15 días calendario después de la reunión, el Director Ejecutivo responderá por escrito, y en los casos en que sea apropiado, en un formato accesible al reclamante, con la decisión final respecto a la queja.

### **Presentación de queja ante la FTA**

El reclamante tiene el derecho de presentar una queja directamente ante la FTA, sin embargo, se le exhorta a que la presente inicialmente ante la RCTC. Tal como se describe en la circular 4702.1B, capítulo IX de la FTA, para presentar una queja el reclamante debe hacerlo no más de 180 días después de la presunta discriminación, en el domicilio a continuación, a menos que la FTA amplíe el plazo para presentarla.

Federal Transit Administration  
Office of Civil Rights  
Title VI Program Coordinator  
East Building, 5<sup>th</sup> Floor – TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Una vez que la FTA acepte la queja para realizar una investigación, la FTA notificará a la RCTC que es sujeto de una queja de Título VI y le solicitará una respuesta por escrito respecto a la acusación del reclamante. Si el reclamante accede a que se divulgue su queja a la RCTC, la FTA se la proporcionará a la

RCTC, y dicha queja podría contener información personal oculta a petición del reclamante. Si el reclamante no está de acuerdo en divulgar la queja a la RCTC, la FTA puede elegir cerrar dicha queja.

La FTA realizará una investigación expedita siempre que un análisis del cumplimiento de las reglas, un informe, queja o cualquier otra información indiquen una posible falla en el cumplimiento de los reglamentos de Título VI del DOT. La investigación incluirá, en los casos apropiados, un análisis de las prácticas y políticas pertinentes de la RCTC; las circunstancias bajo las cuales ocurrió el posible incumplimiento con los reglamentos del Título VI del DOT y otros factores relevantes a la determinación de si el destinatario no cumplió con los reglamentos de Título VI del DOT.

Después de que la FTA concluya la investigación, la Oficina de Derechos Civiles de la FTA transmitirá al reclamante y a la RCTC una de las siguientes cartas de acuerdo con sus hallazgos:

- a. Una carta que indique que la FTA no encontró una violación de los reglamentos de Título VI del DOT. Esta carta incluirá una explicación de porqué la FTA no encontró una violación. En caso necesario, la carta podría incluir una lista de las violaciones a procedimientos o inquietudes, misma que pondrá a la RCTC sobre aviso de que ciertas prácticas son cuestionables y que de no haber pasos correctivos, es posible que en el futuro sí se detecte una violación.
- b. Una carta que indique que la RCTC ha violado los reglamentos del Título VI del DOT. La carta incluirá cada violación en referencia con los reglamentos aplicables, una breve descripción de remedios propuestos, un aviso sobre el plazo límite para darle cumplimiento, las consecuencias que tendría la falta de cumplimiento voluntario y una oferta de ayuda a la RCTC para la creación de un plan de solución para lograr el cumplimiento, en los casos apropiados.

La FTA cerrará administrativamente las quejas de Título VI antes de que se llegue a una resolución si (1) el reclamante decide retractar el caso; (2) el reclamante no responde cuando la FTA le solicite proporcionar información o firmar un formulario de consentimiento de divulgación de información; (3) la FTA ha realizado o planea realizar un análisis de cumplimiento de la agencia contra la cual se ha presentado una queja; (4) se ha iniciado un litigio con acusaciones similares a las que incluye la queja; (5) la queja no se presentó en un lapso de 180 días después de la presunta discriminación; (6) la queja no indica una posible violación del artículo 49 CFR parte 21; (7) la queja es deficiente, insustancial o carece de detalle a tal grado que la FTA determina que no tiene mérito o tiene enunciados tan incoherentes o ilegibles que no se puede considerar que está basada en hechos; (8) la queja ha sido investigada por otra agencia y la resolución de esta reúne los estándares regulatorios del DOT; (9) las acusaciones de la queja han sido adjudicadas por decisiones



previas de los tribunales federales, el Secretario, las determinaciones de las políticas del DOT o la Oficina de Derechos Civiles del DOT; (10) la FTA obtiene información creíble de que las acusaciones en la queja han sido resueltas; (11) la queja es la continuación de un patrón de quejas previamente presentadas, las cuales involucran acusaciones iguales o parecidas en contra del mismo reclamante u otros reclamantes y que la FTA ha considerado factual o legalmente insustanciales; (12) se han presentado las mismas acusaciones en la queja ante otra agencia federal, estatal o local y la FTA anticipa que el destinatario proporcionará al reclamante un proceso de resolución comparable bajo estándares legales comparables; o (13) el fallecimiento del reclamante o de la parte afectada hace que sea imposible investigar por completo las acusaciones.

### **Seguimiento de las quejas**

Tal como lo requiere la FTA; todas las quejas por escrito que recibe el Subdirector Ejecutivo de la RCTC, o su representante, las apelaciones ante el Director Ejecutivo, o su representante, y las respuestas de estas dos oficinas se conservarán en la RCTC durante tres años. Además, se llevará una lista resumida de las quejas durante cinco años, como es requerido.

### **III. FORMULARIO DE QUEJA**

Ver adjunto A.

*Si requiere información en otro idioma, favor de comunicarse al (951)787- 7141.*



**ADJUNTO A:  
FORMULARIO DE QUEJA DE DISCRIMINACIÓN DE TÍTULO VI**

La Comisión de Transporte del condado de Riverside (RCTC) se compromete a asegurar que no se excluya a ninguna persona de participar o que se le nieguen los beneficios de sus servicios debido al grupo étnico u origen nacional tan como lo dicta el Decreto de Derechos Civiles de Título VI de 1964, en su versión modificada. Las quejas deben presentarse en un lapso de 180 días después de la fecha de la presunta discriminación. Es necesaria la siguiente información para ayudar a la RCTC a procesar su queja. Si requiere ayuda para llenar este formulario, por favor comuníquese con el responsable de la Oficina de Derechos Civiles, John Standiford, llamando al (951) 787-7141.

**Una vez que llene este formulario,  
preséntelo con la firma original, o una  
carta firmada, en persona o por correo a:**

**John Standiford, Deputy Executive Director  
Riverside County Transportation Commission  
4080 Lemon Street, Third Floor  
P.O.Box 12008  
Riverside, CA 92502-2208**

**SI TIENE PREGUNTAS O REQUIERE AYUDA  
PARA OBTENER OTROS FORMATOS  
ACCESIBLES TALES COMO TIPOGRAFÍA  
GRANDE, TDD, AUDIO U OTRO, FAVOR DE  
LLAMAR AL: (951)787-7141.  
LOS USUARIOS CON IMPEDIMENTO DEL  
HABLA O DE AUDICIÓN, PUEDEN USAR  
EL SERVICIO DE TRANSMISIÓN DE  
CALIFORNIA, 711, Y DESPUÉS EL  
NÚMERO QUE NECESITA.**

**1. Información de contacto:**

Nombre del reclamante: \_\_\_\_\_  
Domicilio: \_\_\_\_\_  
Ciudad, estado y código postal: \_\_\_\_\_  
Teléfono: \_\_\_\_\_(hogar/trabajo) \_\_\_\_\_(celular)

**¿Cuáles son los días y el horario más conveniente para que la RCTC se comunique con usted respecto a esta queja?**

**2. ¿Presenta usted esta queja por su propia cuenta? Sí: ☐ No: ☐**

Si respondió que sí, por favor vaya a la pregunta #3.

Si respondió que no, por favor explique porqué presenta esta queja a nombre de un tercero:

\_\_\_\_\_  
\_\_\_\_\_

Si respondió que no, por favor confirme que cuenta con el permiso de la parte afectada,



7. **Nombre de las personas (testigos, empleados, supervisores u otros) a quienes podríamos contactar para obtener información adicional en apoyo o aclaración de su queja:**

Nombre

Domicilio

Número telefónico

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8. **¿Se ha presentado esta queja ante otra agencia investigadora federal, estatal o local?**  
**No ☐ Sí ☐ Si respondió que "sí", indique la siguiente información:**

Agencia: \_\_\_\_\_

Persona de contacto: \_\_\_\_\_

Domicilio: \_\_\_\_\_

Núm. telefónico: \_\_\_\_\_

Fecha en que se presentó: \_\_\_\_\_

9. **Favor de proporcionar cualquier información adicional que considere de ayuda en la investigación:**

**Puede adjuntar cualquier material por escrito u otra información que considere relevante para su queja.**

**Favor de firmar y anotar la fecha:**

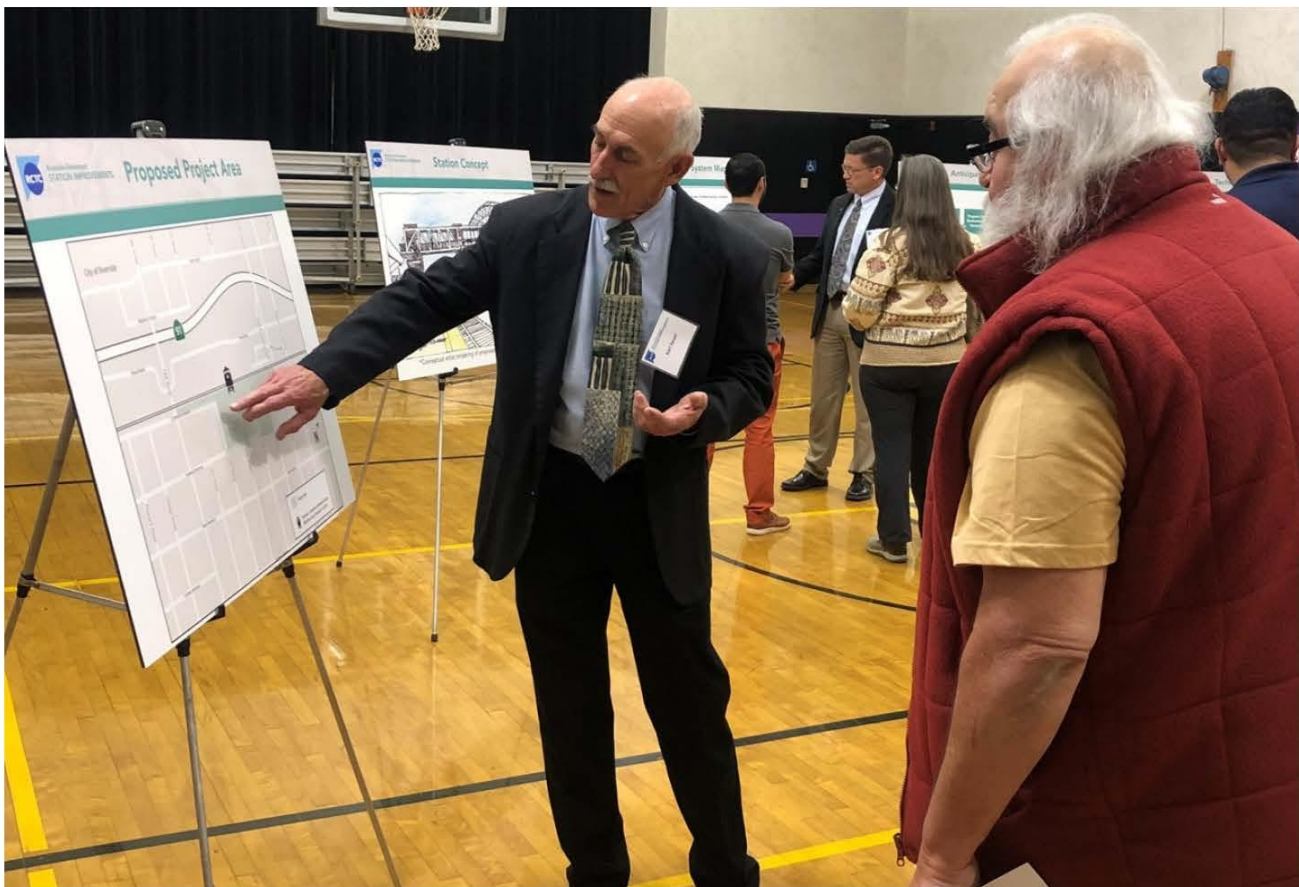
\_\_\_\_\_  
**Firma del reclamante**

\_\_\_\_\_  
**Fecha**

**Si necesita información en otro idioma, llame al (951) 787- 7141.**

## APPENDIX B

# TITLE VI PUBLIC PARTICIPATION PLAN



**RIVERSIDE  
COUNTY  
TRANSPORTATION  
COMMISSION**

4080 Lemon Street, 3rd Floor  
Riverside, CA 92501

If information is needed in another language, please contact (951) 787-7141 for free translation services.  
Si se necesita este documento en Español, llame al 951-787-7141 para servicios de traducción gratuitos.

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# **I. Introduction**

## **Background of the Riverside County Transportation Commission**

The Commission was established in 1976 by the State of California (State) to oversee the funding and coordination of all public transportation services within Riverside County. The governing body consists of all five members of the County Board of Supervisors, one elected official from each of the County's 28 cities, and one non-voting member appointed by the Governor of California. It is the designated Regional Transportation Planning Agency (RTPA) and County Transportation Commission (CTC). Its responsibilities include setting policies, establishing priorities, coordinating activities among the County's various transit operators and local jurisdictions.

RCTC's capital projects, motorist aid services and transit-related programs and projects are funded with various local, state, and federal sources. Local funding sources consist of the Measure A, the countywide sales tax; debt proceeds derived from issuing bonds; and Transportation Uniform Mitigation Fees (TUMF) derived from developer impact fees. State funding sources for projects are derived from the State Transportation Improvement Program (STIP). RCTC also receives apportionments of federal Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds from the Federal Highway Administration (FHWA); and FTA Small Starts and Sections 5307, 5309, 5337 formula funds.

The Commission utilizes FTA funds for its VanClub program, station operations and capital projects, and county share of projects for the Southern California Regional Rail Authority (SCRRA or Metrolink).

Regardless of funding source, RCTC is committed to ensuring that its projects and services are delivered and implemented in a non-discriminatory manner.

## **Purpose of this Plan**

This Public Participation Plan (Plan) is intended to satisfy Title VI requirements as expressed in FTA Circular 4702.1B. Recipients are required to promote inclusive public participation and seek out and consider the needs and input of the general public, including interested parties and those traditionally underserved by existing transportation systems, such as minority and Limited-English Proficient (LEP) persons.

The Public Participation Plan is the established process or plan that describes the proactive strategies, procedures, and desired outcomes of a recipient's public participation activities. This Plan will provide direction for the Commission's public processes by allowing public input for the planning process and for RCTC's programs, projects, and activities to all members of Riverside County, including citizens, organizations, and public agencies. Finally, it will develop specific strategies inclusive of low-income, minority, LEP populations, and underrepresented individuals.

RCTC developed this Plan by considering the demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available to the Commission.

## **Desired Outcomes**

This Plan details RCTC’s public participation goals, as well as strategies that will be implemented to assist meeting these goals. From these efforts, the Commission anticipates the following outcomes:

- Increased access to early, meaningful, and continual engagement in the transportation planning process for all individuals in Riverside County.
- Implementation of proactive strategies to bring enhanced awareness and increased access for minority individuals, LEP individuals, low-income individuals, and additional underrepresented and underserved individuals.
- Participation and representation from a diverse range of perspectives.

## **Federal and State Requirements**

### **Title VI and Federal Authority**

Title VI of the Civil Rights Act of 1964 protects persons in the United States from being excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Under the DOT, the Federal Transit Administration (FTA) requirements for implementing Title VI include the adoption of a Title VI Program report, including a Public Participation Plan, pursuant to FTA Circular 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*.

### **Public Hearing Requirements**

Public hearing requirements may vary by project or program. The Commission may conduct a public hearing for a variety of reasons, such as approval of the Program of Projects under the Federal Transportation Improvement Program (FTIP); or to solicit public comments on the social and environmental effects of a proposed project that is funded with state and federal funds. Capital projects, for instance, will comply with Caltrans’ Project Development Procedures Manual, Chapter 11 Public Hearing requirements; whereas, FTIP projects would follow the public participation requirements stipulated under the existing transportation legislation, Infrastructure Investment and Jobs Act



## Public Participation Background

RCTC's traditionally seeks public involvement for both capital projects and transit-related projects.

The public is most familiar with RCTC for its capital projects. The various regional capital projects that RCTC is involved in throughout the County include the following:

- ✓ 91 Express Lanes
- ✓ 15 Express Lanes
- ✓ 15/91 Express Lanes Connector
- ✓ Interstate 15 Interim Corridor Operations Project
- ✓ Interstate 15 Corridor Operations Project
- ✓ Interstate 15 Express Lanes Southern Extension
- ✓ State Route 91 Corridor Operations Project
- ✓ State Route 71/91 Interchange Project
- ✓ State Route 60 Truck Lanes Project
- ✓ Mid-County Parkway/Interstate 215 Placentia Avenue Interchange
- ✓ Interstate 15/Railroad Canyon Interchange Project
- ✓ Coachella Valley-San Geronimo Pass Rail Corridor Service Project
- ✓ Riverside-Downtown Station Improvements Project
- ✓ Moreno Valley/March Field Station Improvements Project
- ✓ Santa Ana River Trail Extension Projects

A specialized outreach plan is designed for each project and may include community meetings, open houses, and formal public hearings.

Transit-related projects that involve public participation may include:

- Public Transit-Human Services Coordinated Plan Process
- The Citizen and Specialized Transit Advisory Committee
- Annual Transit Needs Hearing

## II. Riverside County Demographics

Riverside County is the fourth largest county in California by area and population and is diverse in geography and demographics. According to the 2020 U.S. Census, Riverside County covers 7,208 square miles and has a population of 2,418,185.

Many of the populations important to this Plan – minority, underrepresented, and low-income individuals – are described in the American Community Survey's estimates. The 2010 and 2020 U.S. Census information were compared for population and race. The 2012 and 2019 ACS 5 Year Estimates were used to compare sex, age, poverty, disability, and homeowner status. By referring to the Census, the Commission has generated the following information to showcase county growth.

- Riverside County's population experienced a 10 percent increase between 2010 and 2020.
- American Indian population experienced an 85 percent growth while White alone experienced a 25 percent decline between 2010 and 2020
- Individuals with Hispanic or Latino origin increased by 21 percent between 2010 and 2020
- Between 2012 and 2019, the adult population ages 18 and over increased by more than 14 percent, adding 223,052 individuals. Adults represent 74 percent of the county's total population, numbering nearly 1.79 million people.
- The adult population age 65 or older has increased by nearly 30 percent, adding nearly 79,000 people. This group amounts to a total of almost 340,575 persons, representing 14.1 percent of the total county population.
- Younger seniors, ages 65 to 74, is the largest and fastest growing senior group, representing 36 percent of all seniors.
- Population in the percent below poverty level decreased by 3 percent since the 2012 ACS Estimates, representing 13 percent of the current entire population.
- Individuals with disabilities total 276,161, which represents 11 percent of the County's total population growing by 22% between 2012 and 2019.
- Owner occupied housing units declined by five percent while renter occupied housing increased by 12 percent

### Minority Individuals

RCTC conducted demographic analysis of minority populations in the aggregate to understand where these communities are located throughout the County. FTA Title VI guidance defines a minority person as an individual of any of the following groups: American Indian and Alaskan Native, Asian, Black, or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islanders.

Demographic maps are provided in Attachment A, based upon minority population count tabulations developed for each Riverside County census tract. These were derived by subtracting the Caucasian population from each tract to arrive at the non-white, minority population counts. A summary of findings is provided below. This analysis was done at the Census Tract and Block Group levels using 2020 Decennial Census, which reflects the most current demographics.

- **Figure 1:** In Western Riverside County, there are pockets of minority populations throughout the region. The largest concentrations of minority populations, between 68.2% to 100% of the population at the Census block group level, are found along the western border of the County near Eastvale and Mira Loma, near Moreno Valley; east of Banning; and in the central portion of the region, near Perris.
- **Figure 2:** In East Riverside County, most of the region has a minority population of 50.9% to 68.1% of the total population at the block group level. A more concentrated minority population is located on the North Shore of the Salton Sea, Ripley and Palo Verde.
- **Figure 3:** Coachella Valley is also home to many minority persons, with the largest concentrations of minority persons located north of Cabazon, south of Cathedral City and Thousand Palms and south of Indio. In these pockets, minority persons make up 68.2 to 100% of the block group population of these areas.

## LEP Individuals

As documented in RCTC’s Language Assistance Plan (LAP), Riverside County is home to many LEP populations, several of which meet the Department of Justice’s Safe Harbor provision. The Safe Harbor provision stipulates that written translation of vital documents for each eligible LEP language is to be provided if the group constitute 5% or 1,000 people, whichever is less, of the total population eligible to be served or likely to be affected or encountered. Such action will be considered strong evidence of compliance with the recipient’s written translation obligation. RCTC’s LAP details how RCTC will provide language assistance to these populations. This information is included here to detail the diverse populations that comprise Riverside County.

Table 1 below provides information from the 2019 American Community Survey 1-year Estimates, the most reliable and current Census source for accessing LEP information. There is a total of 42 LEP groups in Riverside County, numbering 312,657 individuals who speak English less than “very well” or 13.5 percent of Riverside County’s total population. The largest LEP group is Spanish speakers, who number 256,852 and comprise 11.1 percent of the County’s total population. LEP groups of more than 1,000 are highlighted in blue in Table 1 and include individuals who speak Persian, Hindi, Punjabi, Chinese, Korean, Vietnamese, Tagalog, Ilocano, Samoan, Hawaiian, or other Austronesian, Arabic, Other and unspecified languages. Besides Spanish, none of these LEP populations comprise 5% of the County’s total population.

A thorough analysis of LEP populations in the County was conducted to develop RCTC's Language Assistance Plan, consistent with FTA guidance. This analysis found that Spanish-speaking LEPs are the LEP population most frequently contacting RCTC and accessing RCTC's programs and services.

Table 1, Riverside County LEP Populations

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER 2019 American Community Survey 1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Total:	2,314,507		243
Speak only English	1,356,095	58.6%	18705
Spanish: Speak English less than "very well"	256,852	11.1%	10799
French (incl. Cajun): Speak English less than "very well"	582	0.0%	323
Haitian: Speak English less than "very well"	63	0.0%	106
Italian: Speak English less than "very well"	383	0.0%	314
Portuguese: Speak English less than "very well"	334	0.0%	227
German: Speak English less than "very well"	302	0.0%	280
Yiddish, Pennsylvania Dutch or other West Germanic languages: Speak English less than "very well"	42	0.0%	70
Greek: Speak English less than "very well"	461	0.0%	643
Russian: Speak English less than "very well"	699	0.0%	511
Polish: Speak English less than "very well"	469	0.0%	418
Serbo-Croatian: Speak English less than "very well"	310	0.0%	331
Ukrainian or other Slavic languages: Speak English less than "very well"	273	0.0%	345
Armenian: Speak English less than "very well"	180	0.0%	152
Persian (incl. Farsi, Dari): Speak English less than "very well"	1,479	0.1%	740
Gujarati: Speak English less than "very well"	456	0.0%	353

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER</b> <b>2019 American Community Survey</b> <b>1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Hindi: Speak English less than "very well"	1,645	0.1%	1355
Urdu: Speak English less than "very well"	971	0.0%	592
Punjabi: Speak English less than "very well"	1,397	0.1%	928
Bengali: Speak English less than "very well"	-	0.0%	216
Nepali, Marathi, or other Indic languages: Speak English less than "very well"	121	0.0%	146
Other Indo-European languages: Speak English less than "very well"	995	0.0%	580
Telugu: Speak English less than "very well"	70	0.0%	118
Tamil: Speak English less than "very well"	452	0.0%	593
Malayalam, Kannada, or other Dravidian languages: Speak English less than "very well"	-	0.0%	216
Chinese (incl. Mandarin, Cantonese): Speak English less than "very well"	11,837	0.5%	2899
Japanese: Speak English less than "very well"	644	0.0%	425
Korean: Speak English less than "very well"	4,223	0.2%	1653
Hmong: Speak English less than "very well"	81	0.0%	135
Vietnamese: Speak English less than "very well"	7,242	0.3%	1917
Khmer: Speak English less than "very well"	777	0.0%	536
Thai, Lao, or other Tai-Kadai languages: Speak English less than "very well"	976	0.0%	524
Other languages of Asia: Speak English less than "very well"	311	0.0%	324
Tagalog (incl. Filipino): Speak English less than "very well"	10,094	0.4%	2120

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER</b> <b>2019 American Community Survey</b> <b>1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Ilocano, Samoan, Hawaiian, or other Austronesian languages: Speak English less than "very well"	1,173	0.1%	717
Arabic: Speak English less than "very well"	4,009	0.2%	1844
Hebrew: Speak English less than "very well"	-	0.0%	216
Amharic, Somali, or other Afro-Asiatic languages: Speak English less than "very well"	227	0.0%	210
Yoruba, Twi, Igbo, or other languages of Western Africa: Speak English less than "very well"	420	0.0%	438
Swahili or other languages of Central, Eastern, and Southern Africa: Speak English less than "very well"	500	0.0%	536
Navajo: Speak English less than "very well"	-	0.0%	216
Other Native languages of North America: Speak English less than "very well"	-	0.0%	216
Other and unspecified languages: Speak English less than "very well"	1,607	0.1%	1586
Amharic, Somali, or other Afro-Asiatic languages: Speak English less than "very well"	227	0.0%	210

### III. RCTC's Stakeholders

Stakeholders are individuals, groups, organizations, or agencies that may be directly or indirectly affected by a plan, recommendations of that plan, or a project. RCTC seeks to engage all stakeholders through its public participation efforts, particularly those who may be adversely affected or who may be denied benefit of a plan's recommendation(s).

Stakeholders include:

- General public, minority individuals, low-income individuals, LEP persons, persons with disabilities, and older adults;
- University and college students, including those from: California Baptist University, College of the Desert, La Sierra University, Moreno Valley College, Mt. San Jacinto College, Norco College, Palo

Verde College, Riverside Community College, California State University-San Bernardino-Palm Desert Campus, and University of California-Riverside;

- High school students throughout Riverside County;
- Non-profit organizations including Blindness Support Services, Care Connexus, Care-a-Van, CASA, Friends of Moreno Valley, Inland AIDS Project, Operation SafeHouse, among others;
- Public agencies including city governments and health and human services throughout Riverside County;
- Public transit operators: Corona Cruiser, City of Riverside Special Services, Palo Verde Valley Transit Agency, Riverside Transit Agency, SunLine Transit Agency, Banning Pass Transit, Beaumont Pass Transit; and
- Private organizations and businesses.

## **IV. Public Participation Strategies and Tools**

### **Public Participation Goals and Strategies**

This section details RCTC public participation strategies for achieving each goal.

**Goal 1: Provide all interested parties and agencies reasonable opportunities for involvement in the transportation planning process.**

#### **Strategies**

- Provide adequate public notice of public participation opportunities and activities and time for public review of regionally significant plans and documents.
- Use all channels of outreach for promoting public participation opportunities including RCTC's website and blog, the Citizen and Specialized Transit Advisory Committee (CSTAC), Southern California Associated Governments (SCAG), transit providers, news media, and social media.
- Evaluate plans, programs, and projects to determine the most appropriate and effective tools and strategies for public and agency involvement and outreach.
- Provide opportunities to comment on draft planning documents to affected agencies and parties.
- Make transportation planning documents available for viewing on the RCTC website and at key locations throughout the county, as appropriate.
- During the transportation planning process, conduct public meetings, open houses, and public hearings (virtual and in-person), as appropriate.
- Provide language interpreters (Spanish language; other languages upon request) at public meetings, open houses, and public hearings (virtual and in-person).

**Goal 2: Ensure accessibility to the transportation planning process and information for all members of the community; ensure that a wide range of perspectives will be heard so that planning outcomes reflect the needs of the region's diverse communities.**

## Strategies

- Develop information materials that are easily understood and translated for appropriate audiences and make them accessible at meetings and on RCTC’s website.
- Make notices and announcements attractive and eye-catching.
- Plan workshops and/or public hearings at convenient venues and times across the region; ensure venues are accessible to the public.
- Plan workshops and/or public hearings in both virtual and in-person formats; use multiple communication tools to promote the hearings and engage with the public to expand accessibility for participants.
- When appropriate, provide information about regionally significant plans and projects to the local news media for distribution and promotion.
- Maintain the RCTC website with current transportation planning activities, including reports, plans, agendas, and minutes for RCTC Commission meetings.
- When appropriate, present information about specific plans and projects at public forums, such as City Council and Board of Supervisors meetings for increased public and governmental awareness.
- When identifying locations for community outreach activities, prioritize locations that are accessible by public transit.
- Make every effort to accommodate requests for accessibility opportunities, including physical accessibility to public meetings as well as accessibility to information in LEP languages and alternative formats.
- Encourage early involvement in the transportation planning process by providing timely notification and access to information.
- Use citizen and/or agency advisory groups as a means of providing input to the transportation planning process.
- Identify key individuals, organizations, and community organizations that may be interested in or affected by a plan or program; include this list in any mail or email distribution.
- Collaborate with Riverside County transit providers to facilitate and promote public participation opportunities.
- Maintain the *Riverside County Transportation Network*, a list of key stakeholders updated on an annual basis. The 594 active contacts on the Network include non-profits, human and social services, private transportation companies, public agencies, specialized transit providers.

**Goal 3: Engage and increase opportunities for participation for those traditionally underrepresented and or underserved, including low-income, minority, persons with disabilities, and Limited English Proficiency populations.**

## Strategies

- Make commenting on plans convenient and accessible to the public and stakeholders; enable comments to be made at public meetings and workshops, and via email or online commenting



forms.

- Offer vital information, such as notices and announcements, in alternate languages as appropriate and feasible. When considering translation and interpretation needs, the RCTC Language Assistance Plan will be consulted for strategies and procedures. Translated information shall be made available on the RCTC or project-specific website, at public meetings and workshops, and at key locations across the county as appropriate and feasible.
- Translated notices, announcements, and other vital information shall be posted on Riverside County transit operators' buses and at transfer centers, as is possible.
- When appropriate, use alternative media outlets that may target minority, LEP, or underserved segments of the community.
- Continue expanding the contact list with agencies, organizations and stakeholders that work with LEP communities.

## **Project Specific Public Participation**

The project team, including Project Manager and public affairs staff, is responsible for developing an appropriate public participation plan or public outreach plan that describes the strategies that will be used to communicate key information to agencies, organizations, elected officials, residents, business operators, commuters, emergency responders, and other project stakeholders. Outreach activities will be integrated with the technical work program to provide information and incorporate ideas and feedback. The input that is received will facilitate fully informed decisions by RCTC Commissioners at key decision points. These plans will be specifically tailored to individual projects to reflect project area demographics, populations, and need. Plans will comply with Title VI requirements.

Title VI requirements, including strategies for engaging LEP individuals, will be documented in all bid-related materials.

## **Updating the Public Participation Plan**

RCTC's public participation goals and strategies will be reviewed as needed and results will be considered in preparation of the three-year Title VI Program adoption. Based on the effectiveness of strategies and the potential changes to Riverside County's demographics and outreach resources, strategies may be modified, and new strategies may be added to enhance the public participation process.

The following indicators may be used in reviewing and determining the effectiveness of these goals and strategies.

- Number of newspaper ads, public notices
- Number of news releases and news articles
- Number of public meetings and workshops

- Number of participants at public meetings, open houses, and public hearings
- Number of visits to the RCTC website and project-specific webpages
- Number of followers of social media pages, and volume of reach and engagement
- Number of comments received during the public comment period for projects and programs
- Number of requests for translated materials
- Number and content of materials translated
- Revisions to plans or projects based on public and agency input; analysis of how comments influenced the planning process

## **V. Summary of Public Participation Activities**

FTA Title VI guidance requires a summary of outreach efforts made since the last Title VI Program submission. The following is a summary of transit-related and capital project-related public outreach during this submittal period.

### **Transit-Related Public Participation**

#### **Annual Public Hearing on Transit Needs in Riverside County**

As required by Section 99238.5 of the California Public Utilities Code, RCTC holds at least one annual public hearing to solicit input from transit dependent and transit disadvantaged persons. The public hearing is promoted through newspaper articles throughout Riverside County, flyers on buses, public noticing on the County building, electronic promotion through email and social media websites, all printed in both English and Spanish. Written and oral comments provided at the hearing were used by RCTC and the County's transit operators in identifying transit needs in preparation of transportation plans and programs, including the Regional Transportation Plan and Short-Range Transit Plans. Comments are shared with transit and paratransit operators as they relate to operating issues and needs. Additionally, comments are also shared with other agencies that provide transportation services to transit-dependent populations, including the Coordinated Transportation Services Agencies and the County Office on Aging, and specialized transit providers such as Care-A-Van, Forest Folk, and Operation SafeHouse. The public hearings were held during the following dates:

- 2021 Public Hearing, August 9, 2021 via Video/teleconference
- 2020 Public Hearing, December 7, 2020 via Video/teleconference
- 2019 Public Hearing, July 9, 2019 at RCTC Offices

#### **Coordinated Plan 2021 Outreach**

The Coordinated Plan 2021 outreach efforts used a three-phased approach to ensure the process captured a wide range of audiences. The three phases included:

- Phase I Agency Interviews – April and May 2020
- Phase II Countywide E-Survey – July 2020
- Phase III Virtual Workshop and Open House – October 2020

The outreach approach invited comments regarding transportation needs from transit users and potential transit users, agency staff working with the target populations, and the public. Phase 1 of the Coordinated Plan’s outreach process commenced with human service agency interviews to develop a picture of mobility needs and gaps of target group members that informs both the overall study and the Phase II countywide e-survey. Phase II outreach established more quantitative input via an online survey, which was developed to quantify selected issues raised in stakeholder interviews. The survey was designed to invite responses from agency staff and from members of the public. The e-survey link was widely promoted through RCTC’s website and social media, stakeholder agencies, including those interviewed and RCTC’s network of stakeholders, and Riverside County transit operators. A total of approximately 965 surveys were received. Phase III Virtual Workshop and Open House invited comments upon and assistance in prioritizing strategies responsive to needs. During the weeklong open house community members, target population groups and agency stakeholders were invited to visit the project website to learn about project findings, attend an interactive, virtual workshop on Coordinated Plan strategies, rate the strategies’ priority, and provide written comments.

### **Citizens and Specialized Transit Advisory Committee (CSTAC)**

The CSTAC serves as RCTC’s Social Services Transportation Advisory Council (SSTAC) to assist the Commission in complying with Transportation Development Act (TDA) Section 99238. The TDA provides direction for administering both Local Transportation Fund and State Transit Assistance funds for bus and commuter rail services. This funding promotes transportation service improvements and enhancements that support the mobility of older adults, persons with disabilities, and persons of limited means.

Additionally, the role of CSTAC members is to establish an effective communication exchange among Riverside County’s public transit operators, its specialized transportation providers, and representatives of its transit dependent population regarding matters of mutual concern. This group meets biannually, or, as necessary.

### **Riverside County Transportation Network**

The *Riverside County Transportation Network* is a list of key stakeholders and includes agencies and organizations. The 594 active contacts are non-profits, human and social services, private transportation companies, public agencies, specialized transit providers that work with a diverse range of clients throughout Riverside County. The Network is updated on an annual basis, through a mail survey and online e-survey. Transit-Related information, notices, announcements—particularly public participation opportunities—are sent to this Network via emails and physical mail, when those addresses exist.

## **Capital-Related Public Participation**

RCTC has a robust public participation and outreach component for its major capital highway and rail projects. Many of these efforts focus on transparency to allow the public to engage in projects via meetings, helpline, project webpages, and various social media platforms.

Since the last Title VI Program submission, the following RCTC transit-related projects held public engagements:

- Metrolink Downtown Riverside Expansion Project
- Coachella Valley-San Gorgonio Pass Rail Corridor Service – Tier 1 Environmental Impact Statement/Environmental Impact Report (non-FTA funded project)

RCTC maintains webpages for all its capital projects including transit and highways. These webpages are available in the “Projects” section of the RCTC website, [rctc.org](http://rctc.org).

Active capital projects also produce collateral material in English and Spanish and hold community meetings with bilingual staff in attendance. To date, staff has not received requests for or encountered people who require translation or interpretation to languages other than Spanish.

## **RCTC’s Website**

RCTC’s website includes current information and notices for all projects and activities. Website addresses are provided on all printed materials.

The Commission also maintains active Facebook, Twitter, and Instagram pages to enhance its public outreach. These social media pages provide information about public meetings, transit options, capital project updates, and other items of interest to Riverside County residents and the transportation industry. RCTC regularly boosts posts and places digital social media ads and polls to expand its reach to specific communities.

## **VI. Contact information**

RCTC posts Title VI general notices and complaint forms on its website at [www.rctc.org/about](http://www.rctc.org/about). The Plan may be translated in any language for free upon request. Any questions or comments regarding this Plan should be directed to:

Riverside County Transportation Commission  
John Standiford, Deputy Executive Director  
4080 Lemon Street, Third Floor  
P. O. Box 12008  
Riverside, CA 92502-2208  
Phone: (951) 787-7141  
Email: [jstandiford@rctc.org](mailto:jstandiford@rctc.org)

## VII. Attachments

### Demographic Maps of Minority Populations in Riverside County

Figure 1: Western Riverside County Minority Population

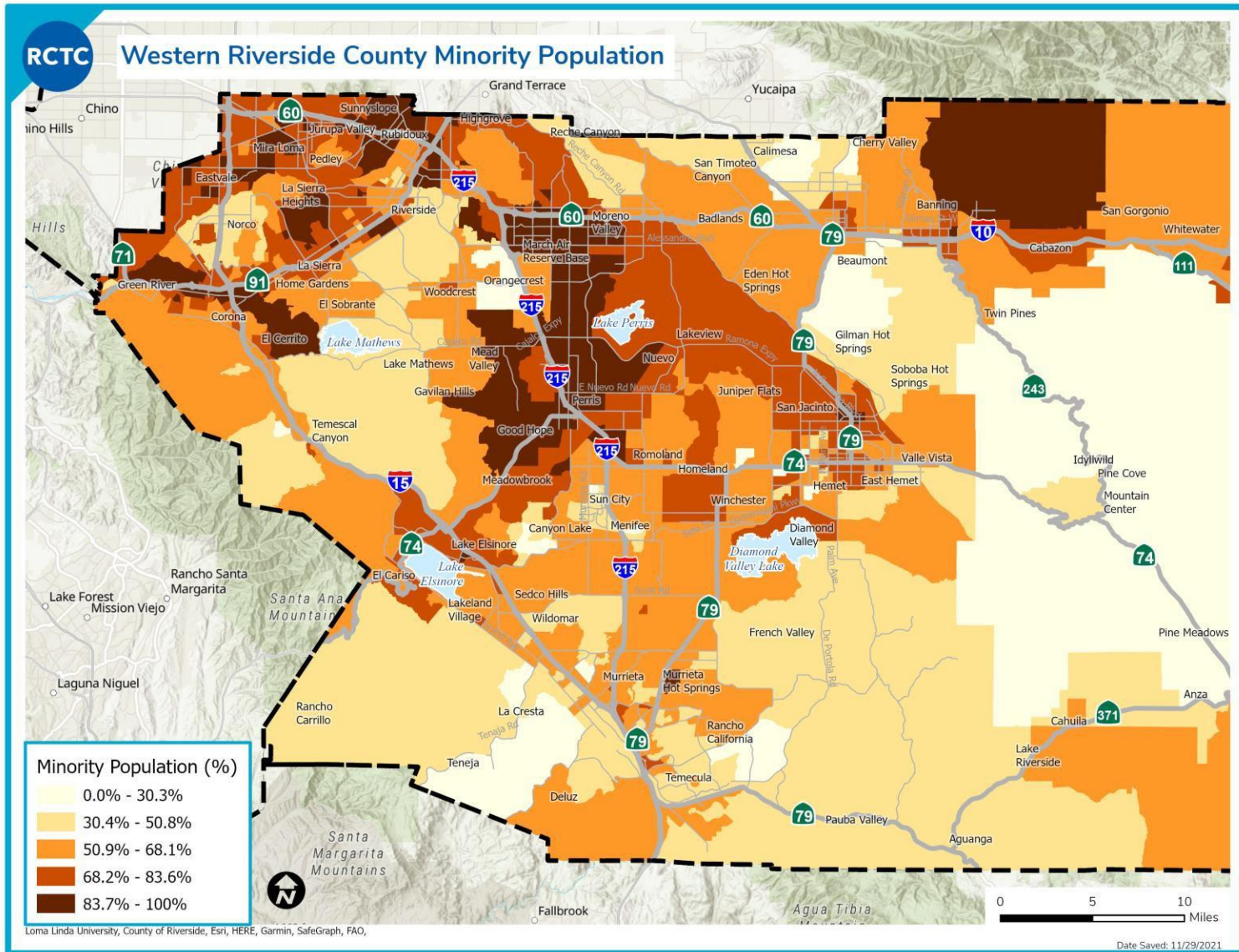


Figure 2: Coachella Valley Minority Population

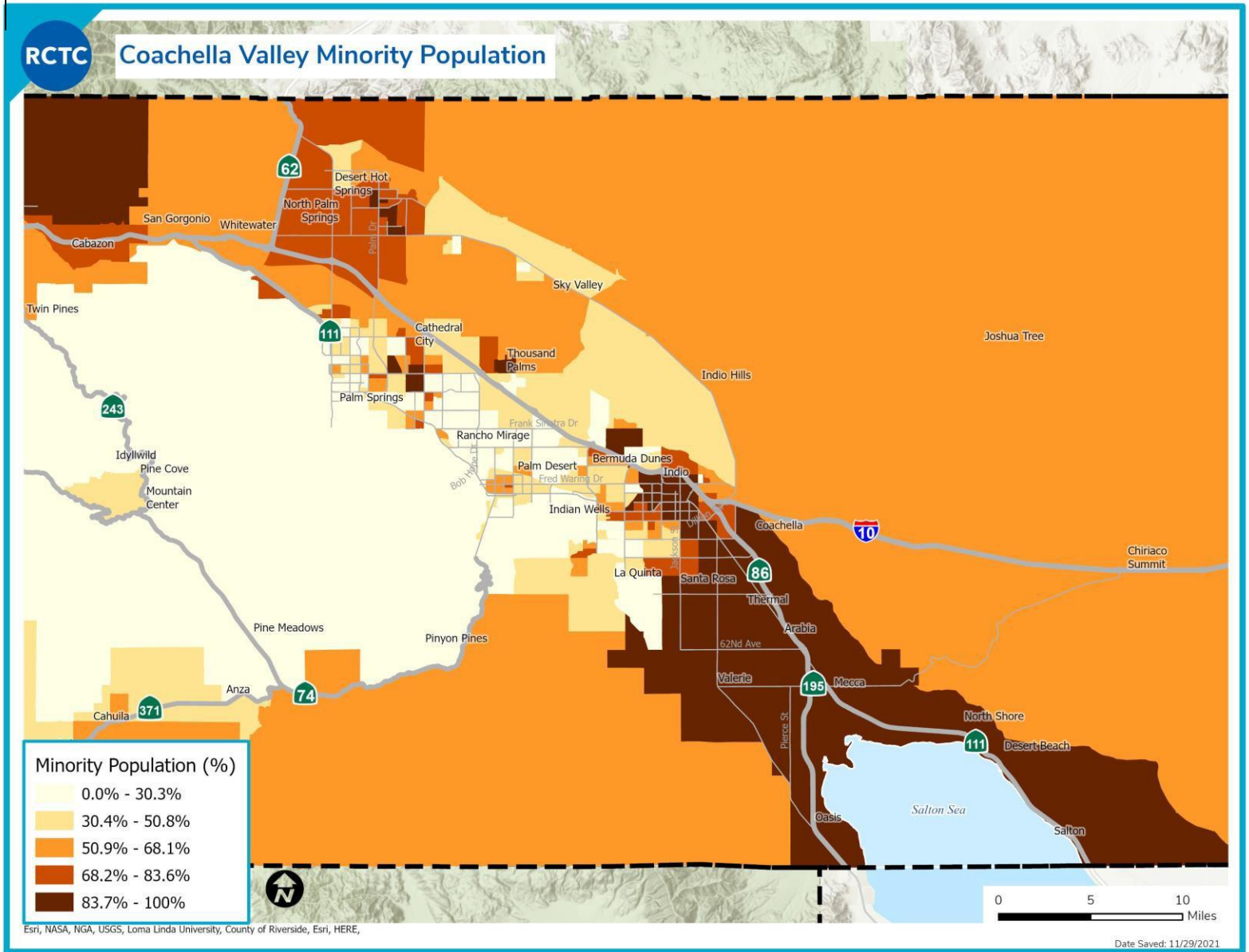
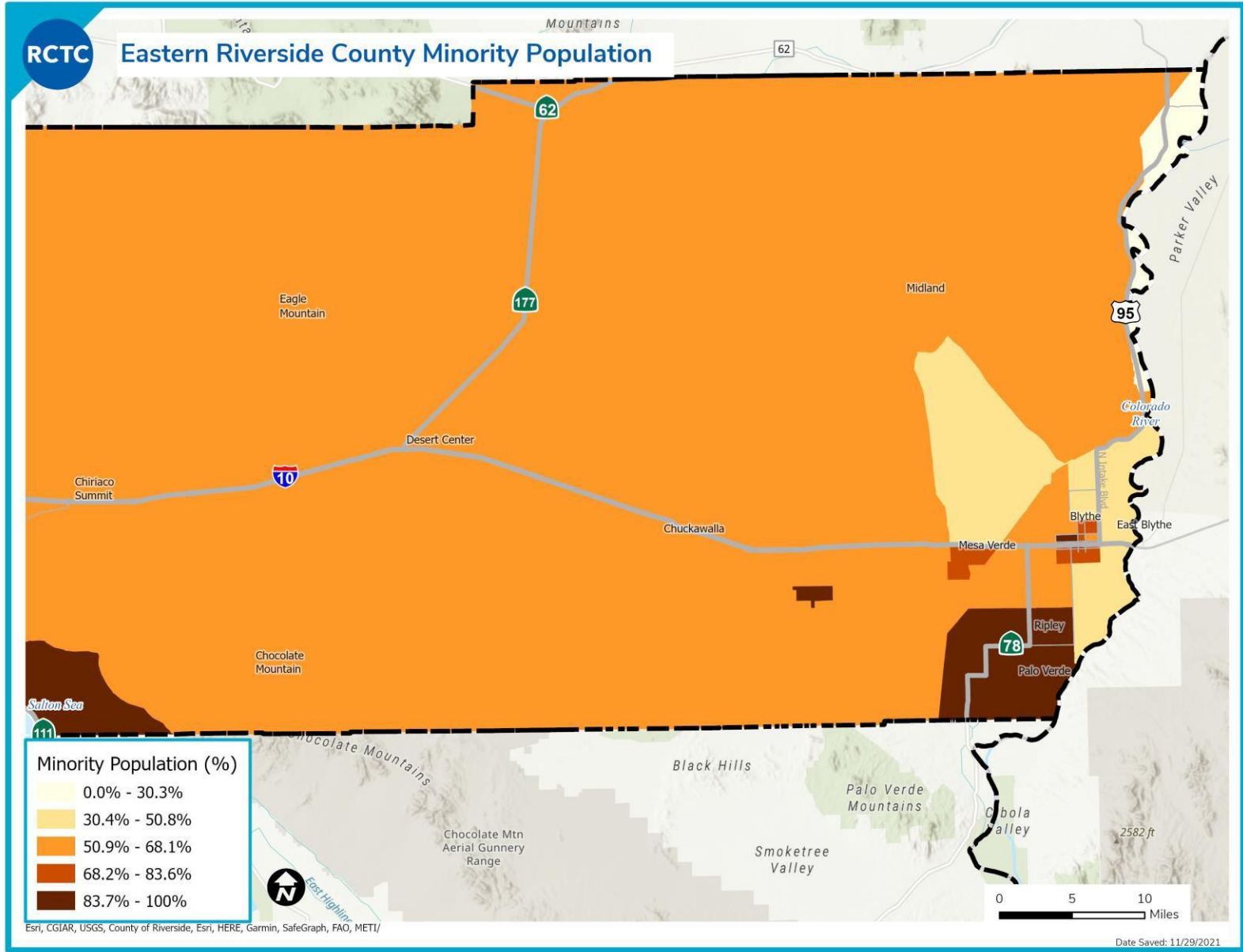




Figure 3: East Riverside County Minority Populati



## APPENDIX C

# TITLE VI LANGUAGE ASSISTANCE PLAN



**RIVERSIDE  
COUNTY  
TRANSPORTATION  
COMMISSION**

4080 Lemon Street, 3rd Floor  
Riverside, CA 92501

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## I. Introduction

### Background of the Riverside County Transportation Commission

The Riverside County Transportation Commission (RCTC or “Commission”) was established in 1976 by the State of California (State) to oversee the funding and coordination of all public transportation services within Riverside County. The governing body consists of all five members of the County Board of Supervisors, one elected official from each of the County’s 28 cities, and one non-voting member appointed by the Governor of California. It is the designated Regional Transportation Planning Agency (RTPA) and County Transportation Commission (CTC). Its responsibilities include setting policies, establishing priorities, coordinating activities among the County’s various transit operators and local jurisdictions.

The public is most familiar with RCTC for its involvement in delivering capital projects and motorist aid services including the following:

- ✓ 91 Express Lanes
- ✓ 15 Express Lanes
- ✓ 15/91 Express Lanes Connector
- ✓ Interstate 15 Interim Corridor Operations Project
- ✓ Interstate 15 Corridor Operations Project
- ✓ Interstate 15 Express Lanes Southern Extension
- ✓ State Route 91 Corridor Operations Project
- ✓ State Route 71/91 Interchange Project
- ✓ State Route 60 Truck Lanes Project
- ✓ Mid-County Parkway/Interstate 215 Placentia Avenue Interchange
- ✓ Interstate 15/Railroad Canyon Interchange Project
- ✓ Coachella Valley-San Geronio Pass Rail Corridor Service Project
- ✓ Riverside-Downtown Station Improvements Project
- ✓ Moreno Valley/March Field Station Improvements Project
- ✓ Santa Ana River Trail Extension Projects

The Commission also provides motorist aid services designed to expedite traffic flow. These services include the Service Authority for Freeway Emergencies (SAFE), a program that provides call box service for motorists; the Freeway Service Patrol (FSP), a roving tow truck service that assist motorists with disabled vehicles on the main highways of western Riverside County during peak rush hour traffic periods; and rideshare programs such as Inland Empire 511 (IE511), a traveler information system.

These programs and projects are funded with various local, state, and federal sources. Local funding sources consist of Measure A, the countywide sales tax; Debt proceeds, derived from issuing bonds; and Transportation Uniform Mitigation Fees (TUMF), derived from developer impact fees. State funding

sources for projects are derived from the State Transportation Improvement Program (STIP). RCTC also receives apportionments of federal Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds from the Federal Highway Administration (FHWA); and FTA Sections 5307, 5309, 5337 formula funds. Additionally, the Commission was also awarded an FTA Small Starts grant for the Perris Valley Line. The Commission utilizes FTA funds for its VanClub program, station operations and capital projects, and transfer to the Southern California Regional Rail Authority (SCRRA or Metrolink).

Regardless of funding source, RCTC is committed to ensuring that its projects and services are delivered and implemented in a non-discriminatory manner.

## **Purpose of this Plan**

The Language Assistance Plan (LAP) is intended to satisfy FTA Title VI requirements related to limited-English Proficient (LEP) individuals. FTA Circular 4702.1B states that “recipients shall take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of their programs and activities for individuals who are limited-English proficient (LEP).” LEP persons refer to those for whom English is not their primary language and who have a limited ability to read, write, speak, or understand English. It includes people who reported to the U.S. Census that they speak English less than very well, not well, or not at all.

The LAP details the process by which RCTC will provide access to LEP individuals and the larger community. RCTC utilized the U.S. Department of Transportation’s (DOT) LEP Guidance Handbook and performed a Four Factor Analysis to develop this LAP.

## **Title VI and Federal Authority**

Title VI of the Civil Rights Act of 1964 protects persons in the United States from being excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Under the DOT, FTA’s requirements for implementing Title VI include the adoption of a Title VI Program report pursuant to FTA Circular 4702.1B, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. As a recipient of FTA Funds, RCTC has developed its own Language Assistance Plan in compliance with FTA Circular 4702.1B and through consultation with the FTA’s Office of Civil Rights’ LEP Guidance Handbook: *The FTA’s Office of Civil Rights’ Implementing the Department of Transportation’s Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons: A Handbook for Public Transportation Providers* (April 13, 2007).

## Language Assistance Goals

The following goals will guide RCTC in ensuring that projects and services are delivered and implemented in a non-discriminatory manner:

1. Ensure meaningful access to all individuals regardless of race, color, national origin, and language of origin through outreach to LEP populations, translation of vital documents into LEP languages, and provision of additional language assistance services, as required;
2. Monitor changing LEP population demographics as necessary to ensure RCTC provides appropriate language assistance services;
3. Update this Language Assistance Plan as necessary to ensure the effectiveness of strategies for providing language assistance.

## II. Four Factor Analysis

Recipients are required to take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of its programs or activities for persons who are limited-English proficient (LEP). FTA Circular 4702.1B details the components of the LAP, including the Four Factor Analysis, which provides a careful analysis of LEP individuals the recipient may encounter to determine the specific language services that are appropriate to provide.

The Four Factor Analysis balances the following factors:

- Factor One: The number and proportion of LEP persons in the jurisdiction;
- Factor Two: How often LEP persons come into contact with RCTC services;
- Factor Three: How important RCTC's services are to the lives of LEP persons;
- Factor Four: The resources available to RCTC for LEP outreach that reasonably can be provided.

The results of the four-factor analysis are used to determine the target LEP populations and the best methods of engaging with the public. RCTC undertook the Four Factor Analysis in order to develop an appropriate and effective Language Assistance Plan

### **Factor One: The number or proportion of LEP persons eligible to be served or likely to be encountered**

RCTC's service area incorporates all Riverside County, which has a total population of 2,418,185 individuals according to the 2020 U.S. Census Bureau. The Census data was used for this analysis as it provides the most current and reliable information about LEP individuals. The Department of Justice's Safe Harbor provision, which was accepted by the FTA, stipulates that written translation of vital documents for each eligible LEP language group that constitutes 5% or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, shall be considered strong evidence of compliance with the recipient's written translation obligation.

Table 1 below provides information from the 2019 American Community Survey 1-year Estimates demonstrating the 42 LEP populations in Riverside County, using 1-year estimates as they provide the most reliable data in terms of LEP populations. The largest group of LEP individuals is Spanish speakers, who comprise 11.1 percent of the County's population and number 256,852 individuals. Although no other LEP group reaches 5 percent of the population, 10 additional LEP groups have over 1,000 persons, which include: Persian, Hindi, Punjabi, Chinese, Korean, Vietnamese, Tagalog, Ilocano, Samoan, Hawaiian, or other Austronesian, Arabic, Other and unspecified languages.

**Table 1: Riverside County LEP Populations**

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER 2019 American Community Survey 1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Total:	2,314,507		243
Speak only English	1,356,095	58.6%	18705
Spanish: Speak English less than "very well"	256,852	11.1%	10799
French (incl. Cajun): Speak English less than "very well"	582	0.0%	323
Haitian: Speak English less than "very well"	63	0.0%	106
Italian: Speak English less than "very well"	383	0.0%	314
Portuguese: Speak English less than "very well"	334	0.0%	227
German: Speak English less than "very well"	302	0.0%	280
Yiddish, Pennsylvania Dutch or other West Germanic languages: Speak English less than "very well"	42	0.0%	70
Greek: Speak English less than "very well"	461	0.0%	643
Russian: Speak English less than "very well"	699	0.0%	511
Polish: Speak English less than "very well"	469	0.0%	418
Serbo-Croatian: Speak English less than "very well"	310	0.0%	331
Ukrainian or other Slavic languages: Speak English less than "very well"	273	0.0%	345

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER</b> <b>2019 American Community Survey</b> <b>1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Armenian: Speak English less than "very well"	180	0.0%	152
Persian (incl. Farsi, Dari): Speak English less than "very well"	1,479	0.1%	740
Gujarati: Speak English less than "very well"	456	0.0%	353
Hindi: Speak English less than "very well"	1,645	0.1%	1355
Urdu: Speak English less than "very well"	971	0.0%	592
Punjabi: Speak English less than "very well"	1,397	0.1%	928
Bengali: Speak English less than "very well"	-	0.0%	216
Nepali, Marathi, or other Indic languages: Speak English less than "very well"	121	0.0%	146
Other Indo-European languages: Speak English less than "very well"	995	0.0%	580
Telugu: Speak English less than "very well"	70	0.0%	118
Tamil: Speak English less than "very well"	452	0.0%	593
Malayalam, Kannada, or other Dravidian languages: Speak English less than "very well"	-	0.0%	216
Chinese (incl. Mandarin, Cantonese): Speak English less than "very well"	11,837	0.5%	2899
Japanese: Speak English less than "very well"	644	0.0%	425
Korean: Speak English less than "very well"	4,223	0.2%	1653
Hmong: Speak English less than "very well"	81	0.0%	135
Vietnamese: Speak English less than "very well"	7,242	0.3%	1917
Khmer: Speak English less than "very well"	777	0.0%	536

<b>Table B16001: LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER</b> <b>2019 American Community Survey</b> <b>1-Year Estimates</b>	<b>Estimate</b>	<b>% to Total # of Population</b>	<b>Margin of Error</b>
Thai, Lao, or other Tai-Kadai languages: Speak English less than "very well"	976	0.0%	524
Other languages of Asia: Speak English less than "very well"	311	0.0%	324
Tagalog (incl. Filipino): Speak English less than "very well"	10,094	0.4%	2120
Ilocano, Samoan, Hawaiian, or other Austronesian languages: Speak English less than "very well"	1,173	0.1%	717
Arabic: Speak English less than "very well"	4,009	0.2%	1844
Hebrew: Speak English less than "very well"	-	0.0%	216
Amharic, Somali, or other Afro-Asiatic languages: Speak English less than "very well"	227	0.0%	210
Yoruba, Twi, Igbo, or other languages of Western Africa: Speak English less than "very well"	420	0.0%	438
Swahili or other languages of Central, Eastern, and Southern Africa: Speak English less than "very well"	500	0.0%	536
Navajo: Speak English less than "very well"	-	0.0%	216
Other Native languages of North America: Speak English less than "very well"	-	0.0%	216
Other and unspecified languages: Speak English less than "very well"	1,607	0.1%	1586
Amharic, Somali, or other Afro-Asiatic languages: Speak English less than "very well"	227	0.0%	210

As all individuals residing in the county may be commuters, transit riders, and pedestrians, the total population is eligible to be served by the Commission's services. The following section addresses which LEP persons the Commission is likely to encounter based on the past frequency of contact.

## **Factor Two: The frequency with which LEP persons come into contact with the program**

To identify and analyze the frequency with which LEP persons come into contact with these programs, a survey was distributed to staff who regularly and is more likely to interact with members of the public. The units that were surveyed include the Clerk of the Board, Public Affairs, Front Reception, Capital Projects, Commuter Assistance, and outreach consultants. The survey asked staff members about their experiences with LEP individuals, including how frequently they interacted with LEP persons, what languages the LEP individuals spoke, how successfully they communicated, and what information LEP persons were seeking.

Few respondents noted occasional interaction with LEP individuals in the three last year, the Front Receptionist, who encounters Spanish inquires few times a week and the external affairs staff and outreach consultants who encounter less than once a month. The most common requests are for information about transit services, RCTC project-specific construction information, and information about Metrolink services (not under the purview of the Commission). Staff members have been able to communicate with LEP individuals through assistance from bilingual staff members, translators, and through hand gestures and drawings. RCTC also has an on-call contract with PALS for Health, a translation/interpretation service based in southern California.

In conclusion, Factor Two identified that RCTC does not frequently come into contact with LEP individuals regarding its services and programs, but of those that are received, most are likely to speak Spanish.

## **Factor Three: The nature and importance of the program, activity, or service to people's lives**

RCTC is a state-mandated countywide agency tasked with the funding and coordination of all public transportation services within Riverside County, which includes 28 cities, 7,208 square miles, and 2,418,185 individuals according to the 2020 U.S. Census Bureau. The Commission's mission is to assume a leadership role in improving mobility in the County and is responsible for setting policies, establishing priorities, and coordinating activities among the County's various transit operators and other agencies. The Commission also programs and/or reviews the allocation of federal, state, and local funds for highway, transit, rail, non-motorized travel (bicycle and pedestrian), and other transportation activities. The Commission serves as the tax authority and implementation agency for Measure A, the voter-approved half-cent sales tax for transportation improvements in Riverside County. The Commission also provides motorist aid services designed to expedite traffic flow. The Commission is also legally responsible for allocating Transportation Development Act (TDA) funds, the major source of funds for transit in the County. Furthermore, the Commission receives FTA funds for vanpool, station maintenance and capital projects, and Metrolink capital. The commission administers vanpool program known as Vanclub and commuter rail service operated by the Southern Californian Regional Rail Authority (SCRRA) better known as Metrolink.



RCTC works to ensure and improve the quality of life of Riverside County’s residents. Transportation interacts with a variety of human needs including a safe environment with better air quality, a reduction in water runoff, reducing the levels of greenhouse gases, and supporting transportation alternatives that promote better health through walking or bicycling. By taking a more holistic approach, the importance of transportation grows larger and is valued as a vital necessity.

## **Factor Four: The resources available to the recipient for LEP outreach**

RCTC has numerous resources available to ensure it provides meaningful access to LEP individuals. These include existing community partners, using its own resources, and using contracted services. These resources are detailed below:

- RCTC contracts with PALS for Health to provide written translation and oral interpretation for LEP individuals.
- Bilingual employees provide written translation and oral interpretation.
- “I Speak” language identification cards are used at the front desk and at public meetings.
- Language assistance information is provided on agendas and meeting notices.
- Public notices are translated into Spanish.
- RCTC may contract with public outreach firms that can provide language assistance as needed.
- Riverside County Transportation Network: This database ensures social service agencies and community organizations that work with LEP individuals are provided the Commission’s information and notices to distribute to their clients.
- Citizens and Specialized Transit Advisory Committee: represent minority groups and are a useful resource for outreach to LEP individuals.
- Riverside County Transit Operators: RCTC may partner with transit operators to post vital information in English and Spanish on buses and at transfer locations.
- The Southern California Association of Government’s LEP Plan, Public Participation Plan, and existing translated resources can provide materials for LEP outreach and communication.
- RCTC translates Title VI vital documents and project-specific vital information into Spanish.
- RCTC’s website provides outreach and is equipped with a Google translator.

## **Discussion of Results**

Census data analyzed in Factor One was consistent with the experience of RCTC staff members analyzed in Factor Two to determine that Spanish-speaking LEP individuals are the largest and most frequent LEP group that accesses RCTC’s services and programs. As these individuals comprise 11.1 percent of Riverside County’s population, it will be important for the Commission to continue providing vital documents in Spanish. Additional LEP groups are very small populations (less than 1 percent of the population), not yet identified (Other Indic Languages, for example), and do not frequently access the Commission’s services or programs. Documents will be translated as requested or as is appropriate for a specific project. Details of language assistance services are provided in the following Implementation Plan.

### III. Implementation Plan

#### Language Service Provision

RCTC will provide the following language assistance measures to ensure LEP individuals have full access to the Commissions services, programs, and activities:

##### Callers and Visitors

- Front desk staff have “I Speak” language identification cards available to assist LEP individuals.
- Several employees are bilingual and can help callers or visitors that speak Spanish.
- RCTC contracts with PALS for Health to provide written translation and oral interpretation for LEP individuals. RCTC requests in writing the material to be translated to Spanish, requests staffing for public meetings, or arranges for telephone translation services, upon request.

##### Translation of Vital Documents

FTA Circular 4702.1B defines vital documents as, “documents that provide access to essential services.” The Commission will use this definition when assessing what documents should be translated.

**Title VI Documents** are vital documents. The Title VI notice to the public, complaint form, and procedures are available in English and Spanish, the LEP language that RCTC is most likely to encounter. Vital documents are available on RCTC’s website and at the front desk. Information about the availability of free language assistance is available on posted notices and agendas in Spanish.

**Spanish-Language Translation:** RCTC provides project notices and announcements and vital documents in Spanish and will continue to do so, as the Spanish-speaking LEP population represents a significant portion of Riverside County’s population. Documents that are translated include: notices and announcements about public meetings and forums and public participation opportunities, key information distributed at project meetings, and any vital project-specific meetings.

**Other LEP Language Translations:** The additional LEP languages represent very small communities and vital information will be translated as requested and as appropriate, with decisions made on a project-by-project basis. For example, if a project takes place in a community with a large LEP population, key information for that project will be translated into that LEP language.

**Oral Interpretation:** Oral interpretation will be provided at public meetings as requested and appropriate. Decisions will be made on a project-by-project basis. Notices of public meetings and forums include information about how to request oral interpretation.

**Outreach/Notice of Availability of Language Assistance** RCTC's Title VI Notice to the Public publicizes its language assistance services. Additionally, other notices may include the statement, *"If information is needed in another language, please contact (951) 787-7141 for free translation services."*

## Staff Training

Outreach and front desk staff are trained in assisting LEP individuals, including identifying language and using the language service provider interpretation system. Training is provided for new employees and reoccurs as necessary.

LEP training includes:

- A summary of RCTC's language assistance requirements DOT LEP Guidance;
- A summary of the Commission's language assistance plan; including responding to LEP persons
- Results of RCTC's Four Factor Analysis, including a summary of the LEP individuals in Riverside County and the frequency of contact between the LEP population and the Commission
- A description of the Commission's non-discrimination policies and practices.

## IV. Monitoring, Evaluating, and Updating the LAP

A thorough review of the LAP will be undertaken every three years, or as necessary as guidelines are revised or as compliance reviews warrant. At that time, the LEP population will be reassessed to ensure all significant LEP languages are included in RCTC's language assistance efforts. The following reoccurring reporting and evaluation measures will be used to update the Language Assistance Plan:

1. RCTC will regularly assess the effectiveness of how the Commission communicates with LEP individuals by working with community stakeholders, such as the CSTAC, the Riverside Transit Network, County transit operators, non-profit agencies, and others.
2. Commission staff will track its language assistance efforts, including:
  - Tracking front desk staff interaction with LEP persons
  - Internal surveys of staff who are likely to engage with the public
  - Number of downloaded documents in other languages
  - Reports and updates from the language service provider
  - Requests for translation and interpretation

## **V. Contact information**

RCTC will post the approved LAP on its website at [www.rctc.org](http://www.rctc.org). The LAP may be translated in any language for free upon request.

Any questions or comments regarding the LAP should be directed to:

Riverside County Transportation Commission  
John Standiford, Deputy Executive Director  
4080 Lemon Street, Third Floor  
P. O. Box 12008  
Riverside, CA 92502-2208  
Phone: (951) 787-7141  
Email: [jstandiford@rctc.org](mailto:jstandiford@rctc.org)

Appendix D: Commission Approval  
(Meeting minutes to be attached)



# **AGENDA ITEM 6E**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee David Knudsen, Interim External Affairs Director
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	State and Federal Legislative Update

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to receive and file an update on state and federal legislation.

**BACKGROUND INFORMATION:**

**State Update**

Governor Gavin Newsom submitted his Fiscal Year (FY) 2022-23 State Budget Proposal on January 10, 2022, to the Legislature, meeting the constitutionally mandated deadline. Dubbed the “California Blueprint,” this \$286.4 billion budget proposal is nine percent more than last year’s budget and would be California’s largest ever. Included in the California Blueprint is a \$45.7 billion surplus, which the Governor noted could increase. From this surplus, funding is pre-dedicated to Proposition 98 K-14 school appropriations, the state reserves, and an additional advance payment to state pensions. After these funds are disbursed, \$20.6 billion in discretionary General Funds for essentially one-time allocations would be available.

The Governor’s budget documents released by the California Department of Finance indicates that Proposition 4, also known as the Gann Limit, is expected to be triggered and will compel the State to either make “excess limit” payments to return tax funds to taxpayers or make expenditures in excluded categories, such as infrastructure.

***State Transportation Infrastructure Package***

The Budget proposes investing in the transportation system and other related zero-emission vehicles efforts. The transportation infrastructure package focuses on increasing mobility options for rail, transit, and active transportation projects, equity-related investments to reconnect communities, and enhanced safety projects. The Governor proposes funding for:

- **High-Speed Rail:** \$4.2 billion to complete electrified high-speed rail construction in the Central Valley, perform advance work for service between Merced and Bakersfield, and

complete advance planning and project design for the entire project. This is in addition to the funds available for this program in Cap and Trade.

- **Statewide Transit and Rail Projects:** \$2 billion to invest in high-priority transit and rail infrastructure projects. These projects will improve rail and transit connectivity between state and local/regional services, including projects on shared corridor routes.
- **Southern California Transit and Rail Projects:** \$1.25 billion to deliver local and regional projects focusing on mobility and greenhouse gas reduction.
- **Active Transportation and Projects to Connect Communities:** \$750 million to transform the state's active transportation networks, improve equity, and support carbon-free transportation options.
- **High-Priority Grade Separation Projects:** \$500 million to support critical safety improvements throughout the state.
- **Climate Adaptation Projects:** \$400 million for state and local climate adaptation projects that support climate resiliency and reduce risks from climate impacts.
- **Port Infrastructure and Goods Movement:** \$1.2 billion for port-related high-priority projects that increase goods movement capacity on rail and roadways serving ports and at port terminals, including railyard expansions, new bridges, and zero-emission modernization projects.

These items are also included in the Governor's Five-Year State Infrastructure Package to coincide with the recently enacted federal Infrastructure Investment and Jobs Act as a way of preparing for the infusion of federal funds to California. The State's infrastructure plan includes accelerated funding for climate resilience, broadband, housing, clean energy, wildfire protection, drought, and zero-emission vehicles.

Collectively, the Governor's budget proposes almost \$15 billion for transportation programs and projects that align with goals identified in the Climate Action Plan for Transportation Infrastructure, which was finalized in July of 2021. Funding will support projects and programs which:

- Support climate resiliency and reduce risks from climate impacts;
- Improve rail and transit connectivity;
- Provide safety and access for bicyclists and pedestrians;
- Improve highway/rail grade separations and grade crossing improvements;
- Support the development of compact or infill housing; and
- Move the state toward cleaner transportation technologies, including zero-emission vehicles and sustainable infrastructure.

### ***Gas Tax Holiday***

The Governor proposes to forego the annual inflation adjustment to the per-gallon fuel excise tax rate scheduled for July 1, 2022. This increase results from the enactment of the 2017 Road, Repair, and Recovery Act known as SB 1. Under the Governor's proposal, the annual inflation adjustment will be resumed by FY 2023-24 with the flexibility to delay the adjustment, should economic conditions warrant it. This proposal will likely impact local governmental shares of fuel tax distributions. The Governor indicated that his administration will review the potential of backfilling local revenues on a one-time basis with State Highway Account funds, which in turn may require additional backfilling of funds, per Proposition 22 (2010).

### ***Funding Request for Inland Empire Transportation Projects***

In anticipation of the projected budget surplus and upcoming consideration of the FY 2022-23 state budget, RCTC and the San Bernardino County Transportation Authority worked with the Inland Empire State Legislative Caucus to seek their support on a suite of projects that, if funded, would enhance the region's transportation network. This suite of projects recognizes the complexity of our regional challenges arising from the nation's supply chain crisis and the region's population growth, driven by the state's housing shortage.

On January 6, 2022, a letter signed by members of the Inland Empire State Legislative Caucus was sent to Governor Newsom, Senate President Pro Tem Toni Atkins, and Assembly Speaker Anthony Rendon seeking funding for projects totaling \$2.2 billion, including \$875 million for five projects in Riverside County.

The legislative affairs team will continue to analyze the Governor's budget proposal, participate in the process, and advocate for funding for projects in Riverside County as the Legislature considers its priorities.

### **Federal Update**

#### ***Infrastructure Investment and Jobs Act Implementation***

The U.S. Department of Transportation (USDOT) is working on the implementation of the Infrastructure Investment and Jobs Act. There are a multitude of changes to existing programs and dozens of new programs included in the five-year legislation. The implementation efforts include several Requests for Information and RCTC is working to provide comment and input to reflect the Commission's priorities. In addition, USDOT expects to begin soliciting proposals for discretionary grant programs in the coming months and staff will examine these solicitations to determine which are appropriate to pursue for federal funding.

### ***FY2022 Federal Appropriations***

The federal government is currently operating under a Continuing Resolution (CR) to fund the government through February 18, 2022. At this time, it is unclear when or if an agreement on an appropriations package can be reached in the House and Senate prior to this deadline. Failure to reach an agreement will require Congress to pass another CR to avoid a government shutdown.

### **FISCAL IMPACT:**

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

### **Attachments:**

- 1) State and Federal Update Legislative Matrix – January 2022
- 2) Inland Empire State Legislative Caucus Letter - Dated January 6, 2022
- 3) Inland Empire State Legislative Caucus – Riverside County Project List
- 4) Inland Empire State Legislative Caucus – San Bernardino County Project List

## RIVERSIDE COUNTY TRANSPORTATION COMMISSION - POSITIONS ON STATE AND FEDERAL LEGISLATION – JANUARY 2022

Legislation/ Author	Description	Bill Status	Position	Date of Board Adoption
<b>AB 1499 (Daly)</b>	Removes the January 1, 2024 sunset date for Department of Transportation and regional transportation agencies to use the design-build procurement method for transportation projects in California.	Signed by the Governor  September 22, 2021	<i>SUPPORT</i>	April 14, 2021
<b>SB 623 (Newman)</b>	Clarifies existing law to ensure toll operators statewide can improve service to customers and enforce toll policies while increasing privacy protections for the use of personally identifiable information (PII).	Hearing canceled at the request of author. Now a two-year bill.  April 26, 2021	<i>SUPPORT</i>  <i>Staff action based on platform</i>	April 5, 2021
<b>SB 261 (Allen)</b>	This bill would require that the sustainable communities strategy be developed to additionally achieve greenhouse gas emission reduction targets for the automobile and light truck sector for 2045 and 2050 and vehicle miles traveled reduction targets for 2035, 2045, and 2050 established by the board. The bill would make various conforming changes to integrate those additional targets into regional transportation plans.	Senate Transportation Committee - hearing postponed by committee. Now a two-year bill.  April 27, 2021	<i>OPPOSE</i>	May 12, 2021
<b>Federal</b>				
<b>HR 972 (Calvert)</b>	This bill establishes the Western Riverside County Wildlife Refuge which would provide certainty for development of the transportation infrastructure required to meet the future needs of southern California.	Ordered Reported by the House Committee on Natural Resources  July 14, 2021	<i>SUPPORT</i>  <i>Staff action based on platform</i>	June 11, 2021



STATE CAPITOL  
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# California State Senate

SENATOR  
**ROSILICIE OCHOA BOGH**  
TWENTY-THIRD SENATE DISTRICT



January 6, 2022

The Honorable Gavin Newsom  
Governor  
State Capitol  
Sacramento, California 95814

The Honorable Toni Atkins  
Senate President Pro Tem  
California State Senate  
State Capitol  
Sacramento, California 95814

The Honorable Anthony Rendon  
Assembly Speaker  
California State Assembly  
State Capitol  
Sacramento, California 95814

## **RE: Request to Invest in Transportation Infrastructure in the Inland Empire**

Dear Governor Newsom, Pro Tem Atkins, and Speaker Rendon:

On behalf of our 4.6 million constituents, the Inland Empire Caucus respectfully requests \$2.245 billion in budget funding to deliver transportation infrastructure projects that will keep our region moving forward. Mobility solutions in the Inland Empire must be key to any infrastructure package contemplated given that both the population and goods and freight movement are dramatically growing in our region. The current budget year surplus and the \$31 billion surplus projected for the 2022-23 budget year, combined with robust cap and trade revenues and considerable new federal transportation dollars present an opportunity that the residents and businesses of the Inland Empire cannot afford to miss.

Our regional transportation planning agencies, the Riverside County Transportation Commission (RCTC) and the San Bernardino County Transportation Authority (SBCTA) are working to deliver a portfolio of multimodal transportation solutions that will connect our diverse communities, offer mobility choices, promote economic prosperity, reduce traffic congestion, streamline goods and freight movement, and secure a climate resilient future across the Inland Empire. The residents of both counties have approved local sales tax measures to provide dedicated funding for transportation projects that will meet these goals, but we cannot do it alone.

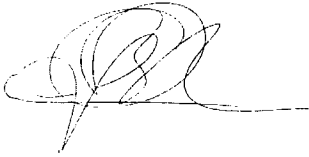
Attached are a suite of urgently needed projects prepared by RCTC and SBCTA that, if funded, would transform the region's transportation network. This suite of projects recognizes the complexity of our regional challenges arising from the nation's supply chain crisis and the state's housing shortage, while setting a vision of prosperity for the disadvantaged communities that call our region home.

As budget negotiations begin in earnest, we ask that you consider this opportunity to infuse much needed funding into the Inland Empire for these regionally transformational transportation projects to help alleviate the goods and freight movement crisis, serve low-income and disadvantaged

communities, and continue to deliver multimodal transportation options that will reduce congestion on our highway system.

The Inland Empire Caucus values its partnership with you and your advocacy on behalf of the residents of our region and state. Please feel free to contact Sarah Couch in my office at (916) 651-4023 if you have any questions or need additional information.

Sincerely,



ROSILICIE OCHOA BOGH  
Senator, 23<sup>rd</sup> District



JAMES RAMOS  
Assemblymember, 40<sup>th</sup> District



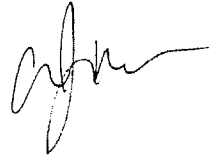
ELOISE GOMEZ REYES  
Assembly Majority Leader, 47<sup>th</sup> District



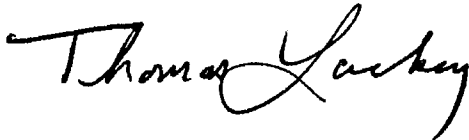
SCOTT WILK  
Senate Republican Leader, 21<sup>st</sup> District



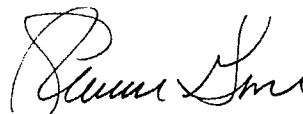
MARIE WALDRON  
Assembly Republican Leader, 75<sup>th</sup> District



CHAD MAYES  
Assemblymember, 42<sup>nd</sup> District



THOMAS LACKEY  
Assemblymember, 36<sup>th</sup> District



SHANNON GROVE  
Senator, 16<sup>th</sup> District



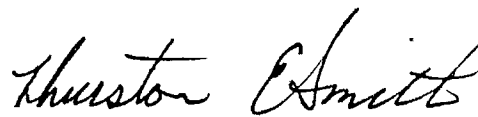
JOSE MEDINA  
Assemblymember, 61<sup>st</sup> District



KELLY SEYARTO  
Assemblymember, 67<sup>th</sup> District

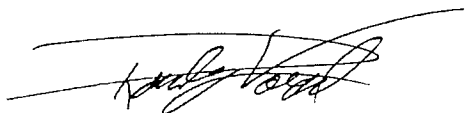


PHILLIP CHEN  
Assemblymember, 55<sup>th</sup> District



THURSTON "SMITTY" SMITH  
Assemblymember, 33<sup>rd</sup> District

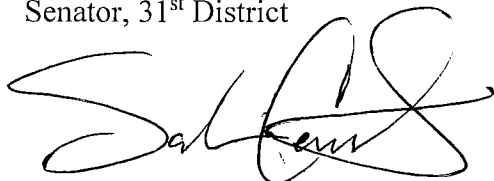




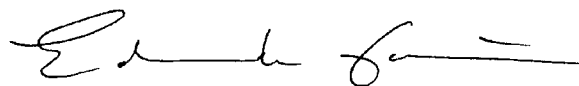
RANDY VOEPEL  
Assemblymember, 71<sup>st</sup> District



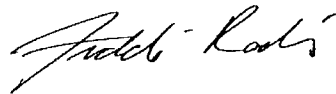
RICHARD ROTH  
Senator, 31<sup>st</sup> District



SABRINA CERVANTES  
Assemblymember, 60<sup>th</sup> District



EDUARDO GARCIA  
Assemblymember, 56<sup>th</sup> District



FREDDIE RODRIGUEZ  
Assemblymember, 52<sup>nd</sup> District

Enclosures: RCTC Suite of Projects  
SBCTA Suite of Projects

CC: The Honorable Nancy Skinner, Chair,  
Senate Budget Committee  
The Honorable Philip Ting, Chair,  
Assembly Budget Committee



# RCTC Project Funding Requests

# ATTACHMENT 3

Project	Location	Request	Benefit	Phase to be Funded	Lead Agency	Project Status	Project Website	Districts Served
<b>Coachella Valley-San Gorgonio Rail Corridor Service Project</b>	LA to Coachella Valley	\$50 million	Caltrans and RCTC propose daily passenger rail service between LA and Coachella Valley. The Inland Empire is the only region of its size and population in the state without intercity rail service. This project would be transformational for the region, creating economic opportunity in disadvantaged communities, improving access to job centers and attractions, providing alternatives to traveling on I-10, and reducing emissions to improve air quality.	NEPA/CEQA Tier II environmental study, estimated at \$60 million, to provide preliminary engineering along the 76-mile eastern section of track as well as project-level environmental clearance for up to six stations, a new third main track, and associated grade crossing and signal improvements on the eastern section of the corridor.	Caltrans (RCTC is Implementing Agency)	The NEPA/CEQA Tier I environmental study, which evaluated service-level impacts of the proposed service, has gone through public comment, and is expected to be approved in early 2022.	<a href="https://www.rctc.org/cvtrail">https://www.rctc.org/cvtrail</a>	SD 31 (Roth); AD 61 (Medina); SD 23 (Ochoa Bogh); AD 40 (Ramos); SD 28 (Melendez); AD 42 (Mayes); AD 56 (Garcia)
<b>Interstate 10 Bypass</b>	Banning and Cabazon	\$95 million	There is a stretch between the City of Banning and the unincorporated community of Cabazon and the Morongo Reservation, in which the I-10 is the only road available to motorists. Should this stretch of the I-10 ever close, the critical link between western Riverside and San Bernardino Counties and the inland desert communities would be severed. The proposed I-10 Bypass would mitigate this nightmare scenario with the construction of a new road south of I-10 linking Banning to Cabazon.	Final design, right of way acquisition, including an easement from the Morongo Band of Mission Indians, utility relocation, and construction of a two-lane facility, with 4-lanes wide bridges, and grading for a future four-lane facility.	County of Riverside Department of Transportation	Caltrans has issued a Finding of No Significant Impact for Preferred Alternative 12 on October 6, 2021. Certification by the Riverside County Board of Supervisors of the Final EIR and Preferred Alternative 12 is pending.	<a href="https://rcprojects.org/i10bypass">https://rcprojects.org/i10bypass</a>	SD 23 (Ochoa Bogh); SD 28 (Melendez); AD 42 (Mayes); AD 56 (Garcia)

## RCTC Project Funding Requests

<b>Third Street Grade Separation Project</b>	Riverside	\$30 million	The project proposes to reduce public safety risks by redirecting the vehicle, pedestrian and bicycle traffic above or below the busy railroad tracks. Riverside is trisected by two freight rail lines, BNSF and Union Pacific. These two rail lines carry over 75% of the freight handled by the ports through Riverside. Every day approximately 128 trains pass through the city. At-grade crossings pose safety risks, create traffic delays, increase emissions from idling vehicles, and delay emergency responses.	Construction of project to separate Third Street from the railroad.	City of Riverside	Engineering design underway. CEQA Notice of Exemption released in 2018 and NEPA Preliminary Environmental Study released in 2019.	<a href="https://www.riversideca.gov/publicworks/engineering/gis/">https://www.riversideca.gov/publicworks/engineering/gis/</a>	SD 31 (Roth); AD 61 (Medina)
<b>15 Express Lanes Project Southern Extension</b>	Corona, Lake Elsinore, and Temescal Valley	\$500 million	The project would extend the I-15 Express Lanes by an additional 14.5 miles, from Cajalco Road in Corona, through Temescal Valley, to State Route 74 in Lake Elsinore. Once built, the project would improve traffic operations and travel times, expand travel choice through carpooling and mass transit, increase travel time reliability, and manage long-term traffic congestion spurred by increased goods movement and population growth.	Final design, right of way acquisition, and construction of the extension of the I-15 Express Lanes from Cajalco Road to SR-74.	RCTC	RCTC received \$29 million in state funding in 2018 for the preliminary engineering and environmental studies, and work began for this phase of work in 2019. The public scoping period was held in fall 2019. Currently, RCTC is conducting environmental and engineering studies, which includes field work within the project study area.	<a href="https://www.rctc.org/projects/i15-express-southern-extension/">https://www.rctc.org/projects/i15-express-southern-extension/</a>	SD 28 (Melendez); AD 67 (Seyarto); AD 71 (Voepel); AD 75 (Waldron); SD 31 (Roth); AD 60 (Cervantes)

## RCTC Project Funding Requests

<b>Fullerton Junction to Riverside Triple Track Completion</b>	Corona and Riverside	\$200 Million	<p>Metrolink's Southern California Optimized Rail Expansion (SCORE) program proposed the triple tracking of the BNSF rail line from Fullerton through Riverside, as a part of a suite of upgrades to Metrolink's system in time for the 2028 Olympics. Not only is this project critical to improved passenger rail service in Riverside County, it will also improve the movement of freight and goods from the Ports of LA and Long Beach, and reduce road congestion and associated emissions.</p>	Project development elements, including Project Management & Detailed Work Plan, NEPA and CEQA review, Final Design, and construction for the segments from Prado Dam, through the City of Riverside.	BNSF and Metrolink	<p>The project from Fullerton to Riverside has been segmented into multiple sections. Currently, the environmental review, design, and construction of the segment from Fullerton to Prado Dam is fully funded. The entire third track section from Prado to Riverside is needed for additional passenger trains under existing agreements. Funds will be needed for project development and construction.</p>	<a href="https://metrolinktrains.com/score">https://metrolinktrains.com/score</a>	SD 31 (Roth); AD 60 (Cervantes); AD 61 (Medina); SD 28 (Melendez); AD 42 (Mayes); AD 56 (Garcia); AD 67 (Seyarto); AD 71 (Voepel); AD 75 (Waldron)
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**SBCTA Project Funding Requests**

ATTACHMENT 4

Project	Location	Funding Request	Benefit	Phase to be Funded	Lead Agency	Project Status	Districts Served
Interstate 10 Corridor Freight and Express Lanes Project - Contract 2	Interstate 10, from I-15 to City of Redlands	\$1.2B	The project balances the need for additional managed lane capacity with the State's investment principles in the new Climate Action Plan Transportation Infrastructure. Additionally, SBCTA has identified several early start efforts that will facilitate full construction more quickly to assist in the supply chain restoration.	The project will provide two express lanes in each direction from just east of I-15 to the City of Redlands, connecting to the I-10 Corridor Contract 1 express lanes currently under construction.	SBCTA	Project is environmentally cleared. SBCTA can provide \$800M toward the \$2B project cost.	SD 20 (Leyva), SD 23 (Ochoa-Bogh), AD 40 (Ramos), AD 47 (Gomez-Reyes), AD 52 (Rodriguez)
U.S. 395 Freight Mobility and Safety Project - Phase 2	U.S. 395, from Interstate 15 in the City of Hesperia to State Route 18 in the City of Victorville.	\$30M	The project will relieve congestion and enhance operation safety and efficiency on U.S. 395.	The funding will complete funding for construction. The project will widen sections of U.S. 395 from two to four lanes between Interstate 15 and State Route 18 in the cities of Hesperia and Victorville. Proposed additional improvements include a continuous 14-foot paved median, 8-foot shoulders, left/right turn channelization and signal interconnections and upgrades.	SBCTA	Project is environmentally cleared and funding is currently planned through the Plans, Specifications & Estimates and Right of Way phases so the project can be a viable candidate for future grant funding. A set-aside for construction has also been established to provide a match for future grants. SBCTA can provide \$45M toward the cost.	SD 21 (Wilk), AD 33 (Smith)
State Routes 247 / 62 Emergency Bypass Lanes Project	State Routes 247 and 62, between Interstates 15 and 10.	\$1M	Increase the usefulness of State Routes 247 and 62 as a bypass to Interstate 15 through the Cajon Pass during times of emergency, such as earthquakes, wild fires or other disasters. SR 247 is uniquely situated with minimal topographical challenges to serve as an escape route, access for emergency vehicles, and a conduit for economic recovery if the Cajon Pass is shut down for an extended period.	Planning study focused on emergency preparedness.	SBCTA	Working with Caltrans to identify potential sections of State Routes 247 and 62 to include in potential study.	SD 21 (Wilk), AD 33 (Smith), AD 42 (Mayes)
Ontario International Airport (ONT) Loop Project	Between ONT and the Rancho Cucamonga Metrolink station.	\$60M	Innovative, zero-emission transit project that would provide critical transit system connectivity for San Bernardino County residents from Metrolink to ONT.	The project is an approximate four-mile sub-surface bi-directional tunnel system using rubber-tire zero-emission vehicles aspiring to be autonomous that will serve as an on-demand direct connection to ONT from the Rancho Cucamonga Station on the Metrolink San Bernardino Line. Funding would support environmental clearance, design and right of way for the project.	SBCTA	Preliminary planning is underway. SBCTA has committed \$72M to the project.	SD 20 (Leyva), SD 23 (Ochoa-Bogh), SD 25 (Portantino), AD 40 (Ramos), AD 41 (Holden), AD 47 (Gomez-Reyes), AD 52 (Rodriguez)

## SBCTA Project Funding Requests

San Bernardino Line Double Track Project	Metrolink San Bernardino Line between the cities of San Bernardino and Rialto.	\$79M	Project will provide for increased service reliability, support future expansion of commuter rail service in underserved communities, and make it more feasible to run peak hour express service as stipulated by the Metrolink Strategic Plan.	The project entails construction of approximately three miles of second mainline track along the Metrolink San Bernardino Line from Control Point (CP) Lilac to CP Rancho and includes ten at-grade crossings, quiet zone-ready safety enhancements, and the addition of a second platform and underpass at the Rialto Metrolink Station.	SBCTA	Preliminary engineering and CEQA clearance is complete and design is fully funded. Additional funding would fully fund right of way and construction. SBCTA has \$11M for the project.	SD 20 (Leyva), SD 23 (Ochoa-Bogh), SD 25 (Portantino), AD 40 (Ramos), AD 41 (Holden), AD 47 (Gomez-Reyes), AD 52 (Rodriguez)
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# **AGENDA ITEM 6F**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects Committee Ruben Duran, Senior Management Analyst Hector Casillas, Right of Way Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreements for On-Call Right of Way Appraisal Review Services

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

This item is for the Commission to:

- 1) Award the following agreements to provide on-call right of way appraisal review services for a three-year term, in an amount not to exceed an aggregate value of \$500,000;
  - a) Agreement No. 22-31-030-00 with Hawran & Malm, LLC;
  - b) Agreement No. 22-31-052-00 with Integra Realty Resources – Los Angeles;
  - c) Agreement No. 22-31-053-00 with R.P. Laurain & Associates, Inc.; and
  - d) Agreement No. 22-31-054-00 with Santolucito Dorè Group, Inc.
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

**BACKGROUND INFORMATION:**

Appraisal review services are necessary to support the Commission's projects, as well as projects for the Western Riverside County Regional Conservation Authority (RCA), for which the Commission is the managing agency as of January 1, 2021.

The Code of Federal Regulations, 49 CFR Part 24, Subpart A, requires that review appraisers examine the presentation and analysis of market information in all appraisals and ensure compliance with accepted practices and appropriate methodologies, as well as the Uniform Standards of Appraisal and/or Uniform Appraisal Standards for Federal Land Acquisitions. All review appraisers shall be licensed by the Bureau of Real Estate Appraisers.

Awarding contracts for on-call appraisal review services with the work to be issued on an as-needed task order basis has worked well for the Commission in the past, and staff recommends

continuing that practice. Due to the amount of potential appraisal review services required for both Commission and RCA projects, staff determined an award to several firms was in the Commission's best interest.

### **Procurement Process**

Staff determined the weighted factor method of source selection to be the most appropriate for this procurement, as it allows the Commission to identify the most advantageous proposal with price and other factors considered. Non-price factors include elements such as qualifications of firm and personnel and understanding and approach for on-call right of way appraisal review services as set forth under the terms of Request for Proposals (RFP) No. 22-31-030-00.

RFP No. 22-31-030-00 for on-call right of way appraisal review services was released by staff on November 18, 2021. The RFP was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 21 firms downloaded the RFP; 7 of these firms are located in Riverside County. Staff responded to all questions submitted by potential proposers prior to the December 2, 2021, clarification deadline. Seven firms – Hawran & Malm, LLC (Newport Beach); Hennessey & Hennessey, LLC (Tustin); Integra Realty Resources – Los Angeles (Encino); Michael J. Francis (Newport Beach); R.P. Laurain & Associates, Inc. (Long Beach); Santolucito Dorè Group, Inc. (Canyon Lake); and Thompson & Thompson (Arcadia) – submitted responsive and responsible proposals prior to the 2:00 p.m. submittal deadline on December 16, 2021. Based on the evaluation criteria set forth in the RFP, the firms were evaluated and scored by an evaluation committee comprised of Commission staff.

As a result of the evaluation committee's assessment of the written proposals, the evaluation committee determined four firms – Hawran & Malm, LLC; Integra Realty Resources – Los Angeles; R.P. Laurain & Associates, Inc.; and Santolucito Dorè Group, Inc. – to be the most qualified firms to provide on-call right of way appraisal review services. The evaluation committee recommends contract awards to these four firms for a three-year term, in the aggregate amount of \$500,000, as these firms earned the highest total evaluation scores.

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

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

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2021/22 FY 2022/23+	Amount:	\$75,000 \$425,000
Source of Funds:	2009 Measure A Western County highway and rail, State Transportation Improvement Program, various Federal reimbursements, Transportation Uniform Mitigation Fees, and RCA reimbursements			Budget Adjustment:	No N/A
GL/Project Accounting No.:	623999 81403 00014 0000 262 31 81402 654199 81403 00014 0000 265 33 81402 r22001 81403 00014 5201 750 68 81402				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	01/12/2022

Attachments:

- 1) Draft Agreement No. 22-31-030-00 with Hawran & Malm, LLC
- 2) Draft Agreement No. 22-31-052-00 with Integra Realty Resources – Los Angeles
- 3) Draft Agreement No. 22-31-053-00 with R.P. Laurain & Associates, Inc.
- 4) Draft Agreement No. 22-31-054-00 with Santolucito Dorè Group, Inc.

<p><i>Approved by the Western Riverside County Programs and Projects Committee on January 24, 2022</i></p>			
In Favor:	11	Abstain:	1
		No:	0



**Agreement No. 22-31-030-00****PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND FTA FUNDING ASSISTANCE****RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
HAWRAN & MALM, LLC  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL REVIEW SERVICES****Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and HAWRAN & MALM, LLC ("Consultant"), a California limited liability company. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

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

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

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

D. A source of funding for payment for on-call professional appraisal review services provided under this Agreement may be Federal Highway Administration ("FHWA") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Commission may withhold payment of any federal funds hereunder until the certification shown in Exhibit "F" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal review services for projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant

represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary) and is familiar with the plans of the Commission.

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

G. Commission may engage Consultant to provide services for the benefit of the Western Riverside County Regional Conservation Authority ("RCA")

## **Terms.**

1. General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the on-call right of way appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a fully executed Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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

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

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

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" or other authorization to proceed under a Task Order may be contingent upon completion



and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an "Authorization to Proceed".

#### 4. Audit Procedures.

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

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

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

Accepted rates will be as follows:

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

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

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

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

## 5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on February 28, 2025, unless extended by contract amendment.

Notwithstanding the foregoing, Caltrans and/or FHWA funded Task Orders shall be completed within thirty-six (36) months of the Effective Date, unless approval of Caltrans is obtained from the Commission.

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

5.3 This Agreement shall remain in effect until the date set forth above, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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

7. Consultant's Representative. Consultant hereby designates **Sydney H. Hawran** 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: **Sydney H. Hawran, James C. Malm**, or as otherwise identified in the Task Order.

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

required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, 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.

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. Project Progress.

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

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

11.3 Progress Reports. As part of its monthly invoice, Consultant shall submit a progress report, in a form determined by the Commission, which will indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by Consultant shall be a condition precedent to receipt of payment from the Commission for each monthly invoice submitted.

12. Delay in Performance.

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

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

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

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

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

15. Opportunity to Cure; Inspection of Work. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

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

17. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, 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.

18. Fees and Payment.

18.1 Consultant shall be reimbursed for hours worked at the hourly rates specified in the Consultant's approved cost proposal, attached hereto as Exhibit "B". The specified hourly rates shall include direct salary costs, employee benefits, prevailing

wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant shall be reimbursed for incurred (actual) direct costs other than salary costs that are included in the attached Exhibit "B" and identified in the approved Task Order.

18.3 Specific projects may be assigned to Consultant through issuance of Task Orders, as set forth in this Agreement. Task Orders may be negotiated for a lump sum (firm fixed price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the attached Exhibit "B". Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit "B". In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement shall not exceed State rates, unless otherwise authorized by Commission. If the rates invoiced are in excess of State 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.

18.5 When milestone cost estimates are included in the approved cost proposal for a Task Order, Consultant shall obtain prior written approval in the form of an amendment to the Task Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order shall be made monthly in arrears based on services provided and actual costs incurred.

18.7 Consultant shall not commence performance of work or services until this Agreement has been approved by Commission, and a Task Order has been authorized as detailed in Section 2 of this Agreement. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, and receipt of Commission's Task Order Authorization.

18.8 Consultant shall be reimbursed, within forty five (45) days upon receipt by Commission's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than forty five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the authorized Task Order, or as otherwise agreed upon by the Parties, and shall reference this Agreement number, project title and Task Order number. Credits due Commission that include any equipment purchased under the provisions of

Section 25, Equipment Purchase, of this Agreement must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

18.9 The total amount payable by Commission, shall not exceed the amount set forth in each Task Order.

18.10 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call ROW Appraisal Review Task Order Contracts"). The other On-Call ROW Appraisal Review Task Order Contracts are Integra Realty Resources – Los Angeles, 22-31-052-00; R.P. Laurain & Associates, 22-31-053-00; and Santolucito Dorè Group, Inc., 22-31-054-00. The total amount payable by Commission for the On-Call ROW Appraisal Review Task Order Contracts shall not exceed a cumulative maximum total value of Five Hundred Thousand (\$500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call ROW Appraisal Review Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call ROW Appraisal Review Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call ROW Appraisal Review Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

## 19. Disputes.

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

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



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

## 20. Termination.

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

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

20.3 In addition to the above, payment upon termination shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Contract Administrator to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination

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

20.5 In addition to the above, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

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

20.8 Consultant may not terminate this Agreement except for cause

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

21. Cost Principles and Administrative Requirements.

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

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

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

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

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

and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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.

23. Audit Review Procedures.

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

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

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

24. Subcontracting.

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

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

24.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Commission.

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

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

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

## 25. Equipment Purchase

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

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

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

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

## 26. Labor Code Requirements.

26.1 By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance

of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the Commission’s offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade

shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

27. Ownership of Materials/Confidentiality.

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

27.2 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.

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

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

27.5 Provisions Applicable to RCA. To the extent the services are performed for the benefit of RCA, the rights granted in this Section 27 to the Commission shall also be granted to RCA.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligations as set forth in this Section 28 shall survive expiration or termination of this Agreement.

29. Insurance.

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

29.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the



performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

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

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

29.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$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.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired

and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, 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, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) 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.

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

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

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

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

29.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

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

31. Additional Work. Any work or activities that are in addition to, or otherwise outside of, the Services to be performed pursuant to this Agreement shall only be performed pursuant to a separate agreement between the parties. Notwithstanding the foregoing, the Commission's Executive Director may make a change to the Agreement, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director,

other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

(b) Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

### 32. Prohibited Interests.

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

### 32.2 Consultant Conflict of Interest.

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

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

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

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

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to the terms herein, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.7 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

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

36. Disputes; Attorneys' Fees.

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

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and, all other costs of such actions.

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

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

39. Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:



**CONSULTANT:**

Hawran & Malm, LLC  
2618 San Miguel Drive, Ste. 1601  
Newport Beach, CA 92660  
Attn: Sydney H. Hawran

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

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

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

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

42. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

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

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

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

46. No Third Party Beneficiaries. Except as to rights expressly granted to RCA hereunder, 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]**

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

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

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

#### **RIGHT OF WAY** **APPRAISAL REVIEW SERVICES**

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

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

Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

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

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.
8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.
10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.
11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.
12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.
13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.
14. All reports and deliverables shall typically consist of one (1) original and one (1) electronic copy, including specialty reports which may be prepared by other consultants.
15. In cases where the assignment requires other services, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

**EXHIBIT "B"**

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

<b>FIRM</b>	<b>PROJECT TASKS/ROLE</b>	<b>COST</b>
<b><i>Prime Consultant:</i></b>		
Hawran & Malm, LLC	Right of Way Appraisal Review Services	\$ 500,000.00
<b><i>Sub Consultants:</i></b>		
<b>TOTAL COSTS</b>		<b>\$ 500,000.00</b>

<sup>1</sup> Commission authorization pertains to total contract award amount. Compensation adjustments between consultants may occur; however, the maximum total compensation authorized may not be exceeded.

## **EXHIBIT "C"**

### **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. DISCRIMINATION; CONTRACT ASSURANCE**

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the implementation of the Caltrans DBE program or the requirements of 49 CFR Part 26. The Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 and the Caltrans DBE program in the award and administration of DOT-assisted contracts, as further set forth below. Failure by the Consultant or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Commission deems appropriate.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

### **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 any Caltrans required DBE reporting forms, as provided by the Commission, 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 does not have a DBE goal, but DBE goals may be included as part of each Task Order request for proposals. Participation by DBE Consultant or

subconsultants for an FHWA funded Task Order shall be in accordance with the information contained in the Consultant Contract DBE Commitment form (Caltrans LAPM Forms Exhibit 10-O1) to be submitted with the relevant Task Order proposal. 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 9 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.



## **EXHIBIT D**

### **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

#### **1. No Obligation by the Federal Government**

- a. RCTC and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

- a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
- b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

#### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

#### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

#### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of

Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. FTA Disadvantaged Business Enterprise (DBE) Requirements**

A. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;  
and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. Discrimination: Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. Commission's Race-Neutral DBE Program: A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award): At termination of the Contract, the successful Consultant shall complete and submit to Commission a "DBE Race-Neutral Participation Listing" in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any RCTC requests which would cause RCTC to be in violation of the FTA terms and conditions.

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

## **12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

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

#### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant’s proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

#### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement (“Breach”) if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above (“Uncured Breach”).

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs

incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.



c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

## **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **20. Clean Air**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

c. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **21. Recycled Products**

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY**

### **Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

*(a) Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order.

*(b) Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## **22. Safe Operation of Motor Vehicles**

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.

. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

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## EXHIBIT "E"

### CERTIFICATE OF CONSULTANT

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

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

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

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT F – LOBBYING ACTIVITIES DISCLOSURE

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## Appendix L – Disclosure of Lobbying Activities

Local Assistance Procedures Manual

EXHIBIT 10-Q  
Disclosure of Lobbying Activities

Not Applicable

### EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year ____ quarter ____ date of last report ____
<b>4. Name and Address of Reporting Entity</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known  Congressional District, if known	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable ____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI)  (attach Continuation Sheet(s) if necessary)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI)  (attach Continuation Sheet(s) if necessary)	
<b>12. Amount of Payment (check all that apply)</b> \$ ____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <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 ____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify nature ____ Value ____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b> (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Authorized for Local Reproduction Standard Form - LLL		

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**Agreement No. 22-31-052-00****PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND FTA FUNDING ASSISTANCE****RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
ELLIS GROUP, INC.  
D/B/A INTEGRA REALTY RESOURCES – LOS ANGELES  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL REVIEW SERVICES****Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and ELLIS GROUP, INC., a California corporation, d/b/a INTEGRA REALTY RESOURCES – LOS ANGELES ("Consultant"). The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

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

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

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

D. A source of funding for payment for on-call professional appraisal review services provided under this Agreement may be Federal Highway Administration ("FHWA") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Commission may withhold payment of any federal funds hereunder until the certification shown in Exhibit "F" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal review services for projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by

Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary) and is familiar with the plans of the Commission.

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

G. Commission may engage Consultant to provide services for the benefit of the Western Riverside County Regional Conservation Authority ("RCA")

### **Terms.**

1. General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the on-call right of way appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a fully executed Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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

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

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

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" or



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

#### 4. Audit Procedures.

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

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

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

Accepted rates will be as follows:

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

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

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

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

## 5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on February 28, 2025, unless extended by contract amendment.

Notwithstanding the foregoing, Caltrans and/or FHWA funded Task Orders shall be completed within thirty-six (36) months of the Effective Date, unless approval of Caltrans is obtained from the Commission.

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

5.3 This Agreement shall remain in effect until the date set forth above, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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

7. Consultant's Representative. Consultant hereby designates **Beth B. Finestone** to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her professional skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Consultant shall work closely and cooperate fully with Commission's Contract Administrator and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Contract Administrator.

8. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are: **Beth B. Finestone, John G. Ellis, Adam M. Bogorad, Robert M. Lea, William Larsen, Jerardo Arciniega, Thomas G. Richardson, and J. Richard Donahue**, or as otherwise identified in the Task Order.

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

have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, 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.

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. Project Progress.

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

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

11.3 Progress Reports. As part of its monthly invoice, Consultant shall submit a progress report, in a form determined by the Commission, which will indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by Consultant shall be a condition precedent to receipt of payment from the Commission for each monthly invoice submitted.

12. Delay in Performance.

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

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

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

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

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

15. Opportunity to Cure; Inspection of Work. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

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

17. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, 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.

18. Fees and Payment.

18.1 Consultant shall be reimbursed for hours worked at the hourly rates specified in the Consultant's approved cost proposal, attached hereto as Exhibit "B". The specified hourly rates shall include direct salary costs, employee benefits, prevailing

wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant shall be reimbursed for incurred (actual) direct costs other than salary costs that are included in the attached Exhibit "B" and identified in the approved Task Order.

18.3 Specific projects may be assigned to Consultant through issuance of Task Orders, as set forth in this Agreement. Task Orders may be negotiated for a lump sum (firm fixed price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the attached Exhibit "B". Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit "B". In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement shall not exceed State rates, unless otherwise authorized by Commission. If the rates invoiced are in excess of State 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.

18.5 When milestone cost estimates are included in the approved cost proposal for a Task Order, Consultant shall obtain prior written approval in the form of an amendment to the Task Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order shall be made monthly in arrears based on services provided and actual costs incurred.

18.7 Consultant shall not commence performance of work or services until this Agreement has been approved by Commission, and a Task Order has been authorized as detailed in Section 2 of this Agreement. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, and receipt of Commission's Task Order Authorization.

18.8 Consultant shall be reimbursed, within forty five (45) days upon receipt by Commission's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than forty five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the authorized Task Order, or as otherwise agreed upon by the Parties, and shall reference this Agreement number, project title and Task Order number. Credits due Commission that include any equipment purchased under the provisions of

Section 25, Equipment Purchase, of this Agreement must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

18.9 The total amount payable by Commission, shall not exceed the amount set forth in each Task Order.

18.10 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call ROW Appraisal Review Task Order Contracts"). The other On-Call ROW Appraisal Review Task Order Contracts are Hawran & Malm, 22-31-030-00, R.P. Laurain & Associates, 22-31-053-00; and Santolucito Dorè Group, Inc., 22-31-054-00. The total amount payable by Commission for the On-Call ROW Appraisal Review Task Order Contracts shall not exceed a cumulative maximum total value of Five Hundred Thousand (\$500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call ROW Appraisal Review Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call ROW Appraisal Review Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call ROW Appraisal Review Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

## 19. Disputes.

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

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



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

## 20. Termination.

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

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

20.3 In addition to the above, payment upon termination shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Contract Administrator to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination

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

20.5 In addition to the above, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

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

20.8 Consultant may not terminate this Agreement except for cause.

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

21. Cost Principles and Administrative Requirements.

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

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

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

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

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

and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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.

23. Audit Review Procedures.

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

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

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

24. Subcontracting.

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

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

24.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Commission.

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

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

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

## 25. Equipment Purchase

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

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

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

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

## 26. Labor Code Requirements.

26.1 By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance

of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade

shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

27. Ownership of Materials/Confidentiality.

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

27.2 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.

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

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

27.5 Provisions Applicable to RCA. To the extent the services are performed for the benefit of RCA, the rights granted in this Section 27 to the Commission shall also be granted to RCA.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligations as set forth in this Section 28 shall survive expiration or termination of this Agreement.

29. Insurance.

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

29.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the



performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

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

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

29.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$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.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired

and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, 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, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) 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.

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

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

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

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

29.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

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

31. Additional Work. Any work or activities that are in addition to, or otherwise outside of, the Services to be performed pursuant to this Agreement shall only be performed pursuant to a separate agreement between the parties. Notwithstanding the foregoing, the Commission's Executive Director may make a change to the Agreement, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director,

other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

(b) Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

### 32. Prohibited Interests.

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

### 32.2 Consultant Conflict of Interest.

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

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

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

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

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to the terms herein, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.7 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

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

36. Disputes; Attorneys' Fees.

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

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and, all other costs of such actions.

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

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

39. Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:



**CONSULTANT:**

Integra Realty Resources -  
Los Angeles  
16030 Ventura Boulevard, Suite 620  
Encino, CA 91436-4473  
Attn: Beth B. Finestone

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

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

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

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

42. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

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

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

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

46. No Third Party Beneficiaries. Except as to rights expressly granted to RCA hereunder, 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]**

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

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

<b>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</b>  By: _____ <b>[INSERT NAME]</b> Chair   <i>Approved as to Form:</i>  By: _____ Best, Best & Krieger LLP General Counsel	<b>CONSULTANT ELLIS GROUP, INC. D/B/A INTEGRA REALTY RESOURCES – LOS ANGELES</b>  By: _____ Signature _____ Name _____ Title  <b>ATTEST:</b>  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**

#### **RIGHT OF WAY** **APPRAISAL REVIEW SERVICES**

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

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

Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

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

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.
8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.
10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.
11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.
12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.
13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.
14. All reports and deliverables shall typically consist of one (1) original and one (1) electronic copy, including specialty reports which may be prepared by other consultants.
15. In cases where the assignment requires other services, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

**EXHIBIT "B"**

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

<b>FIRM</b>	<b>PROJECT TASKS/ROLE</b>	<b>COST</b>
<b><i>Prime Consultant:</i></b>		
Integra Realty Resources - Los Angeles	Right of Way Appraisal Review Services	\$ 500,000.00
<b><i>Sub Consultants:</i></b>		
<b>TOTAL COSTS</b>		<b>\$ 500,000.00</b>

<sup>1</sup> Commission authorization pertains to total contract award amount. Compensation adjustments between consultants may occur; however, the maximum total compensation authorized may not be exceeded.

## **EXHIBIT "C"**

### **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. DISCRIMINATION; CONTRACT ASSURANCE**

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the implementation of the Caltrans DBE program or the requirements of 49 CFR Part 26. The Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 and the Caltrans DBE program in the award and administration of DOT-assisted contracts, as further set forth below. Failure by the Consultant or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Commission deems appropriate.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

### **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 any Caltrans required DBE reporting forms, as provided by the Commission, 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 does not have a DBE goal, but DBE goals may be included as part of each Task Order request for proposals. Participation by DBE Consultant or

subconsultants for an FHWA funded Task Order shall be in accordance with the information contained in the Consultant Contract DBE Commitment form (Caltrans LAPM Forms Exhibit 10-O1) to be submitted with the relevant Task Order proposal. 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 9 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.



## **EXHIBIT D**

### **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

#### **1. No Obligation by the Federal Government**

- a. RCTC and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

- a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
- b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

#### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

#### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

#### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of

Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. FTA Disadvantaged Business Enterprise (DBE) Requirements**

A. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;  
and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. Discrimination: Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. Commission's Race-Neutral DBE Program: A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award): At termination of the Contract, the successful Consultant shall complete and submit to Commission a "DBE Race-Neutral Participation Listing" in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any RCTC requests which would cause RCTC to be in violation of the FTA terms and conditions.

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

## **12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

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

#### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant’s proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

#### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement (“Breach”) if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above (“Uncured Breach”).

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs

incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.



c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

## **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **20. Clean Air**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

c. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **21. Recycled Products**

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY**

### **Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

*(a) Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order.

*(b) Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## **22. Safe Operation of Motor Vehicles**

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.

. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

DRAFT

## EXHIBIT "E"

### CERTIFICATE OF CONSULTANT

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

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

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

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

Signature

\_\_\_\_\_  
Name


\_\_\_\_\_  
Title

## EXHIBIT F – LOBBYING ACTIVITIES DISCLOSURE

DRAFT

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI)  (attach Continuation Sheet(s) if necessary)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI)  (attach Continuation Sheet(s) if necessary)	
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <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 _____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>	Signature: 	
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Print Name: <u>Beth B. Finestone</u>	
	Title: <u>Managing Director</u>	
	Telephone No.: <u>Managing Director</u> Date: <u>12/16/21</u>	
<b>Federal Use Only:</b>	Authorized for Local Reproduction Standard Form - LLL	

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**Agreement No. 22-31-053-00****PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND FTA FUNDING ASSISTANCE****RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
R.P. LAURAIN & ASSOCIATES, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL REVIEW SERVICES****Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and R.P. LAURAIN & ASSOCIATES, INC. ("Consultant"), a California corporation. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

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

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

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

D. A source of funding for payment for on-call professional appraisal review services provided under this Agreement may be Federal Highway Administration ("FHWA") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Commission may withhold payment of any federal funds hereunder until the certification shown in Exhibit "F" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal review services for projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant

represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary) and is familiar with the plans of the Commission.

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

G. Commission may engage Consultant to provide services for the benefit of the Western Riverside County Regional Conservation Authority ("RCA")

## **Terms.**

1. General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the on-call right of way appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a fully executed Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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

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

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

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" or other authorization to proceed under a Task Order may be contingent upon completion



and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an "Authorization to Proceed".

#### 4. Audit Procedures.

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

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

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

Accepted rates will be as follows:

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

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

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

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

## 5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on February 28, 2025, unless extended by contract amendment.

Notwithstanding the foregoing, Caltrans and/or FHWA funded Task Orders shall be completed within thirty-six (36) months of the Effective Date, unless approval of Caltrans is obtained from the Commission.

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

5.3 This Agreement shall remain in effect until the date set forth above, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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

7. Consultant's Representative. Consultant hereby designates **John P. Laurain** to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her professional skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Consultant shall work closely and cooperate fully with Commission's Contract Administrator and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Contract Administrator.

8. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are: **John P. Laurain, Benjamin V. Balos, Ronald P. Laurain**, or as otherwise identified in the Task Order.

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

required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, 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.

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. Project Progress.

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

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

11.3 Progress Reports. As part of its monthly invoice, Consultant shall submit a progress report, in a form determined by the Commission, which will indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by Consultant shall be a condition precedent to receipt of payment from the Commission for each monthly invoice submitted.

12. Delay in Performance.

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

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

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

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

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

15. Opportunity to Cure; Inspection of Work. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

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

17. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, 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.

18. Fees and Payment.

18.1 Consultant shall be reimbursed for hours worked at the hourly rates specified in the Consultant's approved cost proposal, attached hereto as Exhibit "B". The specified hourly rates shall include direct salary costs, employee benefits, prevailing

wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant shall be reimbursed for incurred (actual) direct costs other than salary costs that are included in the attached Exhibit "B" and identified in the approved Task Order.

18.3 Specific projects may be assigned to Consultant through issuance of Task Orders, as set forth in this Agreement. Task Orders may be negotiated for a lump sum (firm fixed price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the attached Exhibit "B". Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit "B". In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement shall not exceed State rates, unless otherwise authorized by Commission. If the rates invoiced are in excess of State 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.

18.5 When milestone cost estimates are included in the approved cost proposal for a Task Order, Consultant shall obtain prior written approval in the form of an amendment to the Task Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order shall be made monthly in arrears based on services provided and actual costs incurred.

18.7 Consultant shall not commence performance of work or services until this Agreement has been approved by Commission, and a Task Order has been authorized as detailed in Section 2 of this Agreement. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, and receipt of Commission's Task Order Authorization.

18.8 Consultant shall be reimbursed, within forty five (45) days upon receipt by Commission's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than forty five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the authorized Task Order, or as otherwise agreed upon by the Parties, and shall reference this Agreement number, project title and Task Order number. Credits due Commission that include any equipment purchased under the provisions of

Section 25, Equipment Purchase, of this Agreement must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

18.9 The total amount payable by Commission, shall not exceed the amount set forth in each Task Order.

18.10 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call ROW Appraisal Review Task Order Contracts"). The other On-Call ROW Appraisal Review Task Order Contracts are Hawran & Malm, 22-31-030-00; Integra Realty Resources – Los Angeles, 22-31-052-00; and Santolucito Dorè Group, Inc., 22-31-054-00. The total amount payable by Commission for the On-Call ROW Appraisal Review Task Order Contracts shall not exceed a cumulative maximum total value of Five Hundred Thousand (\$500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call ROW Appraisal Review Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call ROW Appraisal Review Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call ROW Appraisal Review Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

## 19. Disputes.

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

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



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

## 20. Termination.

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

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

20.3 In addition to the above, payment upon termination shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Contract Administrator to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination

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

20.5 In addition to the above, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

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

20.8 Consultant may not terminate this Agreement except for cause

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

21. Cost Principles and Administrative Requirements.

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

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

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

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

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

and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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.

23. Audit Review Procedures.

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

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

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

24. Subcontracting.

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

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

24.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Commission.

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

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

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

## 25. Equipment Purchase

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

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

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

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

## 26. Labor Code Requirements.

26.1 By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance

of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the Commission’s offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade

shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

27. Ownership of Materials/Confidentiality.

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

27.2 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.

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

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

27.5 Provisions Applicable to RCA. To the extent the services are performed for the benefit of RCA, the rights granted in this Section 27 to the Commission shall also be granted to RCA.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligations as set forth in this Section 28 shall survive expiration or termination of this Agreement.

29. Insurance.

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

29.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the



performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

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

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

29.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$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.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired

and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, 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, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) 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.

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

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

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

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

29.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

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

31. Additional Work. Any work or activities that are in addition to, or otherwise outside of, the Services to be performed pursuant to this Agreement shall only be performed pursuant to a separate agreement between the parties. Notwithstanding the foregoing, the Commission's Executive Director may make a change to the Agreement, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director,

other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

(b) Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

### 32. Prohibited Interests.

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

### 32.2 Consultant Conflict of Interest.

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

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

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

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

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to the terms herein, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.7 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

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

36. Disputes; Attorneys' Fees.

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

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and, all other costs of such actions.

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

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

39. Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:



**CONSULTANT:**

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

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

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

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

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

42. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

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

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

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

46. No Third Party Beneficiaries. Except as to rights expressly granted to RCA hereunder, 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]**

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

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

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

#### **RIGHT OF WAY** **APPRAISAL REVIEW SERVICES**

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

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

Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

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

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.
8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.
10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.
11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.
12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.
13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.
14. All reports and deliverables shall typically consist of one (1) original and one (1) electronic copy, including specialty reports which may be prepared by other consultants.
15. In cases where the assignment requires other services, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

**EXHIBIT "B"**

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

<b>FIRM</b>	<b>PROJECT TASKS/ROLE</b>	<b>COST</b>
<b><i>Prime Consultant:</i></b>		
R.P. Laurain & Associates, Inc.	Right of Way Appraisal Review Services	\$ 500,000.00
<b><i>Sub Consultants:</i></b>		
<b>TOTAL COSTS</b>		<b>\$ 500,000.00</b>

<sup>1</sup> Commission authorization pertains to total contract award amount. Compensation adjustments between consultants may occur; however, the maximum total compensation authorized may not be exceeded.

## **EXHIBIT "C"**

### **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. DISCRIMINATION; CONTRACT ASSURANCE**

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the implementation of the Caltrans DBE program or the requirements of 49 CFR Part 26. The Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 and the Caltrans DBE program in the award and administration of DOT-assisted contracts, as further set forth below. Failure by the Consultant or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Commission deems appropriate.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

### **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 any Caltrans required DBE reporting forms, as provided by the Commission, 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 does not have a DBE goal, but DBE goals may be included as part of each Task Order request for proposals. Participation by DBE Consultant or

subconsultants for an FHWA funded Task Order shall be in accordance with the information contained in the Consultant Contract DBE Commitment form (Caltrans LAPM Forms Exhibit 10-O1) to be submitted with the relevant Task Order proposal. 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 9 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.



## **EXHIBIT D**

### **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

#### **1. No Obligation by the Federal Government**

- a. RCTC and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

- a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
- b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

#### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

#### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

#### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of

Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. FTA Disadvantaged Business Enterprise (DBE) Requirements**

A. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;  
and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. Discrimination: Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. Commission's Race-Neutral DBE Program: A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award): At termination of the Contract, the successful Consultant shall complete and submit to Commission a "DBE Race-Neutral Participation Listing" in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any RCTC requests which would cause RCTC to be in violation of the FTA terms and conditions.

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

## **12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

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

#### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant’s proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

#### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement (“Breach”) if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above (“Uncured Breach”).

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs

incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.



c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

## **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **20. Clean Air**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

c. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **21. Recycled Products**

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY**

### **Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

*(a) Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order.

*(b) Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## **22. Safe Operation of Motor Vehicles**

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.

. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

DRAFT

## EXHIBIT "E"

### CERTIFICATE OF CONSULTANT

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

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

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

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

Signature

\_\_\_\_\_  
Name

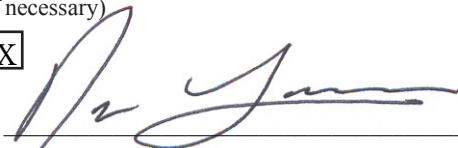
\_\_\_\_\_  
Title

## EXHIBIT F – LOBBYING ACTIVITIES DISCLOSURE

DRAFT

THIS FIRM HAS NEVER BEEN INVOLVED IN LOBBYING ACTIVITIES  
**EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> _____	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <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 _____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____	<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)	
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Signature:  Print Name: John P. Laurain, MAI, ASA Title: President Telephone No.: (562) 426-0477    Date: 12-16-2021	
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
<b>Federal Use Only:</b>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**Agreement No. 22-31-054-00****PROFESSIONAL SERVICES AGREEMENT  
WITH FHWA AND FTA FUNDING ASSISTANCE****RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
SANTOLUCITO DORE GROUP, INC.  
FOR ON-CALL  
RIGHT OF WAY APPRAISAL REVIEW SERVICES****Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and SANTOLUCITO DORE GROUP, INC. ("Consultant"), a California corporation. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

**Recitals.**

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

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

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

D. A source of funding for payment for on-call professional appraisal review services provided under this Agreement may be Federal Highway Administration ("FHWA") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Commission may withhold payment of any federal funds hereunder until the certification shown in Exhibit "F" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way appraisal review services for projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant

represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary) and is familiar with the plans of the Commission.

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

G. Commission may engage Consultant to provide services for the benefit of the Western Riverside County Regional Conservation Authority ("RCA")

## **Terms.**

1. General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the on-call right of way appraisal review services for the Projects ("Services"). The Services are generally described in Exhibit "A" attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a fully executed Task Order. All Services shall be subject to, and performed in accordance with, this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

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

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

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

3. Pre-Award Audit. As a result of the funding for this Project, and to the extent Caltrans procedures apply in connection therewith, issuance of a "Notice to Proceed" or other authorization to proceed under a Task Order may be contingent upon completion



and approval of a pre-award audit. Any questions raised during the pre-award audit shall be resolved before Services are commenced under a Task Order. The funding provided under this Agreement is contingent on meeting all funding requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate State process reviews. In addition, Caltrans may require that prior to performance of any work for which funding reimbursement through Caltrans is requested and provided, that Caltrans must give to Commission an "Authorization to Proceed".

#### 4. Audit Procedures.

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

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

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

Accepted rates will be as follows:

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

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

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

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

## 5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end on February 28, 2025, unless extended by contract amendment.

Notwithstanding the foregoing, Caltrans and/or FHWA funded Task Orders shall be completed within thirty-six (36) months of the Effective Date, unless approval of Caltrans is obtained from the Commission.

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

5.3 This Agreement shall remain in effect until the date set forth above, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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

7. Consultant's Representative. Consultant hereby designates **Christine S. Santolucito** 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: **Christine S. Santolucito, Lance W. Dore**, or as otherwise identified in the Task Order.

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

required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, 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.

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. Project Progress.

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

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

11.3 Progress Reports. As part of its monthly invoice, Consultant shall submit a progress report, in a form determined by the Commission, which will indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by Consultant shall be a condition precedent to receipt of payment from the Commission for each monthly invoice submitted.

12. Delay in Performance.

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

12.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 12.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

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

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

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

15. Opportunity to Cure; Inspection of Work. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant. Consultant shall allow the Commission's Contract Administrator and Caltrans to inspect or review Consultant's work in progress at any reasonable time.

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

17. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, 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.

18. Fees and Payment.

18.1 Consultant shall be reimbursed for hours worked at the hourly rates specified in the Consultant's approved cost proposal, attached hereto as Exhibit "B". The specified hourly rates shall include direct salary costs, employee benefits, prevailing

wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

18.2 In addition, Consultant shall be reimbursed for incurred (actual) direct costs other than salary costs that are included in the attached Exhibit "B" and identified in the approved Task Order.

18.3 Specific projects may be assigned to Consultant through issuance of Task Orders, as set forth in this Agreement. Task Orders may be negotiated for a lump sum (firm fixed price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the attached Exhibit "B". Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

18.4 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit "B". In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement shall not exceed State rates, unless otherwise authorized by Commission. If the rates invoiced are in excess of State 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.

18.5 When milestone cost estimates are included in the approved cost proposal for a Task Order, Consultant shall obtain prior written approval in the form of an amendment to the Task Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

18.6 Progress payments for each Task Order shall be made monthly in arrears based on services provided and actual costs incurred.

18.7 Consultant shall not commence performance of work or services until this Agreement has been approved by Commission, and a Task Order has been authorized as detailed in Section 2 of this Agreement. No payment will be made prior to approval or for any work performed prior to approval of this Agreement, and receipt of Commission's Task Order Authorization.

18.8 Consultant shall be reimbursed, within forty five (45) days upon receipt by Commission's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than forty five (45) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the authorized Task Order, or as otherwise agreed upon by the Parties, and shall reference this Agreement number, project title and Task Order number. Credits due Commission that include any equipment purchased under the provisions of

Section 25, Equipment Purchase, of this Agreement must be reimbursed by Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

18.9 The total amount payable by Commission, shall not exceed the amount set forth in each Task Order.

18.10 Commission has or will enter into four (4) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("On-Call ROW Appraisal Review Task Order Contracts"). The other On-Call ROW Appraisal Review Task Order Contracts are Hawran & Malm, 22-31-030-00; Integra Realty Resources – Los Angeles, 22-31-052-00; and R.P. Laurain & Associates, 22-31-053-00. The total amount payable by Commission for the On-Call ROW Appraisal Review Task Order Contracts shall not exceed a cumulative maximum total value of Five Hundred Thousand (\$500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the On-Call ROW Appraisal Review Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the On-Call ROW Appraisal Review Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the On-Call ROW Appraisal Review Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

18.11 Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Contract Administrator.

## 19. Disputes.

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

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



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

## 20. Termination.

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

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

20.3 In addition to the above, payment upon termination shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Contract Administrator to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination

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

20.5 In addition to the above, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in this Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

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

20.8 Consultant may not terminate this Agreement except for cause

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

21. Cost Principles and Administrative Requirements.

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

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

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

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

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

and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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.

23. Audit Review Procedures.

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

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

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

24. Subcontracting.

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

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

24.3 Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Commission.

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

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

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

## 25. Equipment Purchase

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

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

25.3 Any equipment purchased as a result of this Agreement is subject to the following: Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, Commission shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, Consultant may either keep the equipment and credit Commission in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Commission procedures; and credit Commission in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by Commission and Consultant. If Consultant determines to sell the equipment, the terms and conditions of such sale must be approved in advance by Commission. 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

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

## 26. Labor Code Requirements.

26.1 By its execution of this Agreement, Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance

of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Copies of the prevailing rate of per diem wages are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade

shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

27. Ownership of Materials/Confidentiality.

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

27.2 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.

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

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

27.5 Provisions Applicable to RCA. To the extent the services are performed for the benefit of RCA, the rights granted in this Section 27 to the Commission shall also be granted to RCA.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which, in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, RCA, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, RCA, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligations as set forth in this Section 28 shall survive expiration or termination of this Agreement.

29. Insurance.

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

29.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the



performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

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

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

29.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$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.

29.4 Aircraft Liability Insurance. Prior to conducting any Services requiring use of aircraft, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit as shall be required by the Commission. Such insurance shall include coverage for owned, hired

and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

29.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, 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, RCA, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) 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.

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

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

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

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

29.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

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

31. Additional Work. Any work or activities that are in addition to, or otherwise outside of, the Services to be performed pursuant to this Agreement shall only be performed pursuant to a separate agreement between the parties. Notwithstanding the foregoing, the Commission's Executive Director may make a change to the Agreement, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law, including the requirements of FTA Circular 4220.1D, paragraph 9(f).

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director,

other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

(b) Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

### 32. Prohibited Interests.

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

### 32.2 Consultant Conflict of Interest.

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

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

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

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

32.5 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to the terms herein, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.7 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

33. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

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

36. Disputes; Attorneys' Fees.

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

36.2. If the Parties are unable to resolve a dispute after attempting in good faith to do so, the Parties may seek any other available remedy to resolve the dispute. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and, all other costs of such actions.

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

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

39. Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:



**CONSULTANT:**

Santolucito Dore Group, Inc.  
31600 Railroad Canyon Road  
Suite 100-L  
Canyon Lake, CA 92587  
Attn: Christine S. Santolucito

**COMMISSION:**

Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

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

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

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

42. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

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

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

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

46. No Third Party Beneficiaries. Except as to rights expressly granted to RCA hereunder, 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]**

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

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

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

#### **RIGHT OF WAY** **APPRAISAL REVIEW SERVICES**

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

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

Such review appraisal services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

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

7. It is the Review Appraiser's responsibility to contact Commission's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering information must be verified.
8. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
9. Appraisal Review reports may be reviewed for acceptance by Caltrans or other approving agencies.
10. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation or market value, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.
11. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review to identify any legal issues that may exist. If any legal issues exist; the Review Appraiser shall request legal opinion.
12. All legal opinions shall be rendered by Commission's legal counsel and the appraisal prepared in accordance therewith.
13. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.
14. All reports and deliverables shall typically consist of one (1) original and one (1) electronic copy, including specialty reports which may be prepared by other consultants.
15. In cases where the assignment requires other services, Review Appraiser shall utilize the services of Commission's On-Call Consultants. Fees charged by Commission's On-Call Consultants shall be paid directly by Commission.

**EXHIBIT "B"**

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

<b>FIRM</b>	<b>PROJECT TASKS/ROLE</b>	<b>COST</b>
<b><i>Prime Consultant:</i></b>		
Santolucito Dore Group, Inc.	Right of Way Appraisal Review Services	\$ 500,000.00
<b><i>Sub Consultants:</i></b>		
<b>TOTAL COSTS</b>		<b>\$ 500,000.00</b>

<sup>1</sup> Commission authorization pertains to total contract award amount. Compensation adjustments between consultants may occur; however, the maximum total compensation authorized may not be exceeded.

## **EXHIBIT "C"**

### **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. DISCRIMINATION; CONTRACT ASSURANCE**

The Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the implementation of the Caltrans DBE program or the requirements of 49 CFR Part 26. The Commission shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 and the Caltrans DBE program in the award and administration of DOT-assisted contracts, as further set forth below. Failure by the Consultant or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Commission deems appropriate.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

### **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 any Caltrans required DBE reporting forms, as provided by the Commission, 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 does not have a DBE goal, but DBE goals may be included as part of each Task Order request for proposals. Participation by DBE Consultant or

subconsultants for an FHWA funded Task Order shall be in accordance with the information contained in the Consultant Contract DBE Commitment form (Caltrans LAPM Forms Exhibit 10-O1) to be submitted with the relevant Task Order proposal. 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 9 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.



## **EXHIBIT D**

### **FTA FUNDING REQUIREMENTS (Non-construction/maintenance work)**

As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

#### **1. No Obligation by the Federal Government**

- a. RCTC and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

#### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

- a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
- b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

#### **3. Access to Records**

The Consultant agrees to the following access to records requirements:

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

#### **4. Federal Changes**

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

#### **5. Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of

Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. FTA Disadvantaged Business Enterprise (DBE) Requirements**

A. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;  
and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. Discrimination: Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. Commission's Race-Neutral DBE Program: A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant shall adhere to race-neutral DBE participation commitment(s) made at the time of award.

D. Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award): At termination of the Contract, the successful Consultant shall complete and submit to Commission a "DBE Race-Neutral Participation Listing" in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Agreement, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of this Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of this Agreement, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any RCTC requests which would cause RCTC to be in violation of the FTA terms and conditions.

## **8. Debarment and Suspension.**

The Consultant agrees to the following:

(1) It will comply with the following requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.

(2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any subconsultant whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by— (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended recipients or third party participants.

(3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.

## **9. ADA Access Requirements**

The Consultant shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **10. Fly America**

To the extent applicable to the Services, the Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **11. Cargo Preference - Use of United States-Flag Vessels**

To the extent applicable to the Services, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Consultant in the case of a subconsultant's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**11. Buy America – Not applicable.**

## **12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

- A. Equal Employment Opportunity — Not applicable.
- B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Not applicable.
- C. Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333) —Not applicable.

#### **D. Release of Retainage**

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

#### **13. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Consultant shall submit a final termination settlement proposal to RCTC as directed. If the Consultant fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Consultant because of the termination and shall pay the amount determined. After the Consultant’s proposal is received, RCTC and Consultant shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Consultant does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Consultant may appeal under the Disputes clause.

#### **14. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Consultant may be declared in breach of this Agreement (“Breach”) if the Consultant fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Consultant fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Consultant of the Breach, and the Consultant shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Consultant specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above (“Uncured Breach”).

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Consultant shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs

incurred by RCTC as a result of the Uncured Breach. The Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subconsultants, the Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subconsultant, and if such default arises out of causes beyond the control of both the Consultant and the Subconsultant, and without the fault or negligence of either of them, the Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subconsultant were obtainable from other sources in sufficient time to permit the Consultant to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Consultant for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens of claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 17 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Consultant mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.



c. Pending final decision of a dispute hereunder, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

## **18. Energy Conservation**

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. Clean Water**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

d. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **20. Clean Air**

a. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Consultant further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

c. The Consultant also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **21. Recycled Products**

Recovered Materials - The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY**

### **Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

*(a) Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), applies to this Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” Consultant agrees that it will comply, and will require all subconsultants to comply, with the CDC Mask Order.

*(b) Enforcement for non-compliance.* Consultant agrees that FTA and RCTC may take enforcement action for non-compliance with the CDC Mask Order, including: (1) enforcement actions authorized by 49 U.S.C. § 5329(g); (2) referring Consultant to the CDC or other Federal authority for enforcement action; (3) enforcement actions authorized by 2 CFR §§ 200.339 – .340; and (4) any other enforcement action authorized by Federal law or regulation.

## **22. Safe Operation of Motor Vehicles**

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party consultant to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.

. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

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## EXHIBIT "E"

### CERTIFICATE OF CONSULTANT

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

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

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

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

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT F – LOBBYING ACTIVITIES DISCLOSURE

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## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <b>None</b> <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> _____	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	
<b>12. Amount of Payment (check all that apply)</b> \$ <b>None</b> <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <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 _____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: <u>Christine S. Santolucito</u> Print Name: <u>Christine S. Santolucito</u> Title: <u>President</u> Telephone No.: <u>951-225-3500</u> Date: <u>12/16/2021</u>		
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Standard Form LLL Rev. 04-28-06

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# **AGENDA ITEM 6G**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects Committee Gary Ratliff, Facilities Administrator Marlin Feenstra, Project Delivery Director
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreement for Station Electrical Services

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

This item is for the Commission to:

- 1) Award Agreement No. 22-24-006-00 to Elite Electric, Inc. for station electrical maintenance services and capital improvements, for a five-year term, in an amount of \$825,000 for maintenance and repairs, and \$2,500,000 for capital improvements, for a total not to exceed amount of \$3,325,000;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the contractor under the terms of the agreements.

**BACKGROUND INFORMATION:**

The Commission owns and operates nine commuter rail stations (Riverside-Downtown, Jurupa Valley-Pedley, Riverside-La Sierra, Corona-West, Corona-North Main, Riverside-Hunter Park, Moreno Valley-March Field, Perris-Downtown, and Perris-South). The Commission has a security operation control center at the Riverside Downtown Station and in 2018 the Commission expanded the Riverside-La Sierra station to include a bus depot and a park and ride parking lot. The Riverside Downtown station and Perris-South also provide layover facilities for Metrolink operations.

As an established toll operator for the RCTC 91 Express Lanes and the 15 Express Lanes, the Commission owns five toll facilities, consisting of a storage/maintenance building, two toll utility buildings inside the operating right of way of State Route 91 and two adjacent office buildings for toll business operations.

The 17 Commission owned and operated facilities require lighting and electrical maintenance services. Electrical services are essential for day-to-day operations of these facilities, safety and

security of patrons, employees, and contractors; as well as preserving and maintaining Commission properties.

The Commission requires a professional, certified, and qualified electrical contractor to provide quarterly and annual inspections and testing of facility lighting, solar panel systems, battery back-up systems, tri-annual infrared survey and reporting, and on-call emergency electrical services. These maintenance services include cleaning of stations and facility lights and the repair or replacement of all defective lighting system components and fixtures.

All inspections will be conducted at each facility under Commission staff supervision and per the contractor's proposed labor, material, and equipment rates. On-call services will be provided on an as needed basis to address repairs and emergency safety lighting issues as per the contract rates. Task orders will be issued for additional repair and maintenance work items.

Since 2016, staff has used state and federal grant funds whenever possible to upgrade electrical infrastructure and systems throughout station properties. These projects include upgrading elevator electrical systems, installing emergency back-up lighting systems, solar power systems, and infrastructure. Professional electrical services provide valuable improvements. The Commission approved LED conversion lighting station project accomplished the installation of LED bulbs at the original five stations resulting in a minimum 30 percent energy savings or higher at each location.

Staff has identified additional electrical improvement needs, including installation of solar power systems (per Commission solar power policy), LED fixtures, and other electrical upgrades for efficiency and energy savings and to reduce maintenance and operations costs. Upgrades will be funded by state and federal grants as available and are not guaranteed work. Upgrades and improvements will be contingent on available funds and administered by task orders and staff approval.

The integration of proven electrical technology and regular maintenance preserve Commission assets and lower long-term costs. Station electrical upgrades and improvements, maintenance, and efficiency efforts reflect the Commission's commitment to patrons, the environment, and sustainable practices.

### **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, personnel and the ability to respond to the Commission's needs for electrical services as set forth under the terms of request for proposals (RFP) No. 22-24-006-00.

RFP No. 22-24-006-00 for commuter rail station electrical services was released by staff on October 28, 2021. The RFP was posted on the Commission's PlanetBids website, which is

accessible through the Commission's website. Utilizing PlanetBids, emails were sent to 167 firms, 36 of which are located in Riverside County.

Through the PlanetBids site, 26 firms downloaded the RFP; five of these firms are located in Riverside County. A pre-bid conference was held on November 4, 2021. Staff responded to all questions submitted by potential proposers prior to the November 11, 2021 clarification deadline date. Three firms – Elite Electric, Inc. (Riverside); M Brey Electric, Inc. (Beaumont); and AMTEK Construction (Orange) – submitted proposals prior to the 2:00 p.m. submittal deadline on December 9. The three firms were determined to have submitted responsive and responsible proposals. Utilizing the evaluation criteria set forth in the RFP, the three firms were evaluated and scored by an evaluation committee comprised of Commission and Bechtel staff.

As a result of the evaluation committee's assessment of the written proposals, the evaluation committee recommends contract award to Elite Electric, Inc. to perform station electrical maintenance services and capital improvements for a five-year term, as this firm earned the highest total evaluation score, having submitted the lowest price and demonstrated the highest qualifications.

The overall evaluation scores included the qualifications of firm, personnel, understanding and approach, and cost. Below is a summary of the bids received:

<b>Firm</b>	<b>Bid price</b>	<b>Overall Ranking</b>
Elite Electric, Inc.	\$119,302	1
M Brey Electric, Inc.	\$546,282	2
AMTEK Construction	\$2,134,044	3

Due to the wide disparity in bid prices, staff contacted the second and third place bidders to gain an understanding of their bid prices. Factors that contributed to their prices were unfamiliarity with the work, pricing risk into their bids, and difficulty in obtaining subcontractors for portions of the work. As of the date of preparation of the staff report, the second low bidder has not responded to inquiries.

In addition, staff analyzed the bids closely, to make sure the RFP was clear about the work to be bid, and that the bid results are valid. The following factors contribute to the recommendation to award the contract as bid to the #1 ranked firm:

- The same information was available to all proposers;
- A pre-proposal meeting was held to answer any questions the proposers had, at which all potential proposers were urged to visit the facility sites;
- Questions submitted by potential proposers during the proposal process did not indicate that the RFP was confusing or misunderstood; and
- The prices submitted by the low offeror are comparable to current prices the Commission pays for those services.

The Commission's standard form professional services agreement will be entered into with the consultant subject to any changes approved by the Executive Director, and pursuant to legal counsel review. Outside of the routine electrical maintenance, on-call services, including capital improvements, will be provided through the Commission's issuance of contract task orders to Elite Electric, Inc. on an as-needed basis. Staff oversight of the contract will maximize the effectiveness of the contractor and minimize cost to the Commission.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2021/2022 FY 2022/2023+	Amount:	\$825,000 \$2,500,000
Source of Funds:	2009 Measure A Western County Rail, Toll Revenues, State of Good Repair, Federal Transit Administration Section 5307 grant, CARES Act, Prop 1B and FEMA funds			Budget Adjustment:	No N/A
GL/Project Accounting No.:	244001-73315-00000-0000 265-24-73301 244002-73315-00000-0000 265-24-73301 244003-73315-00000-0000 265-24-73301 244004-73315-00000-0000 265-24-73301 244006-73315-00000-0000 265-24-73301 244010-73315-00000-0000 265-24-73301 244020-73315-00000-0000 265-24-73301 244021-73315-00000-0000 265-24-73301 244022-73315-00000-0000 265-24-73301 244024-73315-00000-0000 265-24-73301 004011-90701-0XXXX-4XXX 265-33-90501 001599-73315-00000-0000 515-31-73301 009199-73315-00000-0000 591-31-73301				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	01/17/2022

Attachment: Draft Agreement No. 22-24-006-00 with Elite Electric, Inc.

<i>Approved by the Western Riverside County Programs and Projects Committee on January 24, 2022</i>				
In Favor:	12	Abstain:	0	No: 0

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
STATION ELECTRICAL MAINTENANCE SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this “DATE” day of “MONTH”, “YEAR” by and between the Riverside County Transportation Commission (“Commission”) and Elite Electric Inc., a Corporation with its principal place of business at 9415 Bellegrave Avenue, Riverside, CA 92509 (“Contractor”). 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 owns and operates nine (9) commuter rail stations, one transit center, and five toll facility serving Riverside County, the addresses and descriptions of which are set forth in Exhibit “A”, attached hereto and incorporated herein by reference (“Station Locations and Toll Facilities”).

2.3 On or about October 28, 2021, Commission issued a Request for Proposals No. 22-24-006-00 (“RFP”), pursuant to which Commission sought proposals from contractors to provide periodic design, installation, inspection, and electrical maintenance services at its Commuter Rail Stations.

2.4 Contractor desires to perform and assume responsibility for the provision of certain periodic design, installation, inspection, and electrical maintenance services at its Commuter Rail Stations required by Commission on the terms and conditions set forth in this Agreement and, for the on-call portions of the services, in the task order(s) to be issued pursuant to this Agreement and executed by the Commission and Contractor (“Task Order”).

2.5 The work generally includes the periodic design, installation, inspection, and electrical maintenance services of the Commuter Rail Stations and Toll Facility including, but not limited to, repair/replace all lamps, ballasts, clocks, fuses, controllers, timers, outlet covers, damaged or unsafe wiring, batteries, and other maintenance required to maintain the Commuter Rail Stations and Toll Facility in a safe attractive and useable condition. Contractor represents that it is a professional Contractor, experienced in providing electrical maintenance services to public clients, and is familiar with the plans of Commission.

2.6 Commission desires to engage Contractor to render routine and on-call electrical maintenance services for the Commuter Rail Stations and Toll Facility. Routine electrical maintenance services shall be as set forth in Exhibit "A", attached hereto and incorporated herein by reference. On-call electrical maintenance services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein. The routine services set forth in Exhibit "A" and each individual project ordered under a Task Order shall be referred to, herein, collectively, as the "Project".

### **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 routine electrical maintenance services for the Commuter Rail Stations and Toll Facility as set forth in Exhibit "A" and any on-call electrical maintenance services for the Commuter Rail Stations and Toll Facility required by Commission, as shall be set forth in a Task Order, collectively referred to herein as the "Services". On-call Services shall be more particularly described in the individual Task Orders issued by the Commission's Executive Director or designee. No on-call Services shall be performed unless authorized by a fully executed Task Order. All Services shall be subject to, and performed in accordance with this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2022 to March 31, 2027, 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. Contractor shall perform the routine electrical maintenance Services expeditiously, within the term of this Agreement, and in accordance with the schedule provided separately in writing to the Contractor. Contractor shall perform any on-call Services in accordance with the schedule that shall be set forth in the Task Order (collectively, "Schedule of Services"). **Contractor shall be required to commence work on a Task Order within five (5) days of receiving a fully executed Task Order.** Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with each Schedule, the Commission shall respond to Contractor's submittals in a timely manner. Upon the Commission's request, Contractor shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

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

3.2.4 Commission's Representative. The Commission hereby designates 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.

3.2.5 Contractor's Representative. Contractor hereby designates Carl Dawson, President, 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.

3.2.6 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.

3.2.7 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.

3.2.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Commission will suffer damage.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the Commission. If Contractor disputes the Commission's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 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. Commission is a public entity of the State of California subject to, among other rules and regulations, the Public Utilities Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a county transportation commissions are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold Commission, its officials, 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.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor.



Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the Commission or its representatives for inspection and copy at any time during normal business hours. The Commission shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the Commission to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 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.

3.2.10.5 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. Contractor shall also comply with all relevant provisions of Commission's Disadvantaged Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by

the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify Commission against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

#### 3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the Commission's rules regarding discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or Commission to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the Commission, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by Commission, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, Commission will provide Contractor with a list of training programs that meet the requirements of this paragraph.

### 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*: \$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 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.

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 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.

3.2.13 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 rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation to be provided under this Agreement, including all Task Orders issued pursuant to this Agreement shall not exceed \$3,325,000. The total compensation per Task Order shall be set forth in the relevant Task Order, and shall not exceed said amount without the written approval of the Commissioner's Executive Director. 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 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.

3.3.3 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. Since 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 \$15,000 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, 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. Responsibility for compliance with California Labor Code Section 1776 shall rest solely with Contractor, and Contractor shall make all such records available for inspection at all reasonable hours.

3.3.7 Registration. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the 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:**  
Elite Electric, Inc.  
9415 Bellegrave Avenue  
Riverside, CA 92509  
  
Attn: Carl Dawson, President

**COMMISSION:**  
Riverside County  
Transportation Commission  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Executive Director

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

### 3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. 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 alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, contractors or agents in connection with the performance of the Services, the Project, this Agreement or any Task Order, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of Commission's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against Commission or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse Commission for the cost of any settlement paid by Commission or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Commission's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse Commission and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Commission, its officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Commission. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the Commission.

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

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

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

3.5.7 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.

3.5.8 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.

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

3.5.10 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.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 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.

3.5.13 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.

3.5.14 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.

3.5.15 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.

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

3.5.17 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.

3.5.18 Federal Provisions. Funding for the Services is provided, in whole or in part, by the Federal Transportation Administration ("FTA"). Contractor shall also fully and adequately comply with the provisions included in Exhibit "C" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR STATION ELECTRICAL MAINTENANCE SERVICES  
AGREEMENT  
BETWEEN THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AND ELITE ELECTRIC, INC.**

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

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

\_\_\_\_\_  
Anne Mayer  
Executive Director

*Approved as to form:*

Best Best & Krieger LLP

\_\_\_\_\_  
General Counsel

**ELITE ELECTRIC, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
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”**  
**STATEMENT OF SERVICES**

DRAFT

## **ELECTRICAL MAINTENANCE SERVICES**

### **1.0 GENERAL INFORMATION**

#### **1.1 BACKGROUND**

- 1.1.1 In establishing this agreement, the Riverside County Transportation Commission ("Commission") intends to enhance availability, ease, and accessibility to the specified contract services.
- 1.1.2 Contractor shall provide all personnel, tools, equipment, transportation, and supplies necessary to successfully perform quarterly, annual, three year and on-call electrical maintenance and repair services described herein.
- 1.1.3 Contractor shall hold a valid C-10 (electrical, general) license issued by the California State Contractor's License Board at the time of contract award and throughout the full term of this Agreement.
- 1.1.4 The Commission intends to retrofit the commuter rail stations to LED and solar carports lighting systems in the near future

#### **1.2 DESCRIPTION OF WORK**

1.2.1 Work Location- Riverside-Downtown, Pedley/ Jurupa Valley Station, La Sierra Metrolink (A), La Sierra RTA(B), Corona- West, Corona- North Main, Perris-Downtown, Riverside Hunter Park/UCR, Moreno Valley-March Field, Perris-South, Riverside-Operation Control Center, 120 Joy Street-Corona CA, 301 and 291 Corporate Terrace-Corona CA, 91 Express Toll Lanes Toll Utility Buildings (TUB's)-91 Toll Express Lanes (1 tub east end) (1 tub west end)

Contractor shall perform various electrical maintenance tasks including, but not limited to:

- 1.2.2 Repair/Replace all lamps, ballasts, clocks, fuses, controllers, timers, outlet covers, damaged or unsafe wiring, batteries, etc. as needed, during the term of the Agreement at the nine Commission-owned commuter rail stations.
- 1.2.3 Repair/Replace all broken, missing, stained (including yellowed) and damaged diffusers, globes and fixtures, as needed, during the term of the Agreement at the nine Commission-owned commuter rail stations.

- 1.2.4 Clean lenses/globes/fixtures (inside and outside) for bugs, spider webs, noticeable debris, etc.
- 1.2.5 Repair the lighting systems and troubleshoot defective equipment and tripped circuits as requested.
- 1.2.6 Perform testing and repair of emergency lighting systems and individual emergency lighting units to insure operability in conformance with the code requirements.
- 1.2.7 Perform infrared thermographic inspections of all electrical panels, subpanels and transformer connections.
- 1.2.8 Clean and maintain solar panels and associated control systems.

## **2.0 PERFORMANCE**

### **2.1 QUARTERLY SERVICES**

- 2.1.1 Perform a visual field survey at each location (field walk) every 90 days to identify inoperable lights or deficient equipment in the presence of the Commission's Representative or designated Project Manager.
- 2.1.2 Provide the Commission's Representative or designated Project Manager with a schedule for performing quarterly lighting maintenance service and electrical equipment inspections within five (5) working days after the effective date of this CONTRACT. Schedule shall include:
  - a. Station Name
  - b. Location
  - c. Day, Date and Time to Perform Service
- 2.2.3 Notify the Commission's Representative or designated Project Manager 72 hours in advance of the quarterly field survey to allow a Commission Representative to accompany Contractor during the survey (if Commission wishes to); scheduled field work shall not be delayed.
- 2.2.4 Provide a status report after each visual field survey documenting all inoperable lights and required/recommended repairs. The report shall be sorted by station listing the number and types of lights to be repaired and general repairs to be made, and shall be submitted to the Commission's Representative or designated Project Manager at the conclusion of the visual field survey.
- 2.2.5 Repair/Replace all inoperable lights or deficient equipment identified in the field survey status report, except those at the three (3) new Perris Valley Line stations and the new portion of the Perris Multimodal station still under



warranty, and clean all lenses/globes/fixtures on the Saturday/Sunday following the field survey.

- 2.2.6 Perform inspection and testing of all emergency “bug eye” lights, including depressing the test button on each unit to insure that the lamps turn on and remain on.
- 2.2.7 Perform cleaning and maintenance of all solar panels, inverters and associated equipment. The solar panels will be cleaned per the methods and procedures as delineated in the array washing procedure section of the “*Solar America Board For Codes and Standards*” Next Phase Solar, Inc. (August 2013) or per the manufacture’s specifications if available.

### 2.3 ANNUAL SERVICES

- 2.3.1 Perform inspection and testing of all emergency “bug eye” lights, including depressing the test button on each unit to insure that the lamps turn on and remain on for 90 minutes, repair or replace components as necessary.
- 2.3.2 Perform a complete solar array maintenance procedure per the manufacturer’s specifications (if available) or per the procedures as delineated in the “*Solar America Board For Codes and Standards*” Next Phase Solar, Inc. (August 2013).
- 2.3.3 Provide a comprehensive written report, by array system, of all pertinent data, including but not limited to validation of all voltages and production values, grounding continuity, open circuit voltages, etc.
- 2.3.4 Perform cleaning, testing, maintenance and repair of the emergency power batteries and inverter/control system at the North Main Corona station per the manufacturer’s specifications.
- 2.3.5 Provide a comprehensive written report on the condition of the emergency power system, including but not limited to the condition of all battery strings, inverter voltage and current output, etc.

### 2.4 YEAR ONE & YEAR THREE SERVICES

- 2.4.1 Perform infrared thermographic/photographic inspection of all panels, subpanels, motor starters, circuit breakers, solar panel inverters and associated connections, and transformer connections, and perform repairs as necessary.

- 2.4.2 Notify the Commission's Representative or designated Project Manager 72 hours in advance of the infrared inspection to allow a Commission Representative to accompany Contractor during the inspection and repairs.
- 2.4.3 All connections deemed critical (40° C above ambient) shall be repaired immediately. All connections deemed severe (20 – 40° C above ambient) shall be repaired as soon as possible. In either case, repairs shall be made only when it is safe for the public, the Contractor's service personnel and the Commission's Representative or designated Project Manager.
- 2.4.4 Provide a comprehensive written report, by station, with infrared and normal color photographs of all panels, subpanels and transformer connections, including before and after repair infrared and normal color photographs of all connections deemed critical (40° C above ambient) or severe (20 – 40° C above ambient). The report, including all photographs, will also be provided in a digital format either on disc or via download from the Contractor's internet WEB site.

## 2.5 ON-CALL SERVICES

- 2.5.1 Unless otherwise specified by the Commission, the Contractor shall:
  - a. Repair inoperable lights within three (3) days;
  - b. Repair damaged wiring, outlets, poles, etc. within five (5) days.
- 2.5.2 Contractor shall complete all work during "non-rush hours" (8:30 am – 2:30 pm) or during weekend hours (Friday 8:00 pm – Monday 5:00 am).

## 3.0 CONTRACTOR OBLIGATIONS

### 3.1 PERSONNEL AND USE OF SITE(S)

- 3.1.1 The contractor shall provide a competent and sufficient supervisory work force as may be necessary to properly maintain efficient performance of the work at all times. Supervision shall have full authority to represent the contractor in making decisions and executing the work in a first class workmanlike manner.
- 3.1.2 Contractor shall not employ on any work for the Commission any unfit person or anyone unskilled in the work assigned to him, and contractor shall at all times keep the work site, including any storage areas used by him, free from accumulation of waste materials, trash or rubbish. All removed lamps and other material shall be removed from each site by the end of each work day. Neither new nor used materials shall be stored on site. All lamps and other materials that are replaced shall be properly disposed off-site by the Contractor in accordance with all environmental requirements. Commission dumpsters shall not be used for this purpose.

- 3.1.3 Contractor shall confine the storage of materials and operations of its workers, vehicles and equipment to limits prescribed by law, ordinances, permits and the directions of the Commission's Representative or designated Project Manager and, upon completion of work for the Commission, Contractor shall leave the work and premises in a condition satisfactory to the Commission's Representative or designated Project Manager.
- 3.1.4 The contractor shall preserve and protect from damage all existing monuments, utilities, structures, and hardscape. The contractor shall be responsible for damages caused by its operations. In the event that damage does occur, the cost of repairs shall be paid by the contractor at no cost to the Commission.
- 3.1.5 Any concerns expressed by contractor, adjacent property owners or government officials regarding acceptable conditions or procedures on Commission-owned property will be resolved by consultation with the Commission's Representative or designated Project Manager, prior to work starting.
- 3.1.6 Contractor shall advise the Commission's Representative or designated Project Manager of any special repairs or upgrades that may be required and provide written estimates as required: estimates are to be itemized. Special repairs may include damaged/destroyed light poles, bollards, neon lights etc.

## 3.2 SAFETY

- 3.2.1 All contractors and subcontractors performing services for the Commission are required and shall comply with all Occupational and Health Administration (OSHA), State and County Safety and Occupational Health Standards, and any other applicable rules and regulations. Also, all contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.
- 3.2.2 Maintenance activities on the property shall be performed in a safe and efficient manner and shall comply with all local, state, and federal requirements. The contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor and sub-contractor's employees will be expected to wear approved safety equipment and follow all relevant safety rules and guidelines.

- 3.2.3 Contractor shall furnish, install and maintain all warning devices, i.e. barricades, cones, etc. required to adequately protect the public during the performance or work.

### 3.3 LABOR AND MATERIALS

- 3.3.1 Contractor shall provide all labor, materials, and tools required for the repair or replacement of all lamps, fuses, ballasts, controllers, timers, batteries and damaged or unsafe wiring, as necessary.
- 3.3.2 Provide necessary equipment (i.e., ladders, ladder trucks, aerial lifts, scaffolding, etc.) required to perform the work specified in the Agreement which shall include those tools and equipment required for repairing/replacing of all lighting regardless of height.
- 3.3.3 Contractor shall provide all storage space needed for performance of this work in an off- site location. Commission facilities shall not be used for the storage of any material, tools or equipment required to perform this work.
- 3.3.4 All replaced material shall be made available to the Commission upon the Commission's request.
- 3.3.5 Unless otherwise specifically noted, contractor shall provide and pay for all labor, materials, equipment, tools, utilities not provided by the Commission, transportation and other facilities and services needed for the proper execution and completion of the work.
- 3.3.6 All materials shall be new, high grade (commercial grade), free of defects, suitable for the specific purpose intended, and subject to the review and approval of the Contract Administrator or his designee.
- 3.3.7 Materials being replaced shall be replaced with the same make and model or an approved equal. All "OR EQUALS" must be approved by the Commission's Representative or designated Project Manager.
- 3.3.8 All lamps and bulbs shall have the manufacturer's date code imprinted on each lamp and bulb.
- 3.3.9 All lamps and bulbs used in performance of this work shall be date coded within one year of the date of installation.
- 3.3.10 Contractor shall maintain a reasonable supply/acquisition system which will provide all necessary lamps, ballasts, diffusers and parts either immediately or with minimal delay.
- 3.3.11 Any material or equipment not conforming to the requirements or found to be damaged or defective at the time of delivery shall be replaced by the contractor without additional cost to the Commission.

- 3.3.12 If the contractor fails to comply promptly with any order of the Commission's Representative or designated Project Manager, to replace or repair damaged or defective material, equipment or work, the Commission's Representative or designated Project Manager shall, upon written notice to the contractor, have the authority to deduct the cost of such replacement or repair from any compensation due or to become due the contractor.
- 3.3.13 Certain small parts, such as wire, nuts, bolts, screws, tape and other consumables shall be included as overhead in the labor cost quoted for a project.
- 3.3.14 All guarantees and warranties obtainable by the contractor from manufacturers and vendors of equipment, in the performance of this contract, shall be extended to the Commission to the full extent of their terms.

#### **3.4 KEY PERSONNEL AND QUALIFICATIONS**

- 3.4.1 Key personnel will be available to the extent proposed for the duration of the agreement and no person designated as "key" to the contract shall be removed or replaced without the prior written concurrence of the Commission. This includes subcontractors that are considered "key" to the successful execution of this agreement.
- 3.4.2 Qualifications applicable to all positions:
- 3.4.2.1 All vehicle equipment operators must have and maintain appropriate licenses for the operation of such equipment.
- 3.4.2.2 Ability to work out of doors in all weather conditions, to climb irregular embankments and ladders, to lift objects not exceeding OSHA weight regulations.

### **4.0 TASK ORDER (TO) PROCEDURES**

#### **4.1 DEFINITIONS**

- 4.1.1 The terms bid and proposal, bidder and proposer, scope of work and statement of work, are interchangeable as relates to this procurement. The term contractor shall refer to the firm or firms that are awarded the ensuring contract for services.
- 4.1.2 A TO is utilized by the parties to establish, outline, and authorize a particular job or task.

#### **4.2 INITIATING TASK ORDERS (TO)**

- 4.2.1 The Commission's Representative or designated Project Manager will issue TOs to contractor on an as-needed basis.
- 4.2.2 REQUEST FOR Task Order SUBMITTALS. Upon a request for a TO Proposal by the Commission's Representative or designated Project Manager, contractor shall develop a plan and submit a TO proposal for the requested services. These services include repairs, betterments, and upgrades to enhance safety, improve efficiencies, and implement electrical modernization technologies. The TO shall include a time schedule, number of labor hours, and labor classification(s) to provide the requested services.
- 4.2.3 REVIEW AND AWARD OF TOs. The Commission's Representative or designated Project Manager will review the submitted TO to ensure that the submittal is complete, consistent with the Commission's written or oral request for services, the personnel assigned are acceptable, the schedule is acceptable, that all costs proposed are appropriate, and that the item is in compliance with contractual requirements. The Commission's Representative or designated Project Manager will award the TO if it is determined to be fair and reasonable. If required, the Commission's Representative or designated Project Manager will conduct negotiations to address exceptions and clarify costs. The fully executed TO will serve as the record of negotiations.
- 4.2.4 COMPLETION SCHEDULE. The contractor's performance of services shall commence under each TO only upon written authorization by the Commission's Representative or designated Project Manager.
- 4.2.5 Contractor shall complete the services within the time frame specified on a particular TO.
- 4.2.6 All work shall be subject to the inspection and approval of the Commission either by the Commission's Representative or designated Project Manager prior to the acceptance and approval of payment.
- 4.3 NOTIFICATIONS AND RESPONSE TIME(S)
- 4.3.1 Unless otherwise directed by the Commission's Representative or designated Project Manager, contractor must provide a TO Proposal in response to the Commission's request for services within forty-eight (48) hours of its receipt of a duly authorized request for TO submittal. In an emergency situation, as determined by Commission staff, the Commission will require the contractor to respond immediately to address the situation.
- 4.3.2 Contractor and sub-contractors must provide the Commission with 24-hour contact number(s) for contractor's key personnel and an acceptable means of emergency "on-call" communication with the Commission's Representative or designated Project Manager.

- 4.3.3 Contractor's offices must have voice, fax and e-mail capability.
- 4.3.4 The Commission's Representative or designated Project Manager must be notified when contractor and or its subcontractor has employees on Commission-owned property, at times other than regularly scheduled work times.
- 4.3.5 Contractor and/or its subcontractor are to immediately notify the Commission's Representative or designated Project Manager of any unsafe or questionable condition that exists on the property. The Commission's Representative or designated Project Manager will then notify the necessary parties.
- 4.3.6 It is the contractor's responsibility to notify the Commission's Representative or designated Project Manager of work completion within 24 hours of completion of each TO.
- 4.3.7 **All TO's shall be performed in accordance with and subject to the terms and conditions of the Agreement, including the indemnification and defense obligations, and shall be considered "Services" as that term is defined under the Agreement. Any TO issued pursuant to the terms of this Agreement shall be considered a part hereof.**

## **5.0 WORKMANSHIP**

- 5.1 Contractor agrees to provide adequate supervision, and take necessary measures to assure that all work is completed in a workmanlike manner. Contractor agrees to perform the work assigned under this contract in a workmanlike manner by qualified, careful and efficient workers. In the event of substandard workmanship or defective materials furnished by the contractor as may be determined by inspection of the Commission or in the event of poor working performance as may be determined by the Commission's Representative or designated Project Manager, the Commission may at any time, require the contractor to expeditiously remedy such failure or defect, at no cost to the Commission.
- 5.2 Workmanship may be determined to be substandard if the work is incomplete, inadequately installed or supported, poorly fitted or sealed, damaged, improperly finished, or installed in a manner that the operation or the maintainability of the installation is impaired beyond the limits specified or indicated by the agreement.
- 5.3 Poor working performance will be determined to exist if any of the contractors' workers fail to install work within the time allocated. In certain work, particularly emergency work, the contractor will be expected to perform the work as expeditiously as possible, with a crew sized to ensure each worker has tasks to perform and with as little lost time as allowed by conditions.

- 5.4 Claims of defective materials, inadequate workmanship or poor working performance will be first made to the contractor's job site foreman. In the event the situation cannot be remedied at the job site, a written claim will be made to the contractor's home office. Contractor shall resolve all claims against workmanship or work performance by issuing a credit to the Commission for the work performed. The amount of the credit will be determined in negotiation between the contractor and the Commission. Payments otherwise due may be withheld, in whole or in part, by the Commission on account of defective materials and/or unresolved workmanship issues.
- 5.5 Contractor shall employ only competent, careful and orderly employees. If the Commission determines that an employee is detrimental to the performance of the work, not qualified to perform the assigned work or guilty of improper conduct, the Commission may require removal of such employee.
- 5.6 The performance of services by the contractor shall not relieve the contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the Commission, when such inaccuracies are due to the acts or omissions, negligent or otherwise, of the contractor.

#### **6.0 DIRECT COSTS AND MATERIAL MARKUP**

- 6.1 Contractor shall be compensated for direct costs detailed on the quarterly field survey report or task order for on-call services and subsequently substantiated with invoices submitted by the contractor for materials used in carrying out the various tasks issued under this contract.
- 6.2 Contractor markup on materials required to perform the services described herein shall be fixed for the term of the agreement. In no case, shall contractor's mark up for materials exceed ten percent (5%).
- 6.3 Receipts will be required and shall be provided by the Contractor to substantiate costs for all materials included in each invoice submitted to the Commission for payment.



## **STATION LOCATIONS**

### **West Corona Metrolink Station**

155 S. Auto Center Drive  
Corona, CA 92880

### **North Main Corona Station**

250 E. Blaine Street  
Corona, CA 92879

### **La Sierra Station**

10901-A Indiana Ave  
Riverside, CA 92503

### **Riverside Downtown**

4066 Vine Street  
Riverside, CA 92507

### **Pedley Station**

6001 Pedley Road  
Riverside, CA 92509

### **Perris Downtown Station**

121 South C Street  
Perris, CA 92570

### **Hunter Park Station**

1101 Marlborough Avenue  
Riverside, CA 92507

### **Moreno Valley/MF Station**

14160 Meridian Parkway  
Riverside, CA 92518

**South Perris Station**

1304 Case Road

Perris, CA 92510

**La Sierra Bus Station**

10901-B Indiana Ave

Riverside, CA 92503

**Operations Control Center**

4344 Vine Street

Riverside CA, 92507

**Toll Facilities****FAM**

120 N. Joy Street

Corona CA

**ROC**

301 Corporate Terrace

Corona, CA

**15 Toll Rd Office**

291 Corporate Terrace

Corona, CA

**Toll TUB E91**

East Bound 91

Center divide

**Toll TUB W91**

West Bound 91

Center Divide

**EXHIBIT “B”**  
**COMPENSATION**

DRAFT

EXHIBIT "B"

COMPENSATION SUMMARY

FISCAL YEAR	PROJECT	COST
FY 2021/22	Station Electrical Maintenance Services	\$ 825,000.00
FY 2022/23	Station Electrical Maintenance Services	500,000.00
FY 2023/24	Station Electrical Maintenance Services	500,000.00
FY 2024/25	Station Electrical Maintenance Services	500,000.00
FY 2025/26	Station Electrical Maintenance Services	500,000.00
FY 2026/27	Station Electrical Maintenance Services	500,000.00
TOTAL COSTS		\$ 3,325,000.00

**EXHIBIT “C”**

**FEDERAL REQUIREMENTS**

DRAFT

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)  
AND  
STATE (CALTRANS)  
FUNDING REQUIREMENTS**

The following additional funding requirements apply depending on the funding source identified as applicable for a Task Order.

**I. SCAQMD REQUIREMENTS**

**Non-Discrimination** - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical handicap and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900, *et seq.*), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this clause and shall include in each such subcontract language similar to this clause.

**II. CALTRANS REQUIREMENTS**

\* Section 2 below is also applicable to FTA Funded Task Orders.

1. Invoices & Payments.

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

Payment shall be made for costs incurred by Contractor in performance of the Services. No advance payment or payment for work not actually performed shall be made under this Agreement or any Task Order.

2. Cost Principles and Administrative Requirements.

Contractor 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.

Contractor 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.

Any costs for which payment has been made to Contractor 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 Contractor to Commission.

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

3. 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; Contractor, subcontractors, 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 Government shall have access to any books, records, and documents of Contractor and its certified public accountants (CPA) work papers that are pertinent to this Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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

5. Travel & Subsistence. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Task Order, as may be applicable. In addition, any payments to Contractor for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules, 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 Contractor is responsible for the cost difference and any overpayments shall be reimbursed to the Commission on demand.

## 6. Equipment Purchase

Prior authorization, in writing, by Commission's Contract Administrator shall be required before Contractor enters into any unbudgeted purchase order, or subcontract for supplies, equipment, or services. Contractor 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: Contractor 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, Contractor 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 Contractor elects to keep the equipment, fair market value shall be determined at Contractor'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 Contractor. If Contractor 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.

## 7. National Labor Relations Board Certification.

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Contractor 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 Contractor within the immediately preceding two-year period, because of Contractor's failure to comply with an order of a federal court that orders Contractor to comply with an order of the National Labor Relations Board.

## 8. Nondiscrimination; Statement of Compliance.

Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that Contractor has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Agreement, Contractor and its subcontractors shall not



unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

## **FTA FUNDING REQUIREMENTS**

The following FTA terms will be incorporated into all Task Orders utilizing FTA funds, unless otherwise determined in writing by RCTC. As used herein, "RCTC" shall have the same meaning as the "Commission." The term "contract" or "Contract" shall have the same meaning as the "Agreement."

### **1. No Obligation by the Federal Government**

a. RCTC and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **2. Program Fraud and False or Fraudulent Statements or Related Acts**

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **3. Access to Records**

The Contractor agrees to the following access to records requirements:

- a. To provide RCTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. To make available in the case of a contract for a capital project or improvement, as defined above and awarded by other than competitive bidding in accordance with 49 U.S.C. 5325(a), records related to the contract to RCTC, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- c. To maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until RCTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- d. To permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **4. Federal Changes**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between RCTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **5. Civil Rights**

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332 and 49 CFR part 21, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed,

national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, Federal transit law at 49 U.S.C. § 5332, the Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability, and that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. FTA Disadvantaged Business Enterprise (DBE) Requirements**

A. General DBE Requirements: In accordance with Federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Commission has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). This RFP is subject to these stipulated regulations. In order to ensure that Commission achieves its overall DBE Program goals and objectives, Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

B. Discrimination: Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used herein that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations.

C. Commission's Race-Neutral DBE Program: A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. There is no FTA DBE goal on this Project.

Consultant shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Consultant

shall adhere to race-neutral DBE participation commitment(s) made at the time of award of any Task Order (as defined in the Model Contract).

D. Race-Neutral DBE Submissions and Ongoing Reporting Requirements (Post-Award): For each Task Order proposal, the successful Consultant shall complete and submit to Commission a “DBE Race-Neutral Participation Listing” in the form provided by Commission. In the event DBE(s) are utilized in the performance of the Task Order, Consultant shall comply with applicable reporting requirements.

E. Performance of DBE Subconsultants: DBE subconsultants listed by Consultant in its “DBE Race-Neutral Participation Listing” submitted at the time of Task Order proposal shall perform the work and supply the materials for which they are listed, unless Consultant has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Consultant shall provide written notification to Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of any Task Order, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of the Task Order, the DBE subconsultant shall notify Consultant in writing with the date of certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

G. Consultant’s Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Consultant shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Consultant shall affirm that they will consider, and utilize subconsultants and vendors, in a manner consistent with non-discrimination objectives.

H. Violations: Failure by the selected Consultant(s) to carry out these requirements shall be a material breach of the contract to be awarded pursuant to this RFP, which may result in the termination of the contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

I. Prompt Payment: Consultant shall pay its subconsultants for satisfactory performance of their contracts no later than 30 days from receipt of each payment Commission makes to the Consultant. 49 C.F.R. § 26.29(a), unless a shorter period is provided in the contract.

J. Compliance with DBE Requirements Contained in FTA Provisions: Consultant shall comply with all DBE reporting and other requirements contained in this Agreement.

## **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RCTC requests which would cause RCTC to be in violation of the FTA terms and conditions.

## **8. ADA Access Requirements**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d).

## **9. Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **10. Cargo Preference - Use of United States-Flag Vessels**

The Contractor agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.)

3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **11. Buy America**

*The following shall apply unless otherwise specified in a Task Order request.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Contractor must submit to RCTC the appropriate Buy America certification with all bids on FTA-funded contracts (including Task Orders), except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## **12. Employment Provisions**

To the extent applicable to the Services, Consultant shall comply with the following:

A. Equal Employment Opportunity — Consultant must comply with Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339), “Equal Employment Opportunity,” as amended by Executive Order 11375 (3 CFR, 1966–1970 Comp., p. 684), “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR chapter 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Consultant must comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, “Consultants and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Commission shall report all suspected or reported violations to the responsible DOE contracting officer.

C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) — Consultant must comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each Consultant is required to compute the wages of every mechanic and



laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. Davis-Bacon Act (40 U.S.C. 276a) — Consultant shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

### **13. Release of Retainage**

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

### **14. Termination for Convenience**

RCTC may terminate the Agreement for convenience in accordance with the terms of the Agreement.

After such termination, the Contractor shall submit a final termination settlement proposal to RCTC as directed. If the Contractor fails to submit a proposal within the time allowed, RCTC may determine, on the basis of information available, the amount, if any due the Contractor because of the termination and shall pay the amount determined. After the Contractor's proposal is received, RCTC and Contractor shall negotiate a fair and equitable settlement and the contract will be modified to reflect the negotiated agreement. If agreement cannot be reached, RCTC may issue a final determination and pay the amount determined. If the Contractor does not agree with this final determination or the determination resulting from the lack of timely submission of a proposal, the Contractor may appeal under the Disputes clause.

### **15. Administrative and Contractual Remedies on Breach; Termination for Cause**

a. The Contractor may be declared in breach of this Agreement ("Breach") if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. In case of any of the foregoing, RCTC shall notify the Contractor of the Breach, and the Contractor shall have a period of ten (10) days (or such longer period as RCTC may authorize in writing) after receipt of notice from RCTC to cure the Breach.

b. RCTC may, by written notice of termination to the Contractor specifying the effective date thereof, terminate the whole or any part of this contract, in the case of a Breach that is not cured within the timeframe set forth in (a) above ("Uncured Breach").

c. If the contract is terminated in whole or in part for an Uncured Breach, RCTC may procure upon such terms and in such manner as RCTC may deem appropriate, supplies or services similar to those so terminated, or may complete the services with its own forces. The Contractor shall be liable to RCTC for any excess costs for such similar supplies or services, and for any other costs incurred by RCTC as a result of the Uncured Breach. The Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

d. Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required project completion schedule.

e. Payment for completed services or supplies delivered to and accepted by RCTC shall be at the contract price. RCTC may withhold from amounts otherwise due the Contractor for such completed services or supplies such sum as RCTC determines to be necessary to protect RCTC against loss because of outstanding liens or claims of former lien holders, or to reimburse RCTC for any other costs related to the Uncured Breach.

f. If, after notice of termination of this contract for cause, it is determined for any reason that an Uncured Breach did not exist, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provisions for termination for convenience of RCTC.

g. The rights and remedies of RCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

h. Notwithstanding the above, RCTC may, without providing an opportunity to cure, terminate the contract in accordance with the timeframe set forth in Section 3.4 of the contract, if RCTC determines such action is in its best interest based on the nature of the Breach. Such actions shall not limit any of RCTC's remedies set forth above.

## **16. Disputes**

a. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be

decided by RCTC's Deputy Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the RCTC Deputy Executive Director shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Contractor mails or otherwise furnishes to the RCTC Deputy Executive Director a written appeal addressed to RCTC's Executive Director. The decision of RCTC Executive Director or duly authorized representative for the determination of such appeals shall be final and conclusive.

b. The provisions of this Paragraph shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Paragraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

c. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision of RCTC's Deputy Executive Director. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any RCTC official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **17. Lobbying**

See the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

## **18. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **19. Clean Water**

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Contractor further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **20. Clean Air**

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to RCTC and understands and agrees that RCTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Contractor further agrees that:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

c. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

## **21. Recycled Products**

Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order

12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **21. Safe Operation of Motor Vehicles**

Pursuant to Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

a. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or RCTC.

b. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.



# **AGENDA ITEM 6H**





<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects and Committee Sri Srirajan, Senior Capital Projects Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Change Order to Amend the Interstate 15 Express Lanes Project Toll Services Agreement with Kapsch TrafficCom USA to Provide for the Design and Installation of the Tolling System for the Interstate 15/State Route 91 Express Lanes Connector

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

This item is for the Commission to:

- 1) Approve Change Order No. 8B to Agreement No. 16-31-043-00 for the Interstate 15 Express Lanes Project (I-15 ELP) with Kapsch TrafficCom USA Inc. (Kapsch) to provide for the design and installation of the Tolling System for the I-15/SR-91 Express Lanes Connector (15/91 ELC) in the amount of \$6,203,750, plus a contingency amount of \$620,000, for a total amount not to exceed \$6,823,750;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the change order on behalf of the Commission; and
- 3) Authorize the Executive Director or designee to approve contingency work up to the total amount not to exceed as required for the project.

**BACKGROUND INFORMATION:**

In April 2017 Governor Brown signed Senate Bill 132 (SB 132) which appropriated \$427 million to the Riverside County Transportation Efficiency Corridor (RCTEC) for five projects. SB 132 allocated \$180 million to the 15/91 ELC. The 15/91 ELC will provide a tolled express lanes connector between the 91 Express Lanes and the 15 Express Lanes to the north of SR-91 (Figure 1: Vicinity Map). The project is currently in construction and anticipated to be completed in 2023.



*Figure 1: 15/91 Express Lanes Connector Project Vicinity Map*

At its October 2017 meeting, the Commission approved an overall procurement strategy for the 15/91 ELC to secure all the services and construction needed to deliver the project. The approved strategy consists of a series of contract amendments, as permitted by AB 115, to existing 91 Project and I-15 ELP contracts with engineering companies, contractors, toll vendors, legal, and financial advisors.

Kapsch is the current provider and operator of both the 91 Express Lanes and 15 Express Lanes roadside toll system. Kapsch operates and maintains the toll equipment for the express lanes, they manage the prices posted on the signs, operate the 15 Express Lanes dynamic pricing algorithm and determine the toll that each customer should be charged. Having the same toll system provider for the Commission's express lanes provides for continuity in operations and a seamless customer experience. The Kapsch contract is in its first year of operation and maintenance. The current contract base period expires in April of 2026. The Commission has the option to extend this contract in one-year increments through April of 2030.

The new 15/91 ELC adds a third origin or destination for customers that use the 91 Express Lanes: McKinley, 15 South, and 15 North. In order to determine which toll to charge a customer, a toll point on the 15/91 ELC and a toll point on the McKinley entrance and exit is needed (Figure 2: Additional Toll Points).

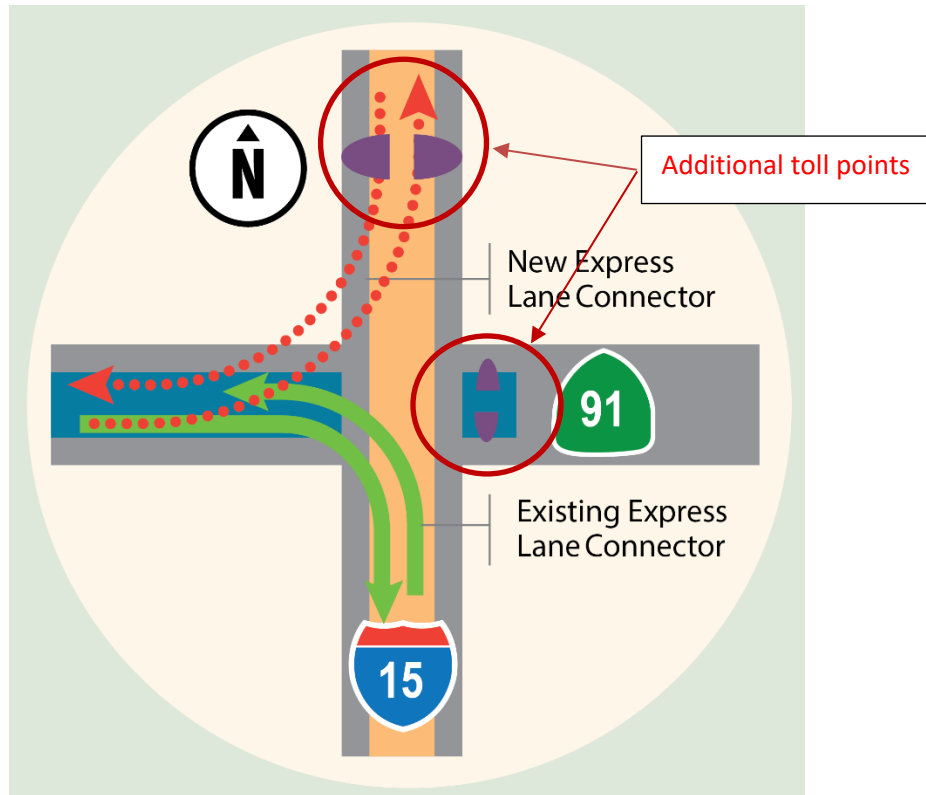


Figure 2: Additional toll points

**DISCUSSION:**

In order to charge a toll for the 15/91 ELC, new toll equipment and changes to the existing toll system are needed. The design build contractor is installing the required toll gantries and this change request is for Kapsch to provide the required tolling elements.

Kapsch will be required to provide the following:

- 1) Toll Equipment in each direction of the 15/91 ELC;
- 2) Toll Equipment at the westbound McKinley entrance to the 91 Express Lanes;
- 3) Toll Equipment at the eastbound McKinley exit from the 91 Express Lanes;
- 4) 7 Traffic detection sensors; and
- 5) 7 Closed-circuit television cameras

In addition to installing the equipment enumerated above, the change request includes the cost for Kapsch to integrate the equipment into the existing Commission express lanes system. Integration of the equipment will require changes to the system software and extensive testing. The following systems will require changes as a result of the additional toll points:

- The roadside maintenance system requires updating to include the new equipment. The roadside maintenance system tracks the performance of all equipment, providing notification should equipment not be working properly.

- The sign management system requires updates to include the 15/91 ELC toll price.
- The 15 Express Lanes traffic detection system requires updates to integrate the additional sensors. The traffic detection system provides important data for use by the dynamic pricing algorithm and by staff in reporting on the express lanes performance.
- The traffic operations center system requires the integration of the additional cameras for use by Kapsch staff and Caltrans in monitoring the express lanes and responding to incidents.
- The trip build software requires updates to determine where a customer begins and ends their trip and the toll rate they should be charged.

At the time of this staff report, the design for the destinations posted on the toll rate signs and the specific trip combinations are still in discussion with staff. As the Commission's express lanes network expands, the current method of posting prices to the end of the express lanes causes concern regarding our ability to properly manage traffic over long distances and introduces a situation where a single posted toll rate has a combination of discounts. Staff and Kapsch are working on alternate methods to amend the trip build and destinations posted on signs to address these concerns. This change request does not include any additional work that may arise to address these changes. The cost of this work may be provided for out of the requested contingency or may result in an additional change request requiring Commission approval in the future.

Additionally, this change request does not include Kapsch's cost to operate and maintain the new equipment, provide image processing for the new cameras, or any increased costs for providing customer service. Staff is working with Kapsch to determine those costs and will return to the Commission with an additional change request at a later date.

**RECOMMENDATION:**

Staff recommends approval of Change Order No. 8B to amend the Toll Services agreement between the Commission and Kapsch in the amount of \$6,203,750, plus a contingency amount of \$620,000, for a total amount not to exceed \$6,823,750. Further, authorization is requested for the Chair or Executive Director to execute the amendment on behalf of the Commission and for the Executive Director or designee to approve contingency work up to the total not to exceed amount as required for the project.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2021/22 FY 2022/23	Amount:	\$2,000,000 \$4,823,750
Source of Funds:	SB 132 State Funds and 91 Express Lanes Surplus Toll Revenue			Budget Adjustment:	No N/A
GL/Project Accounting No.:	003039 81301 00000 0000 605 31 81301				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	01/12/2022

Attachment: Draft Change Order No. 8B with Kapsch

<p><i>Approved by the Western Riverside County Programs and Projects Committee on January 24, 2022</i></p>					
In Favor:	12	Abstain:	0	No:	0





**Change Response / TSP Change Request**  
**RIVERSIDE COUNTY TRANSPORTATION COMMISSION**  
**I-15 Toll Services Provider Contract**

**Change Order No. 8B**

**Pursuant to:** (check appropriate box)

- ☐ Written Change Notice No. \_\_\_\_\_, dated \_\_\_\_\_, submitted by RCTC to TSP pursuant to Section 20.4.1 of the Contract
- ☐ TSP Change Request No. \_\_\_\_\_, dated \_\_\_\_\_, submitted by TSP to RCTC pursuant to Section 20.6 of the Contract
- ☐ Directive Letter No. \_\_\_\_\_, dated \_\_\_\_\_, submitted by RCTC to TSP pursuant to Section 20.3 of the Contract

Reference is made to that certain Toll Services Contract (Contract No. 16-31-043-00) dated January 26, 2016, as amended, by and between Riverside County Transportation Commission ("RCTC"), a public entity of the State of California ("RCTC"), and Kapsch TrafficCom USA, Inc., a corporation organized under the laws of Delaware ("TSP"), as amended, together with all Exhibits and prior amendments (the "Contract").

This Change Order amends the Contract. Capitalized terms used herein, but not defined, in this Change Order have the meanings given in the Contract, and all Section and Exhibit references shall be to the Contract.



## **SECTION I – Narrative, Discussion of Additions, Deletions, Modifications to the Requirements of the Toll Services Contract**

### **A. Evaluation of Change including whether TSP considers any RCTC-Initiated Change to constitute a Change and the specific provision(s) of this Contract which permit a Change Order (Section 20.4.3(a)(i)):**

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N/A – RCTC Initiated Change Order

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- 1) Overview of scope of Change (Section 20.4.3(a)(iii)). For detailed scope of Change, please complete the Change Response Price Form:

All capitalized terms used in this Change Order No.8B and not defined herein have the meanings given to such terms in the Toll Services Contract dated January 26, 2017 (as amended), between the Riverside County Transportation Commission (**RCTC**) and Kapsch TrafficCom USA, Inc. (**TSP**) (together the **Contract**).

RCTC plans to develop a new Express Lanes connector (**ELC** or **ELC Project**) between the SR-91 Express Lanes (**SR-91 EL**) and the future I-15 Express Lanes being developed under the I-15 Express Lanes Project (**ELP Project**). The ELC will consist of one Express Lane in each direction facilitating a direct east-to-north and south-to-west connection between the recently opened SR-91 Express Lanes extension and the future Express Lanes on I-15. The ELC will allow SR-91 EL customers and I-15 Express Lanes customers to make a continuous trip between the two Express Lane facilities.

### **Part 1: SR-91 Retrofit to support upgraded roadside electronic tolling system**

#### **Background**

The construction of the ELC will create new destinations accessible from the SR-91 Express Lanes and I-15 Express Lanes. The I-15 Express Lanes system shall be modified to allow for a new inter-facility pricing strategy. Given the access configuration and location of toll points on the SR-91 Express Lanes and the I-15 Express Lanes, customers using the ELC will be required to use the RCTC segment of the SR-91 Express Lanes (RCTC SR-91 Express Lanes Segment) and one segment of the I-15 Express Lanes (I-15 Express Lanes Segment). Prices for ELC transactions shall be combined with the RCTC SR-91 Express Lanes Segment and the I-15 Express Lanes Segment, creating an inter-facility pricing zone. Additionally, tolls for trips beginning with segment one northbound on the I-15 Express Lanes to the SR-91 Express Lanes westbound or SR-91



Express Lanes eastbound through segment four of the I-15 Express Lanes southbound shall be combined.

Pricing between the SR-91 Express Lanes and the I-15 Express Lanes will require an interface between the SR-91 Express Lanes and I-15 Express Lanes toll systems to collect and exchange entry time data. For example, the SR-91 Express Lanes toll system would need to know the time that ELC users saw the SR-91 Express Lanes price so that the appropriate toll could be charged.

The Parties intend that the scope of the Project under the Contract shall be made up of three Sub projects:

- 1) The toll services work for the SR-91 Express Lanes described in previous Change Orders No.5, and previous Change Order No. 6 (**SR-91 Subproject**);
- 2) The toll services work for the I-15 Express Lanes Project (**ELP Subproject**) – described in the Contract as of the Effective Date; and
- 3) The toll services work for the **ELC Subproject** to be described in this Change Order No. 8B.

The subprojects shall include the following phases of D&D Work described (Phases):

- 1) SR-91 Subproject
  - a) SR-91 Phase 1 –Tolling System Retrofit (described in Change Order No. 5):

Retrofit the existing RCTC SR-91 Express Lanes Segment roadside electronic tolling system (currently Neology) with TSP's roadside electronic tolling system of the same design as the roadside electronic tolling system being installed on the I-15 for the ELP Project to provide compatibility across the entire RCTC tolling environment and add additional capabilities to the RCTC SR-91 Express Lanes Segment (i.e., 6C compatibility) that are being introduced in the ELP Project. The ETC Host will provide "core" services only by creating vehicle transactions and transmitting them to the SR-91 Operator for trip-building.

- b) SR-91 Phase 2 – New Tolling Infrastructure – described in Change Order No. 6
      - i. South Gantry (including SR-91 (Gantry) Turnover Package 5)
    - c) Install new tolling equipment on the South Gantry to be included in Turnover Package 5. This tolling point will have 1 toll lane in each direction. The tolling point will be tied into the existing SR-91 fiber communications system, and shall, upon completion communicate with the new ETC Host which will be located at the RCTC Operations Center ROC).

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- d) After the new tolling point is put into Revenue Service, the TSP will decommission the existing toll point at the I-15/SR-91 interchange by removing the toll equipment from the site before the gantries are removed due to ELC Project construction. The equipment will be returned to RCTC inventory.
  - i. County Line VTMS (including SR-91 (VTMS) Turnover Package 6)
    - a) Install new VTMS price sign equipment consisting of LED displays for pricing for 3 destinations. This VTMS price sign will be tied into the existing SR-91 fiber communications network, and shall, upon completion, communicate to the ELP Project ROC.
    - b) RCTC will provide a sign gantry structure. TSP will insert LED pricing modules into a sign panel provided by RCTC. RCTC will provide supporting structural elements to allow TSP to attach LEDs to the sign panel structure.
    - c) A Yagi antenna will be mounted to the new VTMS sign to support determination of delay for assignment of toll pricing in the Eastbound direction on the SR-91 Express Lanes.
    - d) TSP will implement temporary pricing support utilizing the existing INFO CMS (at station 524+00 on SR-91) utilizing existing network connections, and the new sign manager software (planned for the new County-Line VTMS) if delivery of the new County-Line VTMS structure is delayed past ELP Revenue Service Commencement. This is referred to as "County-Line VTMS Plan B". County-Line VTMS Plan B shall be implemented, tested, and functional no later than ELP Package 4 Turnover.
  - ii. Network Revisions - Connect SR-91 Tolling Infrastructure to the I-15 ROC
    - a) Including the SR-91 Tolling Points as part of the overall Trip Building/Trip Pricing process for the I-15 and RCTC SR-91 Express Lanes Segment – this work is included in previous Change Order #3
    - b) After ELP Subproject has reached Revenue Service, the tolling locations on the RCTC SR-91 Express Lanes Segment will be disconnected from communicating with the SR-91 Operator, and will be reconnected with the new ETC Host located at the new ELP Project ROC as described in Change Order No.6
    - c) Includes changes to the Back Office System software to support multi-facility trip tolling.

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- 2) ELP Subproject – including Turnover Packages 1, 2, 3 and 4 to be performed as described in the Contract as of the Contract Effective Date.
  - 3) ELC Subproject –described in this Change Order No. 8B.
    - a) Roadside
      - i. Install new tolling equipment on the future gantry at Eastbound McKinley Toll Gantry location, as designated on ELC DB Contractor RFC Roadway drawings. This location will support 2 toll lanes.
      - ii. Install new tolling equipment on the future gantry at Westbound McKinley Toll Gantry location, as designated on ELC DB Contractor RFC Roadway drawings. This location will support 1 toll lane.
      - iii. Install new tolling equipment on the future gantry at the Northbound Connector location, as designated on ELC DB Contractor RFC Roadway drawings. This location will support 1 toll lane in each direction.
      - iv. Install 7 CCTV locations as designated on the MRJV RFC Roadway drawings. NOTE: 2 of these locations are on High Mast poles (mounting will be on lowering equipment).
      - v. Install 7 TTMS/MVD locations as designated on the MRJV Roadway drawings.
      - vi. These new locations will be tied into the I-15 fiber communications system or SR-91 fiber communications system (as determined during design, and communicate with the I-15 ROC facility.
      - vii. OPTION 1: Install 3 additional TTMS/MVD locations on the I-15 as designated in Attachment 6. Should RCTC choose to implement Option 1, RCTC will authorize such work by separate NTP. Pricing provided in Attachment 1C.
    - b) Host
      - i. Add new tolling locations (Plaza IDs) to Trip Building and add new trip formations to Golden Truths Document
      - ii. Add new TTMS/MVD locations to Dynamic Pricing Engine
      - iii. Add new CCTV locations to TOC
    - c) Back Office
      - i. Add new trip designations to Back Office system
      - ii. Add new Plaza IDs to IOP Transfers (and notify Interop Partners by updating CTOC interface spec)

### **ELC Subproject D&D Work Milestones:**

The key milestone dates for ELC Subproject D&D Work under this Change Order No. 8B are:

- 1) Change Order No. 8B (ELC Subproject) – RCTC Commission Approval – February 2022
- 2) Notice to Proceed – ELC Subproject – February 2022 (approximate)
- 3) ELC Turnover Package 1 – All CCTVs and TTMS/MVD locations – received from MRJV and ready for installation – February 7, 2023
- 4) ELC Turnover Package 2 – Eastbound McKinley and Westbound McKinley Toll Gantry locations – received from MRJV and ready for installation – March 9, 2023
- 5) ELC Turnover Package 3 – Northbound Connector Toll Gantry location – received from MRJV and ready for installation – April 8, 2023
- 6) Site Acceptance Testing – after completion of each location install
- 7) Operations Testing – June 2023
- 8) ELC Subproject Revenue Service Commencement Deadline– June 30, 2023
- 9) ELC Subproject TCS Acceptance Deadline – December 30, 2023

**Conditions to NTP For this Change Order No. 8B:**

RCTC will not issue NTP until satisfaction of the following requirements:

- 1) TSP has submitted to RCTC the ELC Subproject Performance Bond Rider and the ELC Subproject Payment Bond Rider, as specified in Part 2, section 6 below;
- 2) TSP has submitted to RCTC the certificates of insurance and endorsements as required by Contract Section 17.3.2 to confirm the insurance coverages required, as specified in Part 2, section 5 below;
- 3) TSP has delivered to RCTC an executed consent of the Guarantor to the addition of ELC Subproject to the Project in the form provided in this Change Order; and
- 4) TSP has provided to RCTC any other documents, things or assurances required by this Change Order as a condition of NTP.

RCTC has no obligation to issue this NTP, and unless and until this NTP is issued, RCTC has no liability to TSP under the Contract or this Change Order No. 8B with respect to the ELC Subproject.

**ELC Subproject Deliverables:**

**TSP shall deliver the following ELC Subproject Deliverables by the applicable Delivery Date:**

<b>Deliverable</b>	<b>Format for Update</b>	<b>Delivery Date</b>
Baseline Schedule	Standalone ELC Subproject Schedule	NTP + 30 Days
Monthly Progress Schedule	Standalone ELC Subproject Schedule	Monthly
Four-Week Look Ahead Schedule	Standalone ELC Subproject Schedule	Weekly
DBE Program Performance Plan	update by addendum with any specific requirements for ELC Subproject	NTP + 30 Days
Business Rules	Update by Addendum any changes to support modifications to Trip Building, Dynamic Pricing, and Back Office Design Changes	NTP + 90 Days
Final Design Document (FDD)	Update by Addendum any changes to support modifications to Trip Building, Dynamic Pricing, and Back Office Design Changes	NTP + 90 Days
Installation Plan	update by addendum with any specific requirements for ELC Subproject	NTP + 90 Days
Civil Site Acceptance Checklist	Submit with Installation Plan update	See Installation Plan
Communications Network Acceptance Checklist	Submit with Installation Plan update	See Installation Plan
Installation Drawings	Standalone for ELC Subproject	NTP + 90 Days
Bill of Materials	Standalone for ELC Subproject, including a recommended list of spare parts	NTP + 90 Days
Transportation Management Plan	update by addendum with any specific requirements for ELC Subproject	NTP + 120 Days

Individual Test Plans	Standalone for ELC Subproject	NTP + 150 Days
Individual Test Reports (including Site Commissioning, Operations Testing, TCS Acceptance)	Standalone for ELC Subproject	Completion of testing plus 10 Days
Interface Control Documents	update by addendum with any specific requirements for ELC Subproject, i.e., new Plaza designations for transactions, etc.)	NTP + 90 Days
Financial, Auditing and Traffic Reports	Upon request	Upon request
ELC Subproject As-Built Technical Drawings	Standalone for ELC Subproject	ELC Subproject Revenue Service Commencement + 60 Days
Maintenance Plan	Update, as necessary, to reflect the new locations that require maintenance	ELC Subproject Revenue Service Commencement - 30 Days
Transition Plan	Standalone for ELC Subproject	Go-Live – 120 Days

NOTE 1: PDF and AutoCAD acceptable for this milestone.

NOTE 2: Final As-built drawings must be delivered in PDF and Microstation formats.

## **Part 2: Other Material Terms**

### **1) MOT**

- a. Coordination of MOT is the responsibility of TSP and shall be handled in accordance with the TP, Section 4.7, “Maintenance of Traffic” during D&D Work.

### **2) Spare Parts**

- a. A list of recommended Spare Parts for the ELC Subproject work will be provided for RCTC review and approval per TP Section 16.15, as part of the submittal of the Bill of Materials (BOM).
- b. The purchase and pricing of the spares for ELC Subproject will be part of Change Order No. 8B.

### 3) KPIs

The KPIs listed in TP Section 19.4 – Table 19-2, “Key Performance Indicators” (KPIs) and all provisions of the Contract applicable to the O&M Work shall apply to ELC Subproject when the ELC Subproject enters Revenue Service (See milestone dates).

### 4) Liquidated Damages

a) TSP shall pay the following Delay Liquidated Damages to RCTC:  
\$5,000 for each day after the ELC Subproject Revenue Service Commencement Deadline through the date that TSP achieves ELC Subproject Revenue Service Commencement, not to exceed 60 days or earlier termination of this Contract;

b) The liquidated damages set forth in Section 11 and Exhibit 22 of the Contract will apply to the ELC Subproject.

### 5) Insurance Requirements

As a condition precedent to NTP, TSP shall modify their insurance policies and certificates as follows:

- i. Ensure all insurance coverage include the ELC Subproject Work

### 6) Bonding Requirements

a) As a condition precedent to RCTC issuing NTP, TSP shall deliver to RCTC the updated ELC Subproject Performance Bond Rider and the ELC Subproject Payment Bond Rider.

### 7) Limitation of TSP’s Liability

For the avoidance of doubt, the Total Capital Cost, as referenced in Contract Section 25.1.1(a), shall reflect the addition of the ELC Subproject Total Capital Cost.

### 8) Source Code Escrow

As a condition to payment of invoices for ELC Subproject Payment Milestones and ELC Subproject TCS Acceptance, TSP shall place all the Software Source Code for Pre-Existing Software owned by TSP, licensed to or by TSP or with respect to which TSP has a right to use in connection with the ELC Subproject Work into Source Code Escrow upon establishment of the same in accordance with the Contract.



### **Part 3:**

#### **A. Payments based on labor, overhead, margin, ODC, and subcontract costs (See Attachment 1B)**

(Percentages indicated below are percentages of the ELC Subproject Total System Cost)

- 1) ELC-NTP – Mobilization Payment – 10%
- 2) Design Documents Approved (specific modifications to be handled for the SR-91 Express Lanes version of the TCS) – 7%
- 3) Installation Drawings Approved – 7%
- 4) Installation Plan Approved – 7%
- 5) Approved Test Plans – 10%
- 6) Site Acceptance Testing Complete – 10%
- 7) Operations Testing Complete – 10%
- 8) ELC Subproject Revenue Service Commencement – 15%
- 9) ELC Subproject As-Built Technical Drawings – 12%
- 10) ELC Subproject TCS Acceptance – 12%

#### **B. Payments based on Equipment costs:**

TSP shall deliver Lane Equipment per List of Materials – Amount set forth in the “Materials” section in the ELC Subproject Price Sheet. Payment will be made for delivery of equipment related to item 4 on the Price List.

### **Part 4: SR-91 ROW Access**

RCTC will provide TSP with access to the ELC Subproject ROW:

- a) From NTP until ELC Subproject TCS Acceptance for the purposes of performing the ELC Subproject D&D Work, provided that (i) TSP shall obtain a rider to the existing RCTC encroachment permit providing TSP with access to the ELC Subproject Site prior to commencing work on the site and shall comply with the requirements of such permit, and (ii) TSP shall comply at all times with TSP’s safety and security procedures and all applicable requirements of this Contract and Technical Provisions.

### **Part 5: Additional Definitions (Exhibit 1 to the Contract), not already included in Change Order No.5**

- 1) ELC Notice to Proceed or ELC-NTP means the written Notice issued by RCTC to TSP authorizing TSP to proceed with the ELC Subproject D&D Work.



- 2) ELC Subproject Payment Bond Rider means a bond rider in the form attached to this Change Order No. 8B as Attachment 3-B (with such modifications as RCTC approves by Notice, in its sole discretion).
- 3) ELC Subproject Performance Bond Rider means a bond rider in the form attached to this Change Order No. 8B as Attachment 3-A (with such modifications as RCTC approves by Notice, in its sole discretion).
- 4) ELC Turnover Package 1 means, for all ELC CCTV and TTMS/MVD locations, the stage in the DB Work where DB Contractor has completed design, construction and inspection of the following elements:
  - a. infrastructure for the CCTV and/or TTMS/MVD location, including pole, conduit, power and communication to support all ETC components;
  - b. communications (temporary or otherwise) from the relevant Turnover Area to the ROC;
  - c. commercial power to all of the infrastructure within the relevant Turnover Area and other TCS equipment locations applicable to the Turnover Area; and
  - d. Successful completion of testing of the lightning protection and grounding systems to certify compliance with requirements in the NFPA-70, National Electric Code: NFPA-780, Lightning Protection Code, and UL-96A, Installation Requirements for Master Labeled Lightning Protection Systems.
- 5) ELC Turnover Package 2 means, for Eastbound McKinley and Westbound McKinley Toll Gantry locations, the stage in the DB Work where DB Contractor has completed design, construction and inspection of the following elements:
  - a. infrastructure for the Read Point, including gantry, pads, conduit, power and communication to support AVI, LPR, beacons, and all ETC components;
  - b. a 3,000 foot-long paved and striped EL section that includes required ELs, shoulders, and two-feet wide buffer to perform drive tests for the applicable Turnover Area, with the toll gantry constructed approximately within the center of the 3,000-foot long section;
  - c. communications (temporary or otherwise) from the relevant Turnover Area to the ROC;

- d. commercial power to all of the infrastructure within the relevant Turnover Area and other TCS equipment locations applicable to the Turnover Area;
  - e. Successful completion of a load verification and automatic transfer switch test for each emergency generator meeting the requirements as set forth by the manufacturer and in the DB Contract; and
  - f. Successful completion of testing of the lightning protection and grounding systems to certify compliance with requirements in the NFPA-70, National Electric Code: NFPA-780, Lightning Protection Code, and UL-96A, Installation Requirements for Master Labeled Lightning Protection Systems.
- 6) **ELC Turnover Package 3** means, for Northbound Connector Toll Gantry location, the stage in the DB Work where DB Contractor has completed design, construction and inspection of the following elements:
- a. infrastructure for the Read Point, including gantry, pads, conduit, power and communication to support AVI, LPR, beacons, and all ETC components;
  - b. a 3,000 foot-long paved and striped EL section that includes required ELs, shoulders, and two-feet wide buffer to perform drive tests for the applicable Turnover Area, with the toll gantry constructed approximately within the center of the 3,000-foot long section;
  - c. communications (temporary or otherwise) from the relevant Turnover Area to the ROC;
  - d. commercial power to all of the infrastructure within the relevant Turnover Area and other TCS equipment locations applicable to the Turnover Area;
  - e. Successful completion of a load verification and automatic transfer switch test for each emergency generator meeting the requirements as set forth by the manufacturer and in the DB Contract; and
  - f. Successful completion of testing of the lightning protection and grounding systems to certify compliance with requirements in the NFPA-70, National Electric Code: NFPA-780, Lightning Protection Code, and UL-96A, Installation Requirements for Master Labeled Lightning Protection Systems.

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**Part 6: Impacts on Existing Definitions and Contract Provisions**

For purposes of the ELC Subproject, the Setting Date, the Effective Date and similar reference dates under the Contract will be the date of issuance of this Change Order.

Reference Documents include the documents and information provided with respect to the ELC Subproject, as listed on Change Order No. 8B – Attachment 5.

Except as specifically provided otherwise in this Change Order:

- 1) Defined terms previously applying generally to the ELP Project (such as “Project,” “D&D Work,” “Toll Services,” “Work,” “Completion Deadlines,” “Total Capital Cost,” etc.): (a) will retain the same names and the definitions will be revised to include the ELC Subproject; but (b) corresponding ELP Project-specific defined terms will also be created so as to distinguish from the ELC Subproject as needed.
- 2) Provisions in the Contract of general application to the ELP Project (such as TSP’s indemnities, events of default) will also apply to the ELC Subproject.

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**B.** Analysis of (impact of the Change on the performance of other aspects of the D&D Work, O&M Work, RCTC or RCTC’s toll operations (as applicable); (Section 20.4.3(a)(v)):

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All impacts of the Change are reflected in this Change Order No. 8B, and there are no other impacts of the Change on the performance of other aspects of the D&D Work, O&M Work, RCTC or RCTC’s toll operations.

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**C.** Proposed plan for mitigating impacts of the Change (Section 20.4.2(a)(x)):

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N/A

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**D.** Additions / deletions / modifications to the requirements of the Contract including KPIs (if any) (Section 20.4.3(a)(viii)):

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See Redlined Technical Provisions Attachment 2.

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## **SECTION II – Cost Impact(s)**

### **A. Summary**

Compensation under this Change Order is to be paid (check the applicable boxes below):

- ☐ n/a<sup>1</sup> \$0.00 (“no cost”) Change Order.
- ☐ as a lump sum adjustment to the Contract Price in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).
- ☒ as a series of milestone payments in the following amounts:
- 1) See Section I, Subsection B (Overview of Scope), Part 3, Item A for the D&D Milestone Payment Schedule, and Attachment 1B.
  - 2) See Section I, Subsection B (Overview of Scope), Part 3, Item B for the Equipment Payment Schedule, and Attachment 1A.
- ☐ as an adjustment to Total O&M Years 1 and 2 Cost or Total O&M Years 3, 4 and 5 Cost
- ☐ as a Unit Price Change Order for increases or decreases in the Contract Price [not to exceed] / [in the amount of] \_\_\_\_\_ dollars (\$ \_\_\_\_\_)
- ☐ as a Time and Materials Change Order, [not to exceed] \_\_\_\_\_ dollars (\$ \_\_\_\_\_)]
- ☐ as is set forth below, under Section II(B)([2] / [3]). ***[select the proper reference]***
- ☐ If more than one box has been checked, also check this box and summarize terms here:

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Documentation supporting the Change Order is attached as Annex[es] \_\_\_\_\_ [through \_\_\_\_\_].

### **B. Special Considerations**

**1. Delay and disruption damages for Excusable Delay (Section 20.10).** ☒ n/a Compensation available for Change Orders are (only) extra Work Costs and delay Costs directly attributable to the proposed Change and exclude certain costs and expenses.

- Total extra Work Costs: \$ \_\_\_\_\_
- Total delay and disruption damages: \$ \_\_\_\_\_

Discussion (if any):

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<sup>1</sup> If \$0 (i.e., a “no cost” Change Order), leave remainder of Section II blank.



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**2. Deductive RCTC Changes.** ☒ n/a

If this Change Order is a deductive change

Net Cost<sup>2</sup> Savings attributable to the deductive change \$ \_\_\_\_\_

Amount due to RCTC attributable to the deductive Change (or which can be used by RCTC, in its sole discretion, to offset payment to TSP) \$ \_\_\_\_\_

Discussion (if any):

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<sup>2</sup> When both additions and reductions are involved in any one Change Order, the adjustment shall be determined on the basis of net increase or decrease. TSP Margin will be allowed only for the net increase in labor Cost in order to establish the amount to be added to the Contract Price. In determining a deductive change order, any deduction will include the amount of TSP Margin and Audited Overhead which would have been payable on such amounts by RCTC in accordance with Section 20.



### **SECTION III – Completion Deadline Impacts (Applicable to All Change Orders)**

The status of the CSC Commencement Deadline is as follows:

- ☒ Unaffected by this Change Order  
☐ Affected by [extending] / [accelerating] the date of the CSC Commencement Deadline by \_\_\_\_\_ calendar days to \_\_\_\_\_ calendar days prior to Revenue Service Commencement.

The status of the Revenue Service Commencement Deadline is as follows:

- ☒ Unaffected by this Change Order  
☐ Affected by [extending] / [accelerating] the date of the Revenue Service Deadline by \_\_\_\_\_ calendar days to \_\_\_\_\_ Days after the Package 4 Turnover Date.

The status of the total Float is as follows:

- ☒ Unaffected by this Change Order  
☐ Affected by this Change Order as follows:

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If this Change Order is issued as a result of, or relating to, an Excusable Delay or a shortening time, TSP's Critical Path time impact delay analysis is attached as Annex \_\_\_\_\_ (Section 20.4.3(a)(vi)). ☒ n/a



**SECTION IV - (Reviewed and recommended agreed by TSP’s [Project Manager-D&D Work] or [Project Manager-O&M Work])**

By: \_\_\_\_\_  
Name: Jim Kirwin  
Title: Project Manager  
Date: \_\_\_\_\_

**Comments:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **SECTION V - (Reviewed and agreed by TSP)**

The undersigned Authorized Representative of TSP hereby certifies, under penalty of perjury, as follows:

1. Sections I, II and III of this Change Order, including all Worksheets and Annexes, collectively represent a true, accurate and complete summary of all aspects of this Change Order.
2. The amounts of time and/or compensation set forth in this Change Order (a) are, in each case, justified as to entitlement and amount, (b) reflect all changes to compensation for and scheduling of the Project (inclusive of all Subcontractor and Supplier amounts, impacts), (c) is complete, accurate and current and (d), in each case, the amounts of time, if any, and/or compensation, if any, agreeable to, and is hereby agreed by, TSP.
3. This Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which have been and may be incurred, as a result of the event, occurrence or matter giving rise to this Change Order. This Change Order constitutes a full and complete settlement of all Losses, Claims, matters, issues and disputes existing as of the effective date of this Change Order, of whatever nature, kind or character relating to the event, occurrence or matter giving rise to this Change Order and the performance of any extra Work that this Change Order documents or relates, including all direct and indirect costs for services, equipment, manpower, materials, overhead, profit, financing, delay and disruption arising out of, or relating to, the issues set forth herein. TSP acknowledges that it shall not be entitled to assert any Claim for relief under the Contract for delay, disruption costs or any other adverse financial or Project Schedule impacts existing as of the effective date of this Change Order and arising out of, or relating to, the event, occurrence or matter giving rise to this Change Order or such extra Work.
4. If the foregoing Change Order includes claims of Subcontractors or Suppliers, TSP represents that authorized representatives of each Subcontractor and Supplier, if any, reviewed such claims, this Change Order and accept this Change Order as dispositive on the same, subject to separate Contract between TSP and each such Subcontractor and Supplier, as applicable. Furthermore, TSP has determined in good faith that such claims are justified as to both entitlement and amount.
5. The cost and pricing data forming the basis for the Change Order is complete, accurate and current, with specific reference to the California False Claims Act (Government Code section 12650 et. seq.) and the U.S. False Claims Act (31 USC § 3729 et seq.)
6. It is understood and agreed that this Change Order shall not alter or change, in any way, the force and effect of the Contract, including any previous amendment(s) thereto, except insofar as the same is expressly altered and amended by this Change Order.
7. This Change Order supersedes all prior commitments, negotiations, correspondence, conversations, Contracts or understanding applicable to the issues addressed herein. No deviation from the terms hereof shall be predicated upon any prior representations or





Contracts, whether oral or written, other than the Contract, as amended in accordance with its terms.



8. This Change Order is binding upon, and shall insure to the benefit of, each of the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS, WHEREOF, TSP, intending to be legally bound, has executed this Change Order as of the date below.

**TSP:**

**Kapsch TrafficCom USA, Inc.**

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

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

Name: Ray Cooper

Title: Vice President & General Manager /  
Western Region Delivery & Operations

The undersigned Guarantor hereby (i) acknowledges and consents to this Change Order No. 8B; (ii) reaffirms that certain Guaranty dated as of 25 August, 2020 (the "Guaranty"), executed by the undersigned; and (iii) agrees that the Guaranty remains in full force and effect and binding upon the undersigned as of the date hereof.

**TSP:**

**Kapsch TrafficCom AG**

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

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

Name: JB Kendrick

Title: President



**SECTION VI - (Reviewed and recommended by RCTC)**

By: \_\_\_\_\_  
Name: David Thomas  
Title: Toll Project Delivery Director  
Date: \_\_\_\_\_

**Comments:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**SECTION VII - (Agreed by RCTC's Authorized Representative)**

IN WITNESS WHEREOF, RCTC, intending to be legally bound, has executed this Change Order as of the date first written above.

Date: \_\_\_\_\_  
(the effective date of this Change Order)

**RCTC**  
**RIVERSIDE COUNTY**  
**TRANSPORTATION COMMISSION**

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

Name: Anne Mayer

Title: Executive Director

**ATTACHMENT 1A**  
**ELC SUBPROJECT D&D PRICE SHEET**

#	Item	Description	Unit	Qty	Unit Price	Total
1	Labor – Kapsch	Development of System Design, Documentation, Installation, and Testing for components of the ELC Subproject under this Change Order #8B	Lot	1	\$2,807,061.14	\$2,807,071.14
2	Subcontracts	Support of Installation, Gantry Analysis and Modification Design, Maintenance of Traffic for components of the ELC Subproject under this Change Order #8B	Lot	1	\$1,149,731.55	\$1,149,731.55
3	ODCs	Supporting Costs – Vehicles, Bonding, Lane Closure Fees for components of the ELC Subproject under this Change Order #8B	Lot	1	\$177,334.00	\$177,334.00
Total System Cost						\$4,134,126.69
4	Materials and Equipment	Materials and System Equipment for	Lot	1	\$1,919,955.17	\$1,919,955.17



		Installation of TCS				
Total Materials Cost						\$1,919,955.17
Total D&D Costs						\$6,054,081.86



**ATTACHMENT 1B**  
**ELC SUBPROJECT D&D MILESTONE PAYMENTS**

Milestone	Description	Percentage	Amount
	1 ELC-NTP – Mobilization Payment	10%	\$413,412.67
	2 Design Documents Approved	7%	\$289,388.87
	3 Installation Drawings Approved	7%	\$289,388.87
	4 Installation Plan Approved	7%	\$289,388.87
	5 Approved Test Plans	10%	\$413,412.67
	6 Site Acceptance Testing Complete	10%	\$413,412.67
	7 Operations Testing Complete	10%	\$413,412.67
	8 ELC Subproject Revenue Service Commencement	15%	\$620,119.00
	9 ELC Subproject As-Built Technical Drawings	12%	\$496,095.20
	10 ELC Subproject TCS Acceptance	12%	\$496,095.20
			\$4,134,126.69

**ATTACHMENT 1C**  
**ELC SUBPROJECT D&D PRICE SHEET – OPTION #1**

#	Item	Description	Unit	Qty	Unit Price	Total
1	Labor – Kapsch	Development of System Design, Documentation, Installation, and Testing for components of the ELC Subproject under this Change Order #8B	Lot	1	\$78,263.96	\$78,263.96
2	Subcontracts	Support of Installation, Gantry Analysis and Modification Design, Maintenance of Traffic for components of the ELC Subproject under this Change Order #8B	Lot	1	\$0	\$0
3	ODCs	Supporting Costs – Vehicles, Bonding, Lane Closure Fees for components of the ELC Subproject under this Change Order #8B	Lot	1	\$1,405.00	\$1,405.00
<b>Total System Cost</b>						<b>\$79,668.96</b>
4	Materials and Equipment –	Materials and System Equipment for	Lot	1	\$69,367.14	\$69,367.14





	South Gantry	Installation of TCS				
Total Materials Cost						\$69,367.14
Total D&D Costs						\$149,668.10

**ATTACHMENT 2**  
**ADDITIONAL AND REVISED TECHNICAL PROVISIONS**

**CHANGE #2 – The following provision is added as new Subsection 2.6.2.1 (and the subsections that follow are renumbered accordingly):**

**“2.6.2.1 Project Schedule Requirements - ELC**

**Added:** The TSP shall maintain a separate Project Schedule for the ELC Subproject. The Project Schedule shall include key milestones and interdependencies for the ELC Subproject.”

**CHANGE #9 – The following provision is added as a new third paragraph to Section 4.6.2 (Installation Drawings):**

“The TSP shall prepare installation drawings for the ELC Subproject for review and approval prior to any installation work being performed for the ELC Subproject.”

**CHANGE #10 – The following provision is added as a new paragraph at the end of Subsection 5.1 (General):**

“The TSP shall test the ELC Subproject per Table 4.

	ELC Subproject
ETC FAT	N/A
ETC OFIT	N/A
ELC Subproject ETC Site Commission	For each installation site
CSC FAT	N/A
CSC Installation	N/A
CSC System Commissioning Test	N/A
TCS Disaster Recovery and Back-Up Test	N/A
ELC Subproject TCS Operations Test	For the ELC Subproject
ELC Subproject TCS Acceptance Test	For the ELC Subproject
Annual Renewal	As part of ELP

Table 4 ELC Subproject Testing Overview”



**ATTACHMENT 3-A**  
**FORM OF ELC SUBPROJECT PERFORMANCE BOND RIDER**

To be attached to and form a part of

Bond No.: \_\_\_\_\_

Type of  
Bond: \_\_\_\_\_  
Performance Bond

dated  
effective \_\_\_\_\_  
(Month – Day – Year)

\_\_\_\_\_  
[Principal]

and by \_\_\_\_\_, as Surety,

in favor of **Riverside County Transportation Commission**

In consideration of the mutual agreements herein contained Principal and the Surety hereby consent to the following:

**The amount of the Payment Bond is hereby increased by the amount of \$6,203,749.96.**

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.



This rider is effective \_\_\_\_\_  
(Month – Day – Year)

Signed and Sealed \_\_\_\_\_  
(Month – Day – Year)

By: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
Attorney-in- Fact



**ATTACHMENT 3-B**  
**FORM OF ELC SUBPROJECT PAYMENT BOND RIDER**

To be attached to and form a part of

Bond No.: \_\_\_\_\_

Type of  
Bond: \_\_\_\_\_  
Payment Bond

dated  
effective \_\_\_\_\_  
(Month – Day – Year)

\_\_\_\_\_  
**[Principal]**

and by \_\_\_\_\_, as Surety,

in favor of **Riverside County Transportation Commission**

In consideration of the mutual agreements herein contained Principal and the Surety hereby consent to the following:

**The amount of the Payment Bond is hereby increased by the amount of \$6,203,749.96.**

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.



This rider is effective \_\_\_\_\_  
(Month – Day – Year)

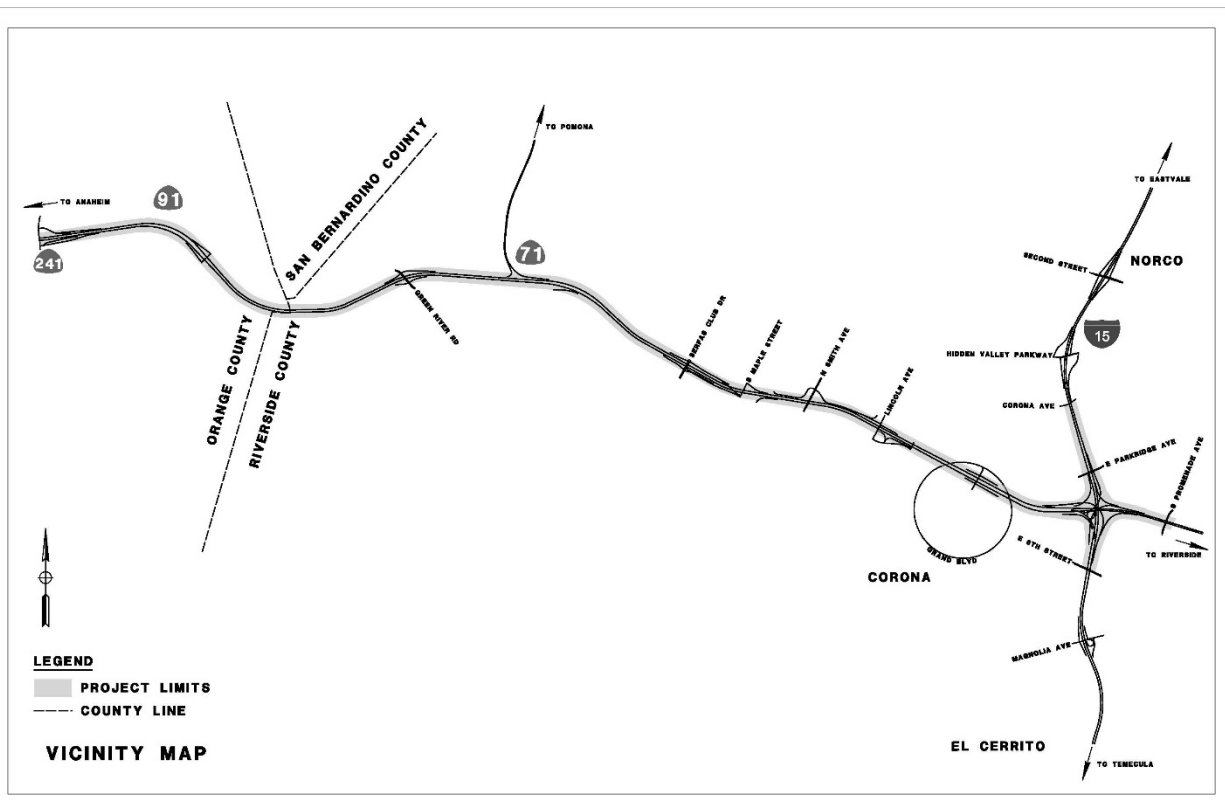
Signed and Sealed \_\_\_\_\_  
(Month – Day – Year)

By: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
Attorney-in- Fact

**ATTACHMENT 4**  
**SR-91 AND ELC ROW**





**ATTACHMENT 5**  
**ELC SUBPROJECT REFERENCE DOCUMENTS**

- 1) SR-91 Express Lanes As-Built Drawings
- 2) RFC Plans (Roadway and Electrical) for the ELC Project provided by MRJV/TYLI
- 3) RFC Plans for Overhead Signs and Structures for the ELC Project provided by MRJV/TYLI



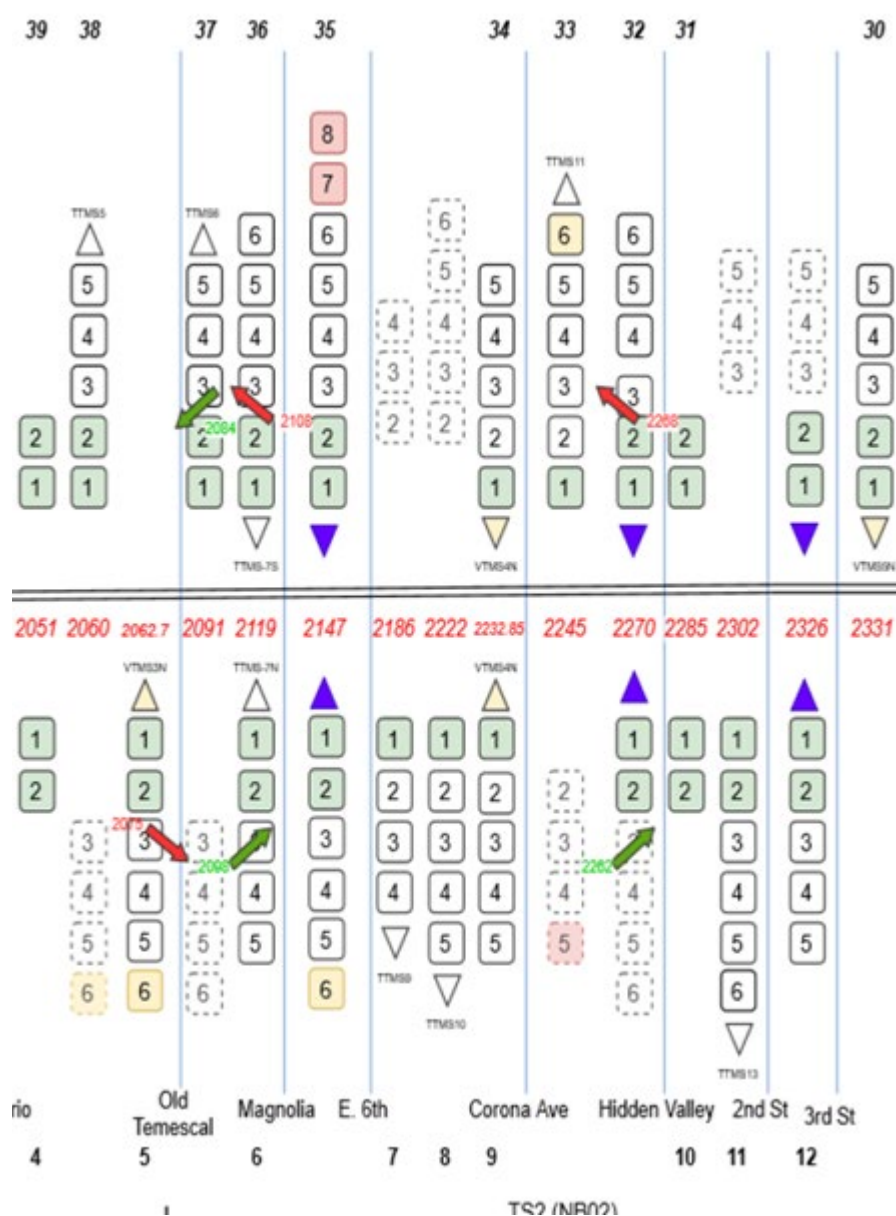
## ATTACHMENT 6

### OPTION 1 – ADDITIONAL TTMS/MVD LOCATIONS FOR I-15

The potential locations, in priority order:

1. Station 2147 (which is south of the 91).
2. Station 2270
3. Station 2326

See purple/blue arrows below.





# **AGENDA ITEM 6I**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Eric DeHate, Transit Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Adoption of Resolution No. 22-004 Authorizing the Commission to Decertify as the Local Access Fund Administrator for the Transportation Network Companies Access for All Program

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Adopt Resolution No. 22-004, *“A Resolution of the Riverside County Transportation Commission Decertifying itself to serve as the Local Access Fund Administrator for the Access for All Program for the County of Riverside”*;
- 2) Approve an increase of \$326,500 in the FY 2021/22 budget for Transportation Network Companies (TNC) Access for All revenues based on revenue received; and
- 3) Authorize the Executive Director or designee, pursuant to legal counsel review, to execute agreements and/or documents related to the TNC Access for All program on behalf of the Commission.

**BACKGROUND INFORMATION:**

Senate Bill 1376 (SB 1376) was signed in 2018 and is known as the TNC Access for All Act, which directs the California Public Utilities Commission (CPUC) to establish a program relating to accessibility for persons with disabilities, including wheelchair users who need a wheelchair-accessible vehicle (WAV). The intent of the legislation is for California to be a national leader in the deployment and adoption of on-demand transportation options for persons with disabilities and that wheelchair users who need WAVs have prompt access to TNC services. According to the CPUC, persons that require a WAV wait at least an hour longer than a person that does not require a WAV using a traditional TNC service. Additionally, traditional demand response public transit service requires an advance reservation, which is typically not on the same day. The legislature points out that the availability of transportation services, especially on-demand transportation service, will take time to develop and can improve economic competitiveness and quality of life, particularly for those that require a WAV.

A TNC was defined by legislation to mean an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating

in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with a driver using a personal vehicle. TNCs in the current market include Uber, Lyft, and Via.

The TNC Access for All program is funded by a \$0.10 per trip charge that is collected by the TNCs and remitted to the CPUC quarterly by each county for the Access Fund. Funding under this program can fluctuate quarter to quarter depending on the number of trips traveled by TNCs. CPUC has estimated that Riverside County may receive approximately \$225,000 to \$230,000 annually from the Access Fund. However, this may decrease over time because TNCs are allowed to request offsets quarterly against these amounts if they can demonstrate that they have improved WAV service in the respective county. The CPUC will establish service levels by county, and a TNC may become exempt from collecting those fees if it can demonstrate for four consecutive quarters that it can maintain that level of service.

The CPUC has defined eligible Local Access Fund Administrators (LAFAs) as Metropolitan Planning Organizations (MPOs) and Regional Transportation Planning Agencies (RTPAs)/County Transportation Commissions. If potential LAFA's decide not to administer the TNC Access for All Program for its county or counties, the CPUC would then be the State Access Fund Administrator for those jurisdictions.

### **DISCUSSION:**

In June 2021, the Commission adopted Resolution No. 21-009 to become the LAFA for Riverside County. Since then, the CPUC adopted changes to the guidelines which changed the implementation of the TNC Access for All program, adding more administrative responsibilities to the LAFAs, including extensive outreach and pre-award and post award audits, in addition to other reporting requirements. Upon further analysis of the direction of the program, staff has determined that the administrative responsibilities will likely exceed the 15 percent administrative allocation.

Moreover, the program guidelines also prioritize projects that can provide trips within 24 hours using an online/on-demand scheduling application. Most public paratransit and specialized transit services in Riverside County require advanced reservation and may not be able to meet the 24-hour service priority. Thus, it is anticipated that the number of applicants for this program will likely be from private transportation carriers. The Commission currently does not have any legal responsibilities to provide oversight to private agencies. The CPUC has expertise in this area as they regulate private transportation carriers and is a better fit to oversee this program at this time.

Staff sought feedback on this program from the Commission's Citizens and Specialized Transit Committee and engaged a consultant for initial outreach to existing Measure A Specialized Transit Program recipients and private taxi companies to gauge the interest of potential applicants in Riverside County. Based on the complexities of implementing this program, staff recommends adopting Resolution No. 22-004 for submittal to the CPUC to decertify the

Commission as the LAFA for Riverside County and request that the CPUC administer the program for Riverside County. There are no penalties or negative impacts to potential applications in Riverside County if the Commission decertifies as the LAFA. Public transit operators, specialized transit providers, and private transportation companies can still apply for the funding available in the program. Staff will continue to monitor the program and if circumstances become more favorable then will return to the Commission for further direction.

**FISCAL IMPACT:**

Staff included \$230,000 in the FY 2021/22 budget cycle; however, the Commission received the full payment of \$556,433. This included funding from July 2019 to June 2021 and CPUC requires all funding received to be returned to the CPUC within 30 days after we provide written notice to them of our choice to decertify.

Financial Information					
In Fiscal Year Budget:	Yes No	Year:	FY 2021/22 FY 2021/22	Amount:	\$230,000 \$326,500
Source of Funds:	State TNC Access Funds			Budget Adjustment:	No Yes
GL/Project Accounting No.:	002225 415 41510 242 62 41501				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	1/12/2021

Attachment: Resolution No. 22-004

<i>Approved by the Budget and Implementation Committee on January 24, 2022</i>					
In Favor:	12	Abstain:	0	No:	0





**RESOLUTION NO. 22-004**

**A RESOLUTION OF THE  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
DECERTIFYING ITSELF TO SERVE AS THE LOCAL ACCESS FUND ADMINISTRATOR FOR  
THE ACCESS FOR ALL PROGRAM FOR THE COUNTY OF RIVERSIDE**

**WHEREAS**, the Riverside County Transportation Commission is eligible as a Regional Transportation Planning Agency and County Transportation Commission to serve as the Local Access Fund Administrator (LAFA) for the county of Riverside, for the Transportation Network Companies Access for All program in administering a funding program for local Access for All providers for on-demand wheelchair accessible vehicle (WAV) transportation projects; and

**WHEREAS**, pursuant to Resolution No. 21-009, adopted on June 9, 2021, the Riverside County Transportation Commission elected to serve as the LAFA for the county of Riverside, and authorized the Executive Director or designee to execute documents and any amendments thereto required to serve in this role; and

**WHEREAS**, the Riverside County Transportation Commission now wishes to rescind any authorizations and certifications related to serving as the LAFA for the county of Riverside; and

**WHEREAS**, Senate Bill 1376 (2018) designated the California Public Utilities Commission (Commission) as the administrative agency for the Access for All program; and

**WHEREAS**, the Riverside County Transportation Commission wishes the Commission to administer and distribute Access Funds to eligible local Access for All program providers of on-demand WAV transportation in the county of Riverside.

**NOW, THEREFORE BE IT RESOLVED** by the Riverside County Transportation Commission that it hereby decertifies itself to serve as the LAFA for the county of Riverside for the Access for All program, and rescinds any related commitments and authorizations related to serving in this role.

**NOW, THEREFORE BE IT RESOLVED** by the Riverside County Transportation Commission that it hereby authorizes the California Public Utilities Commission to serve as the LAFA of the Access for All program for Riverside County.

This Resolution No. 22-004 shall take effect immediately upon its passage.

APPROVED AND ADOPTED this 9<sup>th</sup> day of February, 2022.

---

V. Manuel Perez, Chair  
Riverside County Transportation Commission

ATTEST:

---

Lisa Mobley, Clerk of the Board  
Riverside County Transportation Commission

# **AGENDA ITEM 7**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Hector Casillas, Right of Way Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Right of Way Policies and Procedures Manual

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Adopt Resolution No. 22-003, *“Resolution of the Riverside County Transportation Commission (RCTC) Approving and Adopting the RCTC/RCA Right of Way Policies and Procedures Manual”*; and
- 2) Approve the updated RCTC/RCA Right of Way Policies and Procedures Manual, pursuant to legal counsel review as to conformance to federal and state law.

**BACKGROUND INFORMATION:**

The Commission and the Western Riverside County Regional Conservation Authority (RCA) entered into an Implementation and Management Services Agreement (Agreement) effective January 1, 2021. Under the Agreement, RCTC shall administer, coordinate, and supervise the activities of the RCA as set forth in the RCA Joint Exercise of Powers Agreement and shall act for the RCA in accomplishing its purposes. RCTC, acting through its personnel, attorneys, and consultants acquire, sell, and manage property. The RCTC Right of Way team carries out the responsibilities of the RCA to acquire habitat for the reserve required by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

As a result of RCTC’s management responsibilities and the joint objectives for consolidation and efficiency set forth by the RCA Board and RCTC Commission, staff and legal counsel have reviewed RCA property acquisition (referred to hereafter as “Right of Way”) policies to determine which RCA policies can be consolidated with RCTC policies into a comprehensive policy.

Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661) made changes to the Surplus Land Act found in Government Code, Title 5, Division 2, Part 1, Chapter 5, Article 8. Surplus Land. The following California Codes that apply to California law pertaining to surplus land have been updated as necessary:

- California Government Code Sections 54220-54234

The updated RCTC/RCA Right of Way Policies and Procedures Manual will enable staff to conduct business more effectively on behalf of both agencies while complying with federal and state regulations.

### **Process**

Staff and legal counsel completed a comprehensive review of the existing manual, which was adopted by the Commission in August 2015. Staff and legal counsel developed an updated Right of Way Policies and Procedures Manual, which contains the most current processes by which RCTC operates and the existing roles and responsibilities of staff members. Updates have been made to conform to current state and federal laws as well as the Caltrans Right of Way Manual. Additionally, the manual now incorporates policies and procedures that were previously included in the RCA Right of Way Guidelines. Industry best practices have also been incorporated.

As part of the update, staff added Chapter 13 to define policies and procedures for RCA acquisitions and expounded on Chapter 8 related to the sale and disposition of surplus land to follow guidelines provided by the California Department of Housing and Community Development (HCD)

As of January 1, 2021, HCD began implementing guidelines as they relate to local agencies. Even though these guidelines were in place as of January 1, 2021, HCD did not release final guidelines until April 2021.

Staff regularly disposes of surplus land and has reviewed these guidelines to ensure the new process is being followed.

The updated RCTC/RCA Right of Way Policies and Procedures Manual provides staff with a formal set of policies and procedures that will assist in all aspects of right of way while complying with federal and state regulations pertaining to surplus land. Additionally, the RCTC/RCA Right of Way Policies and Procedures Manual ensures that real estate matters using public funds are conducted in a professional, ethical, and consistent manner that protects both agencies.

Staff recommends adoption of the resolution to approve and adopt the RCTC/RCA Right of Way Policies and Procedures Manual.

### **FISCAL IMPACT:**

There is no fiscal impact related to the adoption of the Right of Way Policies and Procedures Manual.

Attachments:

- 1) RCTC/RCA Right of Way Policies and Procedures Manual
- 2) Redline of the 2015 Right of Way Policies and Procedures Manual

3) Resolution No. 22-003

*Approved by the Budget and Implementation Committee on January 24, 2022*

In Favor: 10 Abstain: 0 No: 0







# **RCTC RIGHT OF WAY AND RCA MSHCP LAND ACQUISITION POLICIES AND PROCEDURES**

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**1.00.00.00 GENERAL INFORMATION****1.1.00.00 INTRODUCTION****1.1.1.00 Reason**

Land acquisition by public agencies is a complex function. It is therefore imperative that policies be written and procedures established to enable each employee of the Riverside County Transportation Commission (Commission) Right of Way Department to be completely informed and able to perform their duties in a skillful manner when acquiring land for the Commission or the Western Riverside County Regional Conservation Authority (RCA). A Right of Way Department employee, working on either Commission or the RCA projects, should perform his or her assigned duties in a professional manner.

**1.1.2.00 Scope**

This manual contains the regulations, requirements and procedural directives governing the operations of the Right of Way Department. It will be updated and amended as needed.

**1.1.3.00 Purpose**

This manual is to be used as the policy and procedures guide for Commission right of way projects, and land acquisition activities related to the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). As used herein, the phrase “right of way” refers to the acquisition of property and rights for Commission public projects (such as highway, commuter rail lines, rail stations, and park-and-ride lots). The phrase “MSHCP land acquisitions” refers to the land acquisition activities in support of the MSHCP. This manual establishes a uniform method for completing each phase of the right of way acquisition. Any deviation from the prescribed policy should be approved by the Executive Director or designee. Any deviation or failure to comply with the provisions of this manual shall not, by itself, invalidate any action of the Commission, the RCA, or create any liability to any third party.

**1.1.4.00 Federal Regulations**

Federal regulations governing right of way acquisition are found in 49 CFR Part 24. Compliance with these regulations is required if federal funds are to be used in any part of a right of way project, but not MSHCP land acquisitions. The policy and procedures outlined in the following chapters of this manual are written to include all of the federal requirements.

**1.1.5.00 State Regulations**

All laws, policies and regulations passed by the State of California governing right of way acquisition shall be complied with, if applicable. Eminent domain procedures shall be governed by the California Code of Civil Procedure and the California Government Code.

**1.1.6.00 FHWA, FTA and State - The Commission Relationship**

The Federal Highway Administration (FHWA), Federal Transit Administration (FTA), State of California Department of Transportation (State/Caltrans) and the Commission Right of Way Staff may work cooperatively to assure all federal and state requirements for right of way acquisition and relocation are met. FHWA, FTA and the State will periodically inspect the Commission right

of way records to assure that federal and state requirements are being complied with. The Commission Right of Way Staff will cooperate by providing required records and documents for inspection. All discrepancies and deficiencies discovered by the inspecting agency will be reported in writing to the Executive Director or designee. The Executive Director or designee will examine the contents of the written reports and determine if those deficiencies or discrepancies are not in compliance with approved Commission policies and will notify the Right of Way Department of any adjustments in operating procedures that need to be improved or revised.

#### **1.1.7.00**      **Communications and Letter Writing**

Good communication, whether inter-department correspondence or outside correspondence is essential. Copies of correspondence should be directed to all interested parties and placed in pertinent files. Instructions provided during telephone conversations should be confirmed by letter or memorandum and copies must be placed in pertinent files explaining actions taken in response to telephone instructions.

#### **1.1.8.00**      **Public Relations**

Right of Way Staff are public relations agents of the Commission and the RCA as they have direct contact with the public. The appearance, attitude and reliability of the individual right of way employee creates an image of the Commission and the RCA in the eyes of those with whom they come in contact. Every effort must be made to reflect an image that is a credit to each employee, the Commission, and the RCA.

#### **1.1.9.00**      **Revisions to Manual**

Revisions to the manual may be approved by the Executive Director with the concurrence of Legal Counsel.

### **1.2.00.00**      **SUBDIVISION OF MANUAL**

#### **1.2.1.00**      **Explanation of Table of Contents**

This manual is divided into chapters as set out in the table of contents. Each chapter is indexed individually to allow additions, deletions, and changes to be made without affecting the continuity of the overall manual.

Chapters are divided into sections and numbered. Each section is divided into subjects, which are also numbered.

#### **1.2.2.00**      **Issue and Revision Dates**

Each page is dated in the lower right-hand corner and each revision issued in the future will show the revised date.

#### **1.2.3.00**      **Retention of Revised Material**

When revised material is issued, the revisions should immediately be placed in the manual upon receiving approval from the Board of Commissioners and/or Board of Directors. The Right of Way Department will keep a permanent record of all revised sheets.



**1.3.00.00 DISCRIMINATORY PRACTICES****1.3.1.00 General Policy Concerning Discrimination**

Under no circumstances shall any form of discrimination be practiced by any employee or any party under contract with the Commission or the RCA, or by any other party carrying out any phase of the Commission's right of way or MSHCP land acquisition programs.

Managers, supervisors and all others responsible for carrying out the right of way and MSHCP land acquisition programs must be aware of the necessity for identifying, reporting, eliminating and/or correcting any discriminatory practice which may occur. Any practice suspected of being discriminatory must be reported to the Executive Director or designee.

Policies and procedures designed to ensure that discriminatory practices will not occur can be separated into five (5) general categories. These categories are:

- Employment Practices – the Commission is an Equal Opportunity Employer
- Right of Way and MSHCP Acquisition
- Property Management
- Relocation Assistance
- Procurement Policy – the Commission and RCA Procurement Policy Manual adopted by the Commission and the RCA Procurement Policy includes the following policy regarding non-discrimination in procurement (Chapter 2.10.0): all formal contracts entered into by the Commission and the RCA should contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

**1.3.2.00 Employment Practices**

Employment Practices for all Commission Staff, including Right of Way Staff, are set out in the Commission Personnel Manual.

**1.3.3.00 Contract Procedures**

Consultant Contracts originating in the Right of Way Department should contain clauses prohibiting discriminatory practices by contractors and subcontractors. Contractors shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances relative to nondiscrimination.

If the contractor fails to comply with the non-discrimination provisions of the contract, the Commission shall impose such contract sanctions as it or the FHWA, FTA or the State may determine to be appropriate, including but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies
- Cancellation, termination, or suspension of the contract, in whole or in part

**1.3.4.00 Acquisition**

All right of way and MSHCP land acquisition policies and procedures, including those applicable to title search, appraisal, negotiations, payments, closings, condemnation, possession, clearing and all other related right of way activities shall be applied equally and without regard to the owner's race, color, religion, national origin, sex, age, ancestry, or physical ability.

The Right of Way Staff who come in contact with property owners shall take appropriate steps to assure that such owners, including representatives of Disadvantage Business Enterprises who may have language or other communication problems, understand the right of way or MSHCP land acquisition program as it relates to them.

**1.3.5.00 Property Management**

Every parcel of excess or surplus land and/or right of way and all improvements disposed of by the Commission and the RCA will be sold through negotiated sale without discrimination on the grounds of race, color, religion, creed, national origin, sex, age, ancestry, or physical ability.

Commission and the RCA owned land and property that is available for license, joint development, or incidental use shall be licensed, or jointly developed to interested persons or firms by negotiations, without discrimination on the grounds of race, color, religion, creed, national origin, sex, age, ancestry, or physical ability.

**1.3.6.00 Relocation Assistance**

Under no circumstances shall any form of discriminatory practice be tolerated on the part of any employee of the Commission or the RCA or on the part of any persons, firms, or corporations under contract with the Commission or the RCA in carrying out any phase of the Relocation Assistance Program.

Managers and all others responsible for carrying out the relocation program shall be aware of the necessity of identifying, reporting, eliminating and/or correcting any discriminatory practice which may occur. Any clearly defined discriminatory practice discovered by Commission staff, or any practice seriously suspected of being discriminatory, must be reported to the Executive Director or designee.

**1.3.7.00 Records and Reports**

The Right of Way Department must maintain a separate file for each of the above three (3) categories (Acquisition, Property Management, and Relocation Assistance). The files shall contain each discriminatory practice case reported or discovered by the Commission, source of such information, all letters, transmittals, and reports related to the subject case, resolution of the specific discriminatory action and an explanation of corrective measures taken by the Commission.

## 2.00.00.00 ROW MANAGEMENT PLAN

### 2.1.00.00 INTRODUCTION

#### **2.1.1.00 Purpose**

The right of way function encompasses several disciplines. The purpose of the Right of Way Management Plan ("RAMP") is to provide an overview of the right of way activities and involvement in the total project. This RAMP is presented in general terms and will be amended or modified pursuant to the nature of the project and funding source requirements. A project specific RAMP may be developed depending on the complexity of a Commission capital project.

Detailed right of way policies and procedures will be presented and discussed in succeeding chapters.

#### **2.1.2.00 Scope**

Included in the right of way function are right of way acquisition, relocation of displaced individuals and businesses, right of way engineering and surveying, appraisal and review, property management, utilities relocation, environmental inspection and remediation and condemnation support.

#### **2.1.3.00 Title VI, Civil Rights Act**

All services and benefits are administered to all eligible individuals without regard to race, color, national origin, or sex in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, et seq.)

2.1.3.1 Title VI Federal Mandate and Caltrans Directive. Caltrans and local agencies are required to incorporate the following two clauses into all right of way contracts on all projects receiving federal funds. These clauses are to be standalone separate clauses. These clauses are also required to be in all other Right of Way documents or agreements used to obtain property rights such as Rights of Entries, Possession and Use Agreements, Permits to Enters, Permits to Enter and Construct, etc.

The parties to the contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Section 50.3.

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is subject of this contract.

The statute requiring Title VI clauses also requires additional Title VI language in all deeds.

**2.2.00.00 RIGHT OF WAY ACQUISITION****2.2.1.00 Authority of the Commission to Acquire**

Public Utilities Code Section 130220.5 authorizes the Commission to take any property necessary, incidental or convenient to the exercise of its powers of eminent domain proceedings or otherwise.

**2.2.2.00 State Laws**

With respect to initiation of condemnation proceedings, the following California Codes apply:

- California Code of Civil Procedure Section 1245.010-1245.270
- California Government Code Sections 7260-7277

**2.2.3.00 Federal Laws and Regulations**

The following federal regulations and policies apply to the right of way program:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) 49 Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17; and the Final Rule dated January 4, 2005
- 23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712 and 713 – The Federal Highway Administration, Right of Way Program Administration
- Federal Highway Administration, Office of Real Estate, Project Development Guide
- Federal Transit Administration Circular 5010.1D dated November 1, 2008, as amended, titled Federal Transit Administration Grant Management Requirements
- Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21)

**2.2.4.00 Overview**

The right of way acquisition program is designed to ensure the timely availability of those parcels necessary for construction and ensure the fair, uniform and equitable treatment of those displaced from their homes and businesses as a result of the project. The acquisition process is divided into the following categories: identification of right of way requirements, appraisal of required interest, negotiation and acquisition either through settlement or condemnation and relocation as required. These activities are scheduled by the Right of Way Manager against established construction deadlines.

**2.2.5.00 Interest to be Acquired**

Long-term real estate interests typically fall under three categories:

- A fee simple estate
- A leasehold estate
- Permanent easements

Accordingly, the Commission must have direct and sustaining control and unrestricted use of the properties in accordance with the terms and conditions of the project.

Temporary construction easements, temporary access easements, temporary use permits, licenses and right of entry agreements are examples of temporary property rights generally obtained to perform various types of work incidental to construction. The type of work to be performed determines which type of agreement is to be used.

Temporary construction and access easements are acquired for such things as access during construction, work areas, establishment of detour roads, construction staging and storage areas where the specified use is essential to completion of construction.

Temporary use permits and right of entry agreements are typically used when obtaining permission to complete soil borings, archeological testing, hazardous materials testing, sloping of lawns or reconstruction of driveways, where a nominal amount of money may be involved and the effect of termination would not jeopardize completion of the project.

#### **2.2.6.00 Title Insurance**

In case of temporary property rights, preliminary ownership information is obtained. Title insurance is secured for the long-term property interests, insuring title effectively free and clear of any liens and encumbrances other than current year's taxes and assessments and easements, covenants and restrictions which do not materially or adversely affect the use of the property for the project. Any senior encumbrance (such as a mortgage, deed of trust or judgment) that might, through foreclosure, cause the long-term property interest to be lost, must be subordinated.

Title insurance is always accompanied by a thorough title examination, which seeks to discover if any defects exist. The title insurance policies are issued shortly after closing (the date the Commission takes ownership of the property, i.e., the date when the deed to the Commission is recorded). Under the policy, the title company agrees to defend the title of the Commission, as the insured.

#### **2.2.7.00 Identification of Right of Way**

For typical design-bid-build or Construction Manager General Contractor (CMGC) Commission projects, identification of the parcels required for a project begins in preliminary engineering and is concluded by the Engineer of Record during final design. This includes the long-term property rights required to accommodate the project alignment, rail projects, stations, station entrances and permanent parking facilities, and the temporary property rights required for construction access and storage yards.

For design-build projects, the design phase and construction phase overlap. The parcel requirements, both long term and temporary, are acquired at various intervals throughout the design process until final design is reached.

Detailed right of way requirements are identified and recommended by the Engineer of Record that conform to the greatest public good and least private injury. To support a recommendation, a licensed land surveyor is required to prepare an acquisition package to include a right of way plat showing the location, size and shape of the parcel to be acquired; a legal description of the

area to be acquired and the name(s) of property owners and computations of the areas to be acquired, and an appraisal map.

#### **2.2.8.00 Scheduling**

The Engineer of Record develops the priorities, by project segment, for right of way acquisition activities. However, the Right of Way Manager identifies within each project segment, the priorities for right of way acquisition by parcel in order to meet the construction schedule. The schedule identifies projected dates for the various stages of the right of way acquisition process and is updated regularly.

The Commission, through its Right of Way Manager, evaluates the right of way acquisition date to ensure there are no conflicts and ensure integration of information into the Master Project Schedule.

### **2.3.00.00 APPRAISAL**

#### **2.3.1.00 Purpose**

Commission appraisals are used to establish a basis for determining Just Compensation. The Uniform Relocation Act, as implemented by 49 CFR Part 24, allows the Commission to waive an appraisal if, based on a review of available data, if the Commission determines that the valuation problem is uncomplicated and that fair market value is estimated at \$10,000 or less, or if the property owner is donating the property and has released the Commission from its obligation to appraise the property. Appraisal waivers are also allowed above the \$10,000 threshold, up to a maximum of \$25,000, if the Commission offers the property owner the option of having the Commission appraise the property and the property owner declines the appraisal. If negotiations are unsuccessful, a standard appraisal must be performed prior to proceeding with condemnation for Commission projects. Moreover, when FTA funds are involved, FTA Circular 5010.1E requires prior FTA concurrence when the recommended offer of Just Compensation exceeds \$1,000,000, or when a property appraised at \$1,000,000 or more must be condemned.

The Uniform Relocation Act, as well as FTA policy and procedures, requires that an appraisal and a reviewer's analysis be obtained on all parcels proposed for acquisition (other than those determined above).

#### **2.3.2.00 Basic Appraisal Process**

The selection of independent fee appraisers is based on qualifications and experience for the property being appraised in accordance with criteria for appraisals contained in 49 CFR Part 24. Commission appraisers may be requested to give expert testimony in support of their value estimates in the event of condemnation and must have experience in eminent domain valuations.

The property owner is notified in writing of the Commission's interest in acquiring property rights and basic protections provided to the owner by law. The owner or the owner's designated representative is given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

The compensation amount is recommended by the appraiser and confirmed by the review appraiser, and the Executive Director or designee has final approval of Just Compensation.

Adherence to FTA, FHWA and State concurrence thresholds (depending on the funding source), appraisal and settlement guidelines is required.

## **2.4.00.00 ENVIRONMENTAL INSPECTION**

### **2.4.1.00 Purpose**

Right of way projects carry certain responsibilities to the community. This policy addresses environmental concerns involving residential, commercial and industrial properties, which may be wholly owned by the Commission or in the process of being acquired for a project.

Where there is contamination or hazardous materials affecting the property, the estimated cost to remediate the contaminated property should be forwarded to the Commission's appraiser for consideration and possible inclusion in establishing fair market value.

Typically, the Commission will retain the services of consulting firms to supervise remediation of hazardous materials. The Commission oversees the investigation, identification, control and disposal of hazardous waste, contaminated soil or other material in accordance with the Environmental Protection Agency and other applicable federal, state and local regulations.

### **2.4.2.00 Procedure**

The procedure requires the Commission to hire a consultant to test for possible contamination and if necessary, perform remediation of hazardous material. Staff oversees the investigation, identification, control and disposal of hazardous waste, contaminated soil or other materials in accordance with the Environmental Protection Agency and other applicable governmental regulations and oversight agencies.

Depending upon the nature of the hazardous material (usually waste products), its origin and the intensity of the product generation, decisions as to the extent of hazard protection are made on a case-by-case basis, as outlined below:

- Residences are usually not a major generator, but are examined for asbestos, floor tile, certain pipe (steam) or boiler wrappings, lead paint and other conditions.
- Commercial properties may generate hazardous materials due to waste products used, abandoned transformers containing Polychlorinated Biphenyl (PCB) type immersion fluids, and asbestos and other products.
- Industrial properties may generate hazardous materials such as by-products and other non-useful products, buried waste, insulation products (asbestos), PCB products or similar materials, underground storage tanks and other waste.
- Vacant land may accumulate hazardous materials as a result of spills, indiscriminate storage and/or dumping, irresponsible management of hazardous materials, and accidents or past pesticide, herbicide or fertilizer use on agricultural properties.
- Each type of property is handled in the following manner:

- Identification of hazardous waste materials as officially (federally) defined
- Examination of potentially hazardous site to determine the risk of hazard, if any via field examination by Commission representatives
- Preparation of a list of areas and the degree of concern
- Preparation of a schedule to address the issue
- Evaluation of the hazard, to determine responsibility for cleanup and their use of the property
- Obtain legal opinion where appropriate
- Identification of funding source
- Coordination with the applicable regulatory agency

#### **2.4.3.00**      **Documentation**

The following steps may be utilized to prepare the documentation for identification of potential hazards and their ultimate disposal and mitigation:

- Prepare an RFP to obtain proposals for hazardous materials removal
- Review proposals received for removal
- Request an estimate for hazardous materials removal
- Perform an environmental analysis, utilizing appropriate procurement procedures in accordance with the Procurement Policy
- Review work schedule
- Provide adequate oversight to ensure hazardous materials are thoroughly and properly removed and disposed of
- Ensure all governmental (federal and state) approvals and clearances are obtained
- Provide approval of contractor and consultant requests for payment
- Obtain site closure and No Further Action letter

### **2.5.00.00      NEGOTIATIONS FOR RIGHT OF WAY ACQUISITIONS**

#### **2.5.1.00**      **Acquisition Agents**

Right of way consulting firms may be retained to assist with negotiations for land acquisitions.

#### **2.5.2.00**      **Procedure**

Every reasonable effort is made to acquire all interests in real property by voluntary conveyance through negotiations. The general procedures utilized during the negotiation process are as follows:

- A Right of Way Department staff person or a right of way consultant contacts each property owner to deliver a written offer of the approved amount of Just Compensation and to discuss the Commission's acquisition policies and procedures. Whenever practical, negotiations are conducted by direct, personal contact with the property owner or his/her representative.  
The written offer is accompanied by an appraisal, except when waiver valuations are used, indicating the basis for the amount established as Just Compensation. As per



California Government Code, the appraisal shall contain detail sufficient to clearly indicate the basis for the offer, including, but not limited to: (1) The date of valuation, highest and best use and applicable zoning of property; (2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value. (3) The Just Compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

- Any business owner on the property is notified in writing by the Right of Way Manager (or designee) of their eligibility for applicable relocation assistance and provided a written description of the Commission's relocation program and their rights under the Uniform Relocation Act.
- A reasonable amount of time (to be determined on a case-by-case basis) is given to the owner to consider the offer and to present information which may not have been considered during the appraisal process. The Commission provides a full copy of the appraisal and appraisal review reports with each offer. The Commission will consider the owner's presentation. Once agreement is reached and the proper forms executed, an escrow is opened in most cases and the transfer of ownership is completed.
- In cases where the owner rejects the original offer, but a purchase can be negotiated on different terms rather than utilizing condemnation proceedings, an administrative settlement is negotiated. Decisions on administrative settlements are coordinated by the Right of Way Manager and are based on items such as the appraiser's opinion of value and recent court awards for similar types of properties involved in the condemnation process. For FTA funded projects, FTA Circular 5010.E requires prior FTA concurrence for administrative settlements in excess of \$50,000 more than the current fair market value.
- In the opinion of the Right of Way Manager, when the possibility of reaching an agreement by negotiation has been exhausted, a request to utilize condemnation proceedings is directed to legal counsel. Condemnation is the least desirable acquisition method and is only used when other methods have failed. When the Commission project is FTA funded, FTA prior concurrence is required when a property appraised at \$1,000,000 or more must be condemned.
- Negotiations shall continue with the owner's attorney or representative through the Commission's legal counsel during any condemnation action in an effort to reach settlement.

## **2.6.00.00 RELOCATION FOR RIGHT OF WAY ACQUISITIONS**

### **2.6.1.00 Relocation Agents**

Relocation consultants may be retained to develop a relocation plan and administer relocation assistance and benefits as required, pursuant to the Uniform Relocation Act if it has been clearly shown that such procedure is in the best public interest.

### **2.6.2.00 Relocation Program**

The Uniform Relocation Act provides for certain relocation advisory services and benefits in addition to the amount a person receives as Just Compensation for property. The Commission

relocation program is designed to conform to the requirements of the Uniform Relocation Act and to provide the maximum assistance allowed to the displaced owners and tenants.

A relocation advisory program is established to provide the maximum assistance allowed to all persons required to relocate. The relocation consultant implements the program under the supervision of the Right of Way Manager (or designee). Relocation brochures are available to describe the relocation benefits available to residential and commercial displacees.

#### **2.6.3.00**      **Appeal Process**

Any person aggrieved or otherwise dissatisfied by a determination regarding their eligibility for a relocation benefit or by the amount of any such payment may file an appeal requesting review of their case by the Commission Appeals Board within sixty (60) days after receipt of the Commission's determination of the person's claims. (See Chapter 7)

### **2.7.00.00**      **RIGHT OF WAY PROPERTY MANAGEMENT**

#### **2.7.1.00**      **Scope**

Property management involves the control and management of land and improvements from the time title is vested with the Commission until the property is used for the purpose it was acquired. More specifically, Property Management is concerned with the interim management of all newly acquired right of way and any improvements thereon, including demolition and disposition of excess property remnants or property rights. In cases where there are existing contracts, such as leases or licenses, involved in the right of way acquired, Property Management also will encompass management of those contracts.

#### **2.7.2.00**      **Right of Way Inventory**

An important property management tool is the right of way inventory. An electronic indexing system for all the Commission right of way is overseen by the Right of Way Manager. Individual property sheets include information such as type and description of asset, title policy, parcel ID numbers, legal description, type of interest, term of rental, instrument of conveyance and effective date, liens and encumbrances, appraisal value, acquisition cost and (federal or state) share of acquisition cost expressed in dollars and dollars per square foot.

#### **2.7.3.00**      **Aging and Receivables Report**

In cases where there are existing contracts involved in the right of way acquired, an Aging/Receivables Report will be developed. This report will include the name of the tenant/licensee, location of the subject property, monthly/annual rent, date rent is due, term, renewal options, date rent will be increased and the basis for rent increase and payment status. All future licenses and right of entry agreements should include standard provisions such as:

- The Commission's right to terminate by providing 30 days written notice to the lessee
- The Commission's right to enter and inspect the property at any time
- Indemnification and hold harmless clauses
- Insurance provisions to protect the Commission against liability

**2.8.00.00 UTILITY RELOCATION****2.8.1.00 Identification**

During the design and engineering process, utilities affected by the proposed construction will be identified. Typically, the affected utilities may need to be relocated, protected in place, or possibly abandoned. Early identification of utility conflicts and early coordination with the utility company is highly recommended as timely design and completion of all utility relocations affect the Commission's ability to commence construction. All potential utility conflicts and their replacement locations will be identified in consultation with the Commission's engineering consultant.

**2.8.2.00 Critical Path**

In preparing the Right of Way Acquisition Schedule, the Right of Way Department will give priority to acquiring properties or property interests necessary for utility relocation.

Right of Way Staff, in conjunction with the project utility coordinator, will be responsible for the negotiation, preparation and execution of utility relocation agreements and it will monitor utility relocation costs and schedule.

**3.00.00.00 TITLE REPORT, ESCROW SERVICES, AND DEEDS****3.1.00.00 TITLE REPORTS****3.1.1.00 General**

For the purpose of this manual the terms “Title Reports”, “Preliminary Title Reports” and PTR” are interchangeable.

**3.1.2.00 Purpose**

Preliminary Title Reports (PTRs) are used to establish ownership and identify liens and encumbrances on real property. PTRs are used in the preparation of surveys, legal descriptions, offer letters, right of way contracts and utility relocation plans.

A PTR is an offer to insure and issue a title policy with the listed exceptions. Most PTRs contain a disclaimer stating that a PTR is not a written representation as to the condition of title to real property, and may not list all liens, defects, and encumbrances affecting title to the land.

California Insurance Code Section 12340.11 states that “Preliminary report”, “commitment”, or “binder” are reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein. No contract or liability exists until the title insurance policy is issued.

**3.1.3.00 Commission and RCA Policy**

It is the policy of the Commission and the RCA to obtain a PTR on all fee simple and less than fee simple property rights acquisitions. However, for Rights of Entry, ownership information can be obtained from the County assessor or an on-line provider of ownership information. Upon identification of the property to be acquired, the Project Engineer, Commission Right of Way Staff or its consultant may order the PTR from an approved title company by providing an assessor’s parcel number, property address or assessor’s map. The title company shall be selected in accordance with the Procurement Policies procedure for procurement of professional services under the micro-purchase limits.

**3.1.4.00 Title Information**

The following title information is typically included in a PTR:

- Owner name and parcel size
- Special assessments
- Trust deeds and mortgages
- Liens and encumbrances such as taxes, easements and judgments
- Covenants and restrictions
- Easements

An updated PTR should be ordered prior to closing escrow on the purchase of properties and property interests in accordance with the Procurement Policy procedure for procurement of professional services under the micro-purchase limits.

#### **3.1.5.00 Title Companies**

Staff will determine the title company it contracts with for each project in accordance with the Procurement Policy procedure for procurement of professional services under the micro-purchase limits.

### **3.2.00.00 LITIGATION GUARANTEES**

#### **3.2.1.00 Purpose**

A Litigation Guarantee ensures the accuracy of interests in the property for purposes of a legal proceeding. It sets forth the current record of title and encumbrances on the real property at issue and identifies the parties who should be named in the lawsuit. The Litigation Guarantee insures against claims of lienholders, if any, who should have been but were not made parties to the action because they were not named in the Litigation Guarantee.

#### **3.2.2.00 Commission Policy**

If a PTR is obtained during the acquisition process, it must be upgraded to a Litigation Guarantee prior to condemnation. If a Litigation Guarantee is obtained during the acquisition process, it must be updated when condemnation proceedings are initiated. Presently, RCA does not utilize eminent domain.

### **3.3.00.00 ESCROW SERVICES**

#### **3.3.1.00 Purpose**

The purpose of using escrow services is to ensure that the title and ownership of properties and property interests acquired by the Commission and the RCA are free and clear of liens and encumbrances that will adversely affect the use of the property for the project. Escrow is a neutral depository for funds and documents deposited by the Commission, the RCA, and other parties.

#### **3.3.2.00 Commission and RCA Policy**

It is the policy of the Commission and the RCA to secure the services of an escrow company in all of its transactions involving the acquisition of properties and property interests. Exceptions for internal escrows may be allowed with approval.

Exceptions include transactions under \$10,000 and where only temporary interests are being obtained.

#### **3.3.3.00 Escrow Instructions**

Upon submission of the purchase and sale agreement to escrow, the escrow company will issue escrow instructions to all parties to the transaction. Documents that may need to be deposited into escrow in order to complete the transaction include:

- Grant deed, quitclaim deed, license, grant of easement, etc.
- Instructions to escrow agent to issue a policy of title insurance in the amount specified in the escrow instruction, vesting title to the Commission or the RCA, free and clear of encumbrances, except those otherwise stated
- Statement indicating which title exceptions, listed in the PTR are acceptable to the Commission or the RCA and may be shown on the title policy
- Instruction as to disposition of taxes
- Authorization to pay the proper demands from lien holders, in accordance with the right of way contract and pay the balance to the grantor(s)

#### **3.3.4.00 Covenants, Conditions and Restrictions**

Title may be acquired subject to the conventional, general or individual type of tract restrictions, provided the nature and effect are known and considered. Unusual covenants or conditions which restrict land for a specific use, such as park purposes, school purposes, or railroads shall be considered particularly as to a possible forfeiture of title upon breach or violation. Releases to clear such reversionary interests should be secured, as necessary. See Section 13.12.00.00 for additional RCA procedures related to Covenants, Conditions and Restrictions.

#### **3.3.5.00 Title Clearance**

It is incumbent on the surveyor, appraiser and the Acquisition Agent to examine the preliminary title report to determine the condition of title. This would include vesting information, liens, encumbrances, easements, covenants, conditions and restrictions, leases, reservations, taxes, assessments, bonds, trust deeds, mortgages and contracts of sale and bonds. Every effort to secure clear title for the Commission or the RCA must be made. Any objectionable title exceptions that cannot be deleted (and as to which the property must be acquired "subject to") will require Caltrans pre-approval for later acceptance into the State Highway System.

The PTR must be analyzed to determine which exceptions will be cleared and which will remain on title to be acquired subject to the encumbrance. Encumbrances involving the public record should include the appropriate book and page or date and instrument number. Liens and encumbrances not listed must be cleared before payment is made. The Acquisition Agent should assist the property owner in clearing title of such liens and encumbrances.

If an encumbrance affects a portion of the grantor's land other than that being acquired by the Commission or the RCA, it does not need to be eliminated. All encumbrances adverse to Commission or the RCA title must be cleared unless adequate reason clearly justifies taking title subject to such encumbrances. The actual and potential effect of each exception on title should be considered. The RCA encumbrances must be viewed with the MSHCP in mind.

#### **3.3.6.00 Payment and Closing Procedure**

The escrow company shall, prior to payment and escrow closing, obtain from the grantor(s) their tax identification number or social security number or federal employer identification number.

The Right of Way Department shall request the Accounting Department to wire the funds necessary to close after receiving the estimated closing statement and wiring instructions from

escrow. Payments to escrow companies may be delivered in person or mail. Submission of payment to escrow companies shall include the escrow number, assessor's parcel number, name of property owner, and check number/check or wiring instructions. Owners are to be notified of the date the payment is delivered to the escrow company.

Delivery of payment for the acquisition of minor property rights, such as rights of entry, permits and temporary licenses, may be delivered by Right of Way Staff or its consultant. Right of Way Staff or its consultant will obtain the signature of the recipient acknowledging receipt of the payment. Payments mailed to owners shall be accompanied by a letter and sent by mail .

It will be the responsibility of the Acquisition Agent to ensure that all documents and payment required for escrow closing be delivered as scheduled. The closing instructions will be reviewed to determine whether all necessary instruments to clear title have been executed and recorded. Taxes shall be pro-rated or in cases of partial acquisitions, properly segregated upon recordation of the deed conveying the property to the Commission. For the RCA acquisitions, escrow requires the Seller to pay all property taxes owed on the property at the close of escrow because the RCA is tax-exempt. The RCA will work with the Seller and the County Tax Assessor's office to refund the property tax assessed for the time period that the Seller no longer owned the property.

#### **3.3.7.00**      **Recording of Documents**

All documents conveying land, easements, realty rights, trust deed, mortgage releases and restrictive easements to the Commission or the RCA, regardless of consideration recited therein, shall be recorded in the appropriate Recorder's Office.

#### **3.3.8.00**      **Escrow Companies**

Staff will determine the escrow company it contracts with for each project in accordance with the Procurement Policy procedure for the procurement of professional services under the micro-purchase limits.

### **3.4.00.00**      **TITLE INSURANCE**

#### **3.4.1.00**      **Purpose**

An owner's policy of title insurance is secured to insure title effectively free and clear of any liens and encumbrances other than current year's taxes and assessments, easements, covenants and restrictions which do not materially or adversely affect the use of the property for the project.

#### **3.4.2.00**      **Commission and RCA Policy**

It is the policy of the Commission and the RCA to secure title insurance for all long-term property interests. Staff will order a title insurance policy in accordance with the Procurement Policy procedure for the procurement policies of professional services under the micro-purchase limits.

### **3.5.00.00**      **ALTA SURVEY**

#### **3.5.1.00**      **Purpose**

An ALTA Land Survey is the most comprehensive of all surveys. It provides the same monetary coverage as a standard policy, but it covers the property owner against additional risks. An ALTA survey is used to determine property lines, locate improvements, identify easements, utilities, and many other conditions affecting the property.

### **3.5.2.00**      **Commission and RCA Policy**

It is the policy of the Commission and the RCA to secure an ALTA survey for any acquisition where there may be a dispute over the property boundary.

## **3.6.00.00**      **DEEDS**

### **3.6.1.00**      **Fee Simple Title**

An unencumbered fee simple title to real property gives its owner the right to use and enjoy the property in any manner, provided its uses are in compliance with prevailing laws and ordinances. Fee simple title represents the whole bundle of rights over real property from which many pieces or segments may be conveyed or licensed.

### **3.6.2.00**      **Conveyances**

- Grant Deed. The transfer of all rights and control over real property. It is used to acquire fee simple title to real property. Includes statutory warranties.
- Grant of Easement. The transfer of a possessory interest less than fee simple title to real property. Easements may be permanent or temporary depending on project requirements and may include temporary construction easements, aerial easements and public utility easement, and conservation easements.
- Quitclaim Deed. The transfer of any right held by the grantor over real property. Includes no statutory warranties. This is the least desirable means of acquiring property rights.
- Final Order of Condemnation. The transfer of any right sought through the eminent domain process.

### **3.6.3.00**      **Forms**

All forms of legal instruments used to acquire property and property rights on behalf of the Commission and the RCA shall be “approved as to form” by legal counsel.



**4.00.00.00 SURVEYS AND LEGAL DESCRIPTION****4.1.00.00 SURVEYS****4.1.1.00 Purpose**

The purpose of a survey is to establish and calculate property ownership boundaries, right of way requirements and excess land. It is used as a basis for all right of way and in a case by case basis for MSHCP land acquisitions and legal descriptions.

**4.1.2.00 Commission and RCA Policy**

It is the Commission's and RCA's policy to establish property boundaries for the following acquisitions:

- Total parcels
- Partial parcels
- Permanent easement rights
- Temporary construction and access easements
- Excess land

All surveys shall be signed and sealed by a licensed surveyor or engineer.

**4.1.3.00 Survey and Right of Way Engineering Companies**

It is the Commission's and RCA's practice to establish an approved list of "on call" survey companies through an open and competitive procurement process.

**4.2.00.00 LEGAL DESCRIPTION****4.2.1.00 Purpose**

The purpose of a legal description is to accurately define, from legally established monuments and survey data, land areas or rights to be conveyed.

**4.2.2.00 Methods of Legally Describing the Fee or Portion Thereof**

- Metes and Bounds Description. This method defines the perimeter of the area by directions and/or bearings and distances. This type of description must commence at a known established monument, such as section corner or be "tied" to a subdivision or portion thereof that has been previously filed at a Recorder's office.
- Centerline or Baseline Description. The centerline method is sometimes used for highway purposes and identifies the right of way as being a strip of land offset on either side by a specified width oriented to a center line. The baseline method is employed in the same manner as the centerline except right of way is dimensioned from the baseline rather than centerline. When the baseline is used it should reference the center median of the highway whenever possible. The centerline or baseline for right of way descriptions must be "tied" to section corners or lot corners of properly filed subdivisions.
- Government Land Survey Description. This method describes land in relation to the government land survey system under which land is broken down into areas called

townships. Townships are for the most part 36 square miles or 6 miles square. Each township is broken down into 36 sections; each section is usually 640 acres. Sections in each township are numbered consecutively beginning with number 1 in the northeast corner of the township, and counting right to left then left to right and so on weaving back and forth through the sections of the township, and ending with number 36 in the southeast corner.

- Lots and Block Description. This method is based on plat maps lodged with the County public records. The plat map subdivides areas into subdivisions, which may then be divided into blocks and lots.

#### **4.2.3.00**      **Description Writers**

It is preferred that legal descriptions be written and plat maps prepared by the same company that prepared the survey for the property or property interest being acquired.

#### **4.2.4.00**      **Commission and RCA Policy**

It is the Commission's and RCA's policy that a currently licensed surveyor stamp be included on all legal descriptions for the following acquisitions:

- Total parcels (when needed)
- Partial parcels
- Permanent easement rights

**5.00.00.00 APPRAISAL****5.1.00.00 REAL PROPERTY APPRAISAL BASIC OPERATING POLICIES****5.1.1.00 Policy**

It shall be the policy of the Commission to secure at least one appraisal of each acquisition having an estimated value exceeding \$10,000. Appraisals will be prepared in an approved appraisal format and comply with the provisions of Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, California eminent domain law and the Uniform Standards of Professional Appraisal Practice (USPAP) and/or the Uniform Appraisal Standards for Federal Land Acquisitions ("Yellow Book"), prior to initiation of negotiations. All appraisals for projects utilizing federal funds will be reviewed by a qualified review appraiser. RCA's appraisal standards are set forth in the MSHCP and explained further in Section 13.8.00.00 of this Manual.

**5.1.2.00 Necessity for Appraisal**

An Appraisal is necessary to ensure compliance with the Constitutional requirement to pay "Just Compensation" when private property is acquired or damaged for public use. The measure of "Just Compensation" is "fair market value" which is contained in an Appraisal Report.

An appraisal is generally required for acquisition and record keeping purposes. The report shall contain a summary of basic information, determination of highest and best use and conclusions together with pertinent supporting data.

**5.1.3.00 Appraisal Not Required**

An appraisal is not required if the Commission determines that an appraisal is unnecessary because the valuation problem is noncomplex and the fair market value is estimated at \$10,000 or less, based on a review of available data. An appraisal waiver may also be used up to a maximum of \$25,000, if the Commission offers the property owner the option of having the Commission appraise the property and the property owner declines the appraisal.

The right of way department staff may prepare a waiver valuation. A waiver valuation is not an appraisal and is used merely for documentation in support of the amount of Just Compensation to be paid to the property owner. A "Determination of Just Compensation" will be prepared using the appraised value as the basis. The "Determination of Just Compensation" may be documented with a diary entry, stating the basis of the value conclusion, i.e., land value (with calculations) and improvement value. In addition, a photograph(s) of the property must be included. Waiver valuations are not subject to USPAP or Yellow Book.

Waiver valuations cannot be used for condemnation proceedings, including precondemnation offers required by the Government Code.

The RCA may prepare an appraisal for property donations for asset valuation purposes (i.e., compliance with (GASB 51).

The criteria to be considered in making the determination of whether the parcel valuations are noncomplex are:

- There is no serious question as to highest and best use
- Adequate market data is available
- Substantial damages and benefits are not involved
- There is no substantial decrease in market value due to the presence of hazardous waste.

#### **5.1.4.00 Review Appraisal**

All appraisals for federally funded projects, whether prepared by Commission staff or by an independent fee appraiser, must be reviewed by an independent review appraiser.

Before an appraisal is sent to a review appraiser, Commission staff shall internally review the appraisal to ensure that it accurately states the following:

- Property address
- Property owner(s) name
- Property APN
- Purpose of the appraisal
- Property interests to be acquired
- Legal description and plat map of the property interest to be acquired

The review appraiser must review the appraisal(s) for compliance with the appraisal contract, State and Federal Law requirements and USPAP and/or Yellow Book. The review appraiser may choose from the following:

- Recommend the valuation of an appraisal as Just Compensation
- Not recommend or accept the appraisal even though it meets all requirements
- Develop and report an amount believed to be Just Compensation

When the review appraiser finds the report lacking in content, support, reasoning, or conclusion, the review appraiser may elect to supplement the areas considered lacking, including modifying the appraised value. A written report clearly delineating the areas in question and full support and documentation for the reviewer's conclusions must be provided. In addition, review appraisers may work with the first appraiser to modify the appraisal report to correct any deficiencies.

#### **5.1.5.00 Notice to Property Owner of Decision to Appraise**

When the Commission decides to appraise a property for acquisition, written notice must be given to the property owner. The written notice shall include the following:

- The specific area being considered for a particular public use, i.e., the project
- The owner's property is located within the area
- That all or a portion of the owner's property (which should be generally described) may be acquired for public use

- An offer for the owner or owner's representative to accompany the appraiser on an inspection of the property
- Reasonable notice of the date and time of the inspection

For Commission projects, enclosed with the written notice will be a written explanation of the eminent domain process and description of property owner rights and a Title VI Brochure.

#### **5.1.6.00**      **Record Keeping**

The original appraisal and review appraisal, when applicable, as well as an electronic copy, shall be kept in each parcel file.

#### **5.1.7.00**      **Fee Appraisers and Review Appraisers**

It is the Commission's policy to establish an approved list of "on call" fee appraisers and review appraisers.

### **5.2.00.00      REAL PROPERTY APPRAISAL REPORTS**

#### **5.2.1.00**      **Noncomplex Valuations**

Appraisal reports of noncomplex valuations of \$25,000 or less must include at least the following:

- Parcel summary page
- Senior Field Review Certificate
- Certificate of Appraiser
- Photograph(s) of the property
- Index map
- Appraisal map
- Comparable data pages with photographs
- Comparable data map
- An identification of significant personal property

Waiver Valuations with a determination of Just Compensation less than \$10,000 must include the following:

- Determination of Just Compensation and Title Page
- Certificate of Determination of Just Compensation
- Parcel summary page
- Senior Review Certificate
- Photograph(s) of property
- Index map
- Appraisal map
- An identification of significant personal property

Waiver valuations may be prepared by knowledgeable Commission staff and do not have to be completed by a licensed appraiser.

**5.2.2.00 Appraisal Formats**

Appraisal Report Format - USPAP 2-2(a). This format is required when there are other intended users in addition to the client and one of the following occurs:

- There is a substantial acquisition and the appraisal problem is judged to be complex. The complexity might be due to the nature or value of the acquisition of land, improvements, property rights, and/or consequential damages resulting from the acquisition.
- The highest and best use of a property is different from existing use.
- The remainder is an uneconomic remnant.
- Damages, other than cost to cure, are more than nominal.
- Decreases or increases in market value due to the proposed improvements are involved.
- More than one approach to value will be applied.
- Restricted Appraisal formats are unsuitable for any reason.
- There is a possibility of eminent domain proceedings.
- A “Complex Specialty” report is needed. Specialty Reports are used to assist the principal appraiser in estimating contributory value of specialty items, such as machinery and equipment.
- A Uniform Residential Appraisal Report (URAR Form) may be used when the following occurs:
  - The subject property is a single-family residence.
  - The residential improvements represent the highest and best use of the property.
  - It is a total acquisition or in the case of a partial acquisition the remainder is an uneconomic remnant.

Restricted Appraisal Report Format - USPAP 2-2(b). This format shall be used when the only intended user is the client and one of the following occurs:

- The value will be low but the property requires an appraisal.
- The appraisal involves only vacant land or land with minor improvements.
- Before and after valuations are not required.

**5.2.3.00 General Criteria for Appraisals**

- Appraisals may not include any payment of relocation assistance benefits or consider that such relocation payments will be made.
- Appraisals must be independently prepared, and each appraisal must be signed by the individual(s) making the appraisal and include appropriate certification prior to submittal for review.
- Documentation by reference is acceptable when the referenced material is in the Commission’s files.
- Qualifications of all appraisers and all technicians who contribute to the report must be in the Commission’s files or in the report.
- Fee appraisers must be State Licensed.

- Appraisals must be consistent with the Uniform Standards for Professional Appraisal Practice (USPAP).
- Appraisals may also need to be consistent with the Uniform Appraisal Standards for Federal Land Acquisitions (“Yellow Book”).
- Appraisals must comply with State approved requirements.

#### **5.2.4.00 Instructions to Appraisers**

When Commission staff order an appraisal, clear and specific written instructions in the form of a scope of work will be provided which will include the following information:

- Address of the property to be appraised
- Assessor’s Parcel Number
- Owner of the property, mailing address and phone number (if available)
- Name of tenant (if any), mailing address and phone number (if available)
- Purpose of the appraisal (estimate Just Compensation; disposal/sale of excess; etc.)
- Interest to be appraised (total/partial acquisition; easement; aerial rights; rental estimate; access rights; loss of business goodwill; outdoor signs)
- Legal description of property (in cases of partial acquisition, provide legal description of remainder)
- Survey/plat maps/GIS exhibits
- Fee to be paid to appraiser (if more than one (1) appraisal is involved, itemize fees)
- Specific date when appraisal(s) is due to be completed
- Contact person at the Commission or the RCA

#### **5.2.5.00 Approaches to Value**

- Sales Comparison Approach. This approach should be developed and relied upon whenever there is adequate market data. The approach shall include adequate research to identify all pertinent similar properties for which sales, listings or rental data are available.

All comparable information will be verified with the buyer, seller, broker or other person having knowledge of the price, terms and conditions or the reason for not so confirming shall be stated.

Significant adjustments for similarities and dissimilarities such as market conditions, location, physical and economic characteristics, and motivation for the transaction shall be individually explained. Substantial lump sum adjustments are not acceptable.

- Cost Approach. This approach can be relied upon when appraising a special purpose property. However, this should not be used unless the special purpose improvements develop the property to its highest and best use and a potential buyer would reasonably consider, as an alternative, the cost of acquiring comparable site and reproducing the improvements. The cost of the improvements to a site with a different highest and best

use should be addressed together with the incurable obsolescence inherent in this type of analysis.

This approach shall consist of factual data beginning with reproduction or replacement cost and shall state the specific sources of all figures used. Physical deterioration, functional and external obsolescence shall be individually supported in narrative form. All calculations must be shown. The appraiser's opinion of the value of the land shall be supported by confirmed comparable sales in the same manner as in the sales comparison approach.

- Income Approach. Reliance on this approach is appropriate when the property is income providing, including but not limited to rental properties. It shall include verified market data arranged to show and support, as a minimum, gross economic rent or income, allowance for vacancy and credit losses, itemized estimate of each pertinent expense and any reserves for replacement.

Capitalization of net income shall be at a rate prevailing in the market for the type of property and location. Capitalization technique and rate used shall be explained in a narrative form and supported by a statement of the market facts, which support such rates and factors, and appraiser's analysis of such market factual data that leads to the conclusion of the capitalization rate.

#### **5.2.6.00 Special Appraisal Considerations**

The following are special considerations in reviewing appraisals (internally):

- American with Disabilities Act of 1990 ("ADA"). The ADA applies to any public accommodation, commercial facility or private entity that offers examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional or trade purposes. It requires that all new improvements after January 26, 1993, must be designed and constructed to be readily accessible and usable by individuals with disabilities.

Property to be appraised shall be inspected on the date of valuation for its compliance or non-compliance with ADA regulations. All comparable sales should be analyzed as to their compliance or non-compliance to ADA regulations.

- Hazardous Waste or Materials. Properties that involve hazardous waste or materials (as defined by state and federal laws) will be appraised under two scenarios. The first reflects the hypothetical condition as if free and clear of hazardous waste and the second is recognizing the effects of hazardous waste or materials, or "as is." For the second valuation the appraiser must consider the estimated cost of cleanup requirements, provided by the environmental consultant, market data of properties with comparable cleanup problems and marketability of parcels with known hazardous waste problems.



- Access Rights. The value of access rights is measured by the loss of value of the remaining property before and after the restriction.
- Agricultural Improvements. Agricultural buildings, farm residences and specialized fences will be valued as improvements at depreciated value in place.
- Severance Damages. Severance damage is the loss in value of remaining property after acquisition and construction. Severance damages are valued by appraisal of the remainder as a portion of the total property in the before condition and as a remainder in the after condition (disregarding the benefits of the construction project).
- Cost to Cure. Some severance damages may be mitigated or entirely eliminated by estimating the cost to cure the damage.
- Benefits. Benefits are valued by appraising the remainder before and after the acquisition and construction of the project. Benefits are to be offset against any severance damages.
- Public Utility Parcels. Property owned in fee by public utilities (including governmental utility agencies) utility agencies, irrigation districts and flood control districts may be subject to special treatment, including the purchase of replacement land for exchange.
- Excess Land Appraisal. Excess land will be valued using a Market Value Appraisal or Market Value Determination (\$10,000 or less) and excess land with a highest and best use as plottage (joinder or assemblage) to an adjoining property will be appraised at the amount it adds to the value of the adjoining property unless directed otherwise by staff. The before and after valuation method will be used when appropriate.
- Airspace Valuations. Methods in appraising airspace rights will be the same as those applied in appraising any right of way acquisition parcel, except that consideration should be given to all of the factors that may limit or enhance its utility because of the existence of the project improvement located on or near the parcel. Full consideration will be given to any enhancement of real estate values in the area because of the location of the project improvement.
- Rent Determination. A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

### **5.3.00.00      UNIFORM REGULATIONS**

#### **5.3.1.00      The Uniform Relocation Act**

Regulations implementing appraisal standards of the Uniform Relocation Act are found in 49 CFR Part 24. The Uniform Relocation Act applies to any federal or federally-assisted program or project if federal funding is to be used in any phase of the program or project. Federal funding for the right of way acquisition is not the key in determining whether or not federal requirements

apply to appraisals. If federal funds are going to be used in any part of the project, but not in acquiring right of way, the Uniform Relocation Act still applies to the appraisals and acquisitions.

### **5.3.2.00 Purpose**

The purpose of the Uniform Relocation Act is to ensure that all property owners are treated fairly and uniformly when it is necessary for their property be acquired for any Federal or federally-assisted program or project.

### **5.3.3.00 Appraisal Requirements of the Uniform Relocation Act**

The amount determined to be Just Compensation must be established by the Commission before the initiation of negotiations (the first time a formal written offer is presented to the owner preferably in person or by certified mail, if necessary).

Any decrease or increase in the market value of the property, which is caused by the public improvement or its likelihood prior to the date of valuation, must be disregarded by the appraiser, except physical deterioration within the reasonable control of the owner.

When property values go up or down because of the proposed public improvement, the appraiser must disregard such changed value when estimating the before value but not in estimating the after value as permitted by state law, typically represented as damages and/or benefits.

The appraiser should consider the possibility of uneconomic remnants and the Commission must offer to buy any remainder that is of little or no value or utility to its owner.

The appraiser must separately state damages to the remainder property and value of the property acquired.

All buildings, structures and improvements, including those owned by tenants, as part of the real property if they will be required to be removed or will be adversely affected must be valued by the appraiser.

Tenant owned buildings, structures and improvements must be appraised as part of the real property based on their contributory value as if they could remain in place, or their value for removal (salvage value), whichever is greater. Lease terms requiring tenants to remove building, structures or improvements must be disregarded and appraise as if they could stay through their useful life as extended by normal maintenance.

If the Commission acquires any interest in real property, it must acquire equal interest in any buildings, structures and improvements located upon the real property, which the Commission will require to be moved or will adversely affect.

This also applies to tenant owned buildings, structures and improvements located on the real property, even if the tenant is required by lease to remove them at the end of the lease. Such buildings, structures and improvements will be valued at contributory value as part of real property or value for removal (salvage value), whichever is greater.

An adequate description of the items identified as personal property. When there is an agreement as to ownership between fee owner and tenant, the Commission must make a separate offer to tenant for tenant owned buildings, structures and improvements, thus, there must be a separate appraisal.

#### **5.4.00.00 CALIFORNIA REGULATIONS**

##### **5.4.1.00 Regulations**

Appraisal requirements for any acquisition that utilizes the power of eminent domain in the State of California are found in Government Code Section 7267, et seq. and California Code of Civil Procedures 1263, et seq.

##### **5.4.2.00 Purpose**

The purpose of the California regulations is to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices.

##### **5.4.3.00 California Appraisal Requirements**

The owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during his or her inspection of the property.

The fair market value of the property acquired is defined as the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

The appraisal shall include the date of valuation, highest and best use, applicable zoning of property, principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value, if appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

Compensation for damages to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded.

##### **5.4.4.00 Property Owner Appraisals**

California Code of Civil Procedures 1263.025 requires the Commission to offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000) of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of

eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal must be conducted by an appraiser licensed by the Bureau of Real Estate Appraisers.

When dealing with an RCA project, property owners often obtain a second appraisal to negotiate as outlined in Section 6 of the MSHCP.

#### **5.4.5.00 State Requirements**

All appraisals for State Highway System projects must meet all conditions and forms outlined in Chapter 7 of the Caltrans Right of Way Manual.

### **5.5.00.00 SPECIALTY APPRAISALS**

#### **5.5.1.00 Outdoor Advertising Signs**

Outdoor advertising signs will be valued as improvements unless they are owned by outdoor advertising companies. If relocation of such signs is feasible, that fact may be shown for information purposes only. Outdoor advertising signs may be valued by a goodwill appraiser or a fixtures and equipment appraiser. Caltrans Right of Way Manual 7-EX-14 contains a schedule for outdoor advertising values, however, the schedule may not be utilized for condemnation. Legal counsel should be consulted as to the approach for valuing outdoor advertising signs.

#### **5.5.2.00 Mobile Homes**

As a general rule, mobile homes are considered realty if installed on the owner's land. They are considered personal property if tenant-owned or they do not meet "decent, safe and sanitary standards"; no adequate number of suitable replacement sites are available; or, they are not roadworthy and thus incapable of being moved. Mobile Homes that are considered personal property should not be valued as they will be covered under Relocation Assistance.

#### **5.5.3.00 Goodwill Appraisals**

Code of Civil Procedure, Title 7, Eminent Domain Law, Chapter 9, Article 6, Sections 1263.510, 520 and 530 provide the basis for compensating the owner of a business for the loss of goodwill.

The business owner shall be compensated for the loss of goodwill if the owner proves that the loss is caused by the Commission's acquisition of the property and that the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting measures that a reasonably prudent person would take and adopt to preserve the goodwill. The business owner has the burden of proof for loss of goodwill.

The business owner must be notified, in writing, of the owner's right to claim a loss of business goodwill. The notice must be sent by certified mail with return card requested together with a questionnaire asking for information about the business. A reasonable time for the owner to respond must be set forth in the letter.

Goodwill valuation shall be prepared under the direction of the Commission's legal counsel. Reports will be submitted to the Commission's legal counsel.

**5.5.4.00      Fixture and Equipment/Improvements Pertaining to Realty Appraisals**

Trade fixtures, equipment, machinery, and other items installed for use on a property will be appraised if they cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed. Appraisals for improvements pertaining to realty shall be prepared by a qualified individual in accordance with current and appropriate standards and will contain cost sources for each item.

**5.6.00.00      CONTRACT APPRAISERS****5.6.1.00      Approved Contract Appraisers**

It is the Commission's and RCA's policy to establish a current roster of approved contract appraisers through the procurement process. This roster will be updated according to procurement guidelines and based on the Commission's and RCA's work requirements.

**5.6.2.00      Selection of Contract Appraisers**

Every effort shall be made to select the most qualified appraisers available to the Commission. Appraisers will be classified into:

General Fee Appraisers. Appraisers qualified to perform all types of appraisals will be included in this classification, such as residential, commercial, industrial and agricultural property appraisers.

Specialty Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate airspace leases, hazardous waste, mobile homes, outdoor advertising signs or other specialty items. Specialists performing services of this nature may be members of appraisal or engineering firms whose principal occupation is the appraisal of specialty items, contractors who are engaged in the installation of such items or equipment, or suppliers or dealers of such specialty items who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and thereby document their opinion in accordance with accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

Goodwill Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate business goodwill for a variety of businesses. Specialists performing services of this nature may be members of appraisal firms whose principal occupation is the appraisal of going concerns and who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and document their opinion in accordance with the Uniform Standards of Professional Appraisal Practice or any other applicable standards and accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

Furniture, Fixtures and Equipment Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate furniture fixtures or equipment or other specialty items. Specialists performing services of this nature may be members of appraisal or engineering

firms whose principal occupation is the appraisal of personal property items, contractors who are engaged in the installation of such items or equipment, or suppliers or dealers of such items who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and thereby document their opinion in accordance with the Uniform Standards of Professional Appraisal Practice or any other applicable standards and accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

**5.6.3.00**      **Non-Competitive Proposals for Contract Appraisers**

In instances when Specialty Items will be appraised, the Right of Way Department may select the most qualified appraiser(s) available for the particular assignment. Consideration should be given to anticipated appraisal problems, talents, skills and special qualifications of the individual appraiser. The Right of Way Manager shall exert best efforts in negotiating the lowest cost possible for the appraisal assignment.

**5.6.4.00**      **Review Appraisers**

It is the Commission's and RCA's policy to establish an approved list of "on call" review appraisers through the procurement process. Review appraisal contracts will be awarded in the same manner as contract appraisers.

**6.00.00.00 ACQUISITION, NEGOTIATION, AND EMINENT DOMAIN****6.1.00.00 GENERAL PROVISIONS****6.1.1.00 Purpose**

The purpose of this section is to establish the Commission policies and procedures related to the acquisition function in negotiations for land, property and rights necessary for the proper and economical construction and maintenance of Commission projects. The intent and purpose of the policies and procedures are to assure uniform acquisition practices, which will provide consistent and equitable treatment of owners and tenants of real property acquired by the Commission for public purposes.

**6.1.2.00 Authority to Acquire Land**

Public Utilities Code Section 130220.5(a) authorizes county transportation commissions, including the Commission, to make contracts and enter into stipulations of any nature whatsoever either in connection with eminent domain proceedings or otherwise.

**6.1.3.00 Federal Code Requirement**

Acquisition of private property for public use utilizing federal funds is to be in accordance with the following:

- United States Code entitled “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) 49 CFR Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17; and the Final Rule dated January 4, 2005.
- 23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712 and 713 – The Federal Highway Administration, Right of Way Program Administration
- Federal Highway Administration, Office of Real Estate, Project Development Guide
- Federal Transit Administration Circular 5010.1E dated July 16, 2018, as amended, titled Federal Transit Administration Grant Management Requirements
- Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21)

**6.1.4.00 State Oversight Projects**

Commission projects on the California State Highway System (on-system) will have State oversight and must adhere to Chapter 17 of the Caltrans Right of Way Manual. Commission projects utilizing FHWA or State funds that are not on the State Highway System (off-system) will also have State oversight and must adhere to Chapter 13 of the Caltrans Local Assistance Procedure Manual.

**6.1.5.00 Terminology**

For purposes of this Right of Way Manual, the following terms are synonymous:

- Acquisition and negotiation
- Negotiator, acquisition consultant, acquisition agent and right of way consultant
- Right of Way Staff and contract negotiator

- Offer and offer of Just Compensation
- Eminent domain and condemnation

**6.1.6.00 Acquisition of Real Property Interest**

All rights, title, interest of fee and subordinate interests in real property within the right of way and/or easement boundaries are to be acquired as necessary for economical construction, operation, protection, support, preservation and maintenance of the project.

**6.1.7.00 Occupancy of Right of Way**

The area within right of way boundaries is devoted to public use. Any encroachments, use of airspace, joint development or multiple uses of right of way and installation of public and private facilities must be in accordance with established regulations and policies governing such uses.

**6.1.8.00 Public Meetings or Hearings**

Right of Way Staff may be required to attend public meetings and hearings when the Executive Director, Project Delivery Director or project management staff present information concerning the Commission's projects and programs. The Right of Way Staff will be available to answer questions concerning the Commission's right of way acquisition process and will become familiar with possible problems that may arise during the right of way acquisition process.

**6.1.9.00 Project Field Inspection**

Right of Way Staff are encouraged to participate in project field inspections. If field inspections reveal that a revision in the design would contribute to the social, economic or environmental effects of a project, the Right of Way Manager should immediately advise the Project Manager.

**6.1.10.00 Pre-Negotiation Public Relations Contacts**

Acquisition Agents may be assigned to make or receive calls from property owners and discuss right of way procedures and provide general information concerning the proposed project prior to actual offers and negotiations. Right of Way Staff, who may be later involved with the appraisal, acquisition, or relocation for the project, may make or receive such calls. Care should always be taken to avoid discussing assumptions, possible offers, possible damage, value conclusions or any other discussion that may lead to a claim of pre-condemnation damages. This initial call should be brief and is only intended to provide project information and promote public relations.

**6.1.11.00 Who Conducts Negotiations**

- Right of Way Staff. Negotiations for the acquisition of real property and/or property rights for Commission and RCA projects will be conducted by qualified Right of Way Staff.
- Acquisition Consultants. Negotiations may also be conducted by Acquisition Consultants who have a written agreement with the Commission or the RCA, as appropriate, and under the direction of the Right of Way Manager.

**6.1.12.00 Relocation Assistance Information**



Residential owner occupants being displaced are to be provided an explanation of the relocation benefits for which they are eligible. General relocation assistance information should be provided at the same time or shortly after the offer.

## **6.2.00.00 COMMISSION ACQUISITION POLICIES**

### **6.2.1.00 General Policies**

- It is the policy of the Commission that all negotiations shall be expeditious and result in the property owner receiving Just Compensation, the settlement being just and fair to the owner and the public. Every courtesy, consideration and patience will be extended to the property owner to create and establish trust in the Commission, the members of its Board of Commissioners and its employees.
- All offers shall represent the approved amount of Just Compensation as determined through the Commission's valuation procedures. Right of Way Staff or the Acquisition Agent shall make a reasonable effort to demonstrate and promote confidence in the approved Just Compensation offer.
- If the Acquisition Agent discovers facts, which were not recognized in the Just Compensation, the information shall be made available to the Right of Way Manager who will evaluate and give full consideration to those items prior to continuation of negotiations.
- Acquisition Agents must demonstrate that they represent the interest of the property owner as well as those of the public. Care should be exercised at all times to protect the interests of owners who may be unfamiliar or inexperienced in real estate transactions.
- Acquisition Agents are required to maintain a written record of negotiations, documenting that all elements of the transaction were given adequate consideration and that there was a mutual understanding between the Acquisition Agent and the property owner.
- The Commission shall make every reasonable effort to expeditiously acquire real property by negotiation. Real property shall be appraised before initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during the inspection of the property.

### **6.2.2.00 Payment Prior to Possession**

No owner will be required to surrender possession of real property acquired by the Commission prior to the deposit of payment of the agreed purchase price or the amount of Just Compensation into escrow if a Possession Clause is included in the Purchase and Sale Agreement. If a Possession Clause is not included in the Purchase and Sale Agreement, then possession will be obtained at the close of escrow.

### **6.2.3.00 Coercion**

In no event shall the Commission either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

**6.2.4.00 Institution of Condemnation Proceedings**

If any interest in real property is to be acquired by exercise of the power of eminent domain, the Commission shall institute formal condemnation proceedings.

**6.2.5.00 Acquiring Property Owned by a Commission Employee, Member of the Board of Commissioners, or The RCA Board of Directors**

When the property or property interest to be acquired by the Commission is owned fully or partially by a Commission employee or a member of the Board of Commissioners, the Right of Way Department will consult legal counsel to ensure that conflict of interest laws are not violated.

**6.2.6.00 Functional Replacement of Real Property in Public Ownership**

When publicly owned real property, including land and/or facilities, is to be acquired by the Commission in lieu of paying the fair market value of the real property, the Commission may, with prior approval of FTA or FHWA, provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. (See 23 CFR Part 710.509).

**6.2.7.00 Continuation of Possession on Rental Basis**

If the Commission permits an owner or tenant to occupy their real property acquired on a rental basis for a short term, or for a period subject to termination by the Commission on short notice, the amount of rent required shall not exceed the fair market rent of the property for short term occupancy.

**6.2.8.00 Reimbursement of Property Owner's Out of Pocket Expenses**

The Commission may reimburse property owners for expenses incurred in development of a property, when development is interrupted by acquisition, provided certain criteria are met and an audit of the validity of the claimed expenses supports such payment. Expenses incurred by the property owner for the following items may be reimbursable by the Commission, subject to entering into a written agreement:

- Change in development, architectural, structural and drainage plans
- Map checking fees
- Building permit fees materials
- Survey fees
- Inspection fees

**6.2.9.00 Reimbursement of Mortgage Prepayment Penalty**

Owners will be reimbursed for actual penalty costs for prepayment of a preexisting mortgage entered into in good faith and recorded prior to initiation of negotiations.

**6.2.10.00 Options**

The Commission may consider utilizing options on a project specific basis. Options allow the Commission to reserve rights to purchase the property in the future by making an upfront payment substantially less than the full market value of the property. Options may be entered

into prior to completion of the environmental process (NEPA/CEQA) with the permission of the funding agency. The future purchase price of the property may be established at the time the option is purchased, or the option may define the process by which fair market value is determined.

#### **6.2.11.00 Incentive Payments**

The Commission may consider utilizing incentive payments on a project specific basis. Incentive payments provide for an agency to pay an additional amount above the appraised value if the property owner signs within a specified timeframe. The funding agency should be consulted prior to implementation of an incentive payment program as the federal agency may or may not participate in the incentive payment program.

### **6.3.00.00 COMMISSION ACQUISITION PROCEDURES**

#### **6.3.1.00 Just Compensation**

Prior to initiating negotiations for the acquisition of real property, the Executive Director or designee shall establish an amount which it believes to be Just Compensation. In no event shall the amount of Just Compensation be less than the Commission's approved appraisal of the fair market value of the property.

#### **6.3.2.00 FTA Appraisal Concurrence**

For FTA projects, prior FTA concurrence is required when the Commission's recommended offer of Just Compensation exceeds \$1,000,000, or when a property appraised at \$1,000,000 or more must be condemned. Appraisals and appraisal reviews must be submitted for review.

#### **6.3.3.00 Pre-Negotiation Preparation**

The Negotiator should ensure possession of all materials and information necessary to conduct and complete negotiations for the orderly and efficient acquisition of a property for the proposed project. At a minimum, the Negotiator should be supplied with the following:

- Title report of all recorded interests in the property
- Survey/plat, legal description or appraisal map
- Documents necessary to acquire all interests
- Right of way plans
- Appraisal reports
- Basis for Just Compensation
- Offer letter
- Title VI Brochure
- Overview of the Eminent Domain Process and Description of Property Owner Rights Brochure

In order to make an informed explanation of the proposed acquisition to an owner, the Negotiator should make a comprehensive study of the plans, title report, appraisal report and basis for Just Compensation.

**6.3.4.00 Initiation of Negotiations**

The term “initiation of negotiations” relates to the date on which the Commission presents the property owner, or their designated representative, a written offer for purchase of the property or rights to be acquired. When non-resident owners are involved who cannot be contacted in person, initiation of negotiations for the property shall be the date such owner or his designated representative received the first communication by mail or telephone from the Commission in which a monetary offer to purchase is made. Certified mail with return receipt requested must be used when the above contact is made by mail to establish and document the date that the written offer is received by the property owner or by their representative.

Should several individuals own fee interest in the property, delivery of the offer letter to one of the owners is sufficient to establish the date of initiation of negotiations, however, all owners are to be provided with all relevant offer items.

**6.3.5.00 Prompt Offer of Just Compensation**

All offers of Just Compensation shall be promptly presented to property owners or their designated representatives. The Right of Way Department should determine the appropriate timing for delivery of offers within the scope of good negotiating practices. If offers cannot be made within six months of the completion of the appraisal, the Right of Way Manager should be consulted as to whether or not an updated appraisal is appropriate.

**6.3.6.00 Offer Letter**

A written offer will be made to the owner or owners of record to acquire the property for the full amount established. The offer may be conditioned upon the Commission’s ratification of the offer by execution of a contract.

As part of the written offer, the property owner will be informed of their right to secure an appraisal and that the Commission will reimburse the cost of such appraisal report up to \$5,000 (Code of Civil Procedure Section 1263.025).

The offer letter should also advise the property owner of the right to leaseback the property for one year at fair market rent unless the Commission states in writing that the use of the property is scheduled to begin within two years of acquisition (Code of Civil Procedure 1263.615).

**6.3.7.00 Tenant Interests**

In some cases, tenants on the property may have interests in the real property for which the offer is being made. The following are guidelines on drafting the offer for when tenants may have an interest:

- **Fee Owner Offer.** An offer letter is to be delivered to the fee owner or a designated representative. However, the real property interests and amounts included in the offer may vary dependent on tenant ownership of the improvements.
- **Tenant Offer.** Tenants who have the right or obligation to remove real estate property improvements which contribute to the real estate value, as determined in the appraisal process, have a compensable interest in those improvements. Compensation may include

the contributory fair market value for the improvement being acquired or other value for removal purposes.

When a separate amount of Just Compensation is approved for an improvement owned by a party other than the owner of the land, such as a tenant, the offer to the tenant will be conditioned upon the tenant obtaining execution of the necessary disclaimer (release of structures or leasehold) from the owner of the land. Payment for such improvements shall not be made unless the owner of the land disclaims all interest in the tenant improvement. The owner of the land may disclaim his interest in such improvement by executing a deed of conveyance of right, title and interest, a quitclaim or a disclaimer. Tenants are afforded the same rights and protection as fee owners. Should a tenant reject the offer made for the improvement, it will be necessary to condemn all interest in the property including the fee ownership.

- Combined Fee and Tenant Offer Letter for Condemnation Purposes. Immediately prior to condemnation proceedings for a parcel where tenant-owned structures are involved, an offer letter will be presented to all fee owners of record or their designated representative. The offer will be the total of the amount of Just Compensation for the fee and tenant.

#### **6.3.8.00 Offer Package**

Along with the offer letter, each owner or representative will be provided with the following:

- California Government Code Section 7267.2 (b) requires the property owner to be provided a summary of the basis for the amount it established as Just Compensation. However, the Commission will provide a full copy of the appraisal with each offer which includes at a minimum:
  - The date of valuation, highest and best use, and applicable zoning of property.
  - The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.
  - Where appropriate, the Just Compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.
- Informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law (Gov't Code Section 7267.2(a)(2))
- Conveyance documents
- Purchase and Sale Agreement
- Summary of rights under Title VI
- Project information

#### **6.3.9.00 Improvements Acquired or Damaged**

All of the improvements within the right of way are generally acquired.

- Interest in Improvements Acquired. An equal interest shall be acquired in all buildings, structures or other improvements determined to be a part of the real property when such improvements are to be removed from the land acquired for right of way purposes.
- Improvements Located Partially within the Right of Way. Improvements located partially within the right of way, which are designated for removal shall be totally removed, unless the owner opts to cut it at the right of way line.

The decision to allow an owner to retain and cut an improvement at the right of way line must be made during negotiations. In making the decision, the owner is to understand that the Commission will have to re-evaluate its offer through the appraisal process. If a revised offer is unacceptable to the owner, the original offer and plan for total removal of the improvement will apply and if necessary, condemned as originally designed.

- Improvements Located Outside the Right of Way. Owners will be compensated for any loss in fair market value of improvements that are not required to be removed but are adversely affected as a result of the acquisition, as determined by the appraisal.

#### **6.3.10.00      Owner Retention of Improvements**

Whenever structural improvements are partially or totally within the required right of way, the improvements are generally acquired. However, there may be occasions where it more prudent to relocate the improvement. Relocation, as referred to in this subsection, is an acquisition concept where improvements are moved from the required property to a replacement, substitute or remainder property. Relocation of improvements at the Commission's cost is only allowed if the Commission determines this action is in the best interest of the public and the cost to relocate the improvements is consistent with current federal regulations.

The determination to relocate improvements at the Commission's cost must be based on economic feasibility. If the owner chooses to relocate the improvement and moving cost is to be made directly to the owner, the amount will be based on the best and most reasonably competitive moving bids obtainable from qualified contractors. A minimum of two (2) bids is required, if obtainable.

If the Commission determines that relocation of the improvement is not cost effective or in the best interest of the public, the Commission may elect to allow the owner to relocate the improvement at their own cost. If the owner chooses to relocate the improvement at their own cost, the Commission will be relieved of any responsibility for their removal and clearing of the site. The owner of the improvements assumes the entire obligation of improvement removal and site clearance.

The decision to allow an owner to retain an improvement must be made during negotiations. In making the decision, the owner is to understand that the Commission may re-evaluate its offer through the appraisal process. If a revised offer is unacceptable to the owner, the original offer and plan for acquisition of the improvement will apply and if necessary condemned as originally designed.

Improvements pertaining to the realty, which an owner has severed from the real estate prior to a Purchase and Sale Agreement, are personal property and handled under the Relocation Assistance Program.

When acquiring motels, hotels or furnished apartments, it may be necessary to acquire the furnishings to prevent the eviction of tenants who would be unable to continue to occupy the premises if the furniture is retained and removed by the fee owner. The appraisal of these types of properties will contain an inventory and estimated market value of the furnishings.

Removal time of improvements should normally be completed in a sixty to ninety (60-90) day period. The Purchase and Sale Agreement shall specify a date by which the improvements are to be removed and provide for clearance of the site.

#### **6.3.11.00 Uneconomic Remnants**

If the Commission is acquiring a portion of the property and the acquisition would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the Commission shall offer to acquire the entire property if the owner so desires.

- Definition of Uneconomic Remnant. “A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the Agency has determined has little or no value or utility to the owner.” (49 CFR 24.2 (27))
- Offer to Purchase Uneconomic Remnants. An offer to purchase each uneconomic remnant shall be made to the owner simultaneously with the offer of Just Compensation for the acquisition of the right of way if the value was established in the appraisal. Situations revealed during negotiations or administrative decision to consider all or part of remainders as uneconomic remnants, may necessitate a revised offer reflecting the value of the uneconomic remnant.

Multiple uneconomic remnants shall be individually identified and individual values must be set out in the offer letter.

#### **6.3.12.00 Leasehold Bonus Value**

If bonus value is shown in the appraisal, the Acquisition Agent is not to offer it to the lessee. Ultimately, the lessor and the lessee will either agree to the allocation of any bonus value, or the court will decide. The bonus value may be suggested to the lessor that because of the terms of the lease, the lessee’s interest may be more than a compensable interest in the improvements.

#### **6.3.13.00 Condemnation Clause**

A lease may contain what is commonly referred to as a “condemnation clause.” This clause usually provides that in the event the property is acquired under the actual or potential exercise of eminent domain, the lease shall terminate, lessee will pay pro-rated rent to the date of vesting or possession by condemnor and lessee has no claim to the compensation paid to the lessor by the condemnor. In partial acquisition, the lease may provide the lessee with the option to terminate the lease or continue in occupancy with a proportionate reduction in rent. Legal counsel should be consulted to interpret this type of lease provision.

**6.3.14.00 Access Rights**

In cases involving acquisition of access rights only, relinquishments or subordinations are to be secured from all parties whose interest would be detrimental to the achievement of access control. Ordinarily, these include trustees and beneficiaries under deeds of trust, mortgages, lessees, holders of liens, the foreclosure of which would either nullify or jeopardize the rights being acquired by the Commission and holders of easements or rights of way of any kind whose ability to utilize and enjoy them would be materially diminished or damaged by the Commission's acquisition of access rights to the subject property.

**6.3.15.00 Construction Obligations**

In some cases, the Commission is required to do certain work on grantor's remaining property (as part of the consideration for acquisition). This work can range from construction of fences, irrigation facilities, re-paving driveways to replacement of structures. The extent of construction should be completely described in the Purchase and Sale Agreement and/or Administrative Settlement.

**6.3.16.00 Exchanges and Abandonments**

Excess property may be used in exchange for other property required for a project. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. Non-contiguous exchanges may be granted under certain circumstances.

Excess real property or an interest therein, proposed for exchange shall be appraised. This requirement does not apply to parcels acquired specifically as substitute parcels for public utilities, government-owned land or railroad.

**6.3.17.00 Negotiator's Report and Contact Log (Parcel Diary)**

A Negotiator's report and contact log shall be completed and signed by the Negotiator upon termination or completion of negotiations for each parcel. A log of all contacts with the owner or representative shall be completed. The information for each contact should include the date and place of each contact, parties contacted, offers, counteroffers, issues raised by the owner, reasons settlement could not be reached, and any other pertinent data.

When negotiations are unsuccessful, and the Negotiator considers further attempts to negotiate to be futile, recommendations for action should be recorded.

**6.3.18.00 Negotiating with an Attorney or Designated Representative**

Unless otherwise authorized by the property owner, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner, acquisition discussions will generally be with the attorney, unless otherwise authorized in writing by the attorney. In such cases, the Commission or the RCA may likewise be represented by its legal counsel during negotiations and meetings. If the property owner employs someone as his representative, the extent of the authority of the representative should be in writing, signed by the owner.

**6.4.00.00 COMMISSION EARLY AND ADVANCED ACQUISITIONS**



Federal regulations allow federal funds to be used for right of way acquisition prior to NEPA completion for transportation projects provided that certain findings are made, which include the following:

- A parcel or a limited number of parcels is involved.
- It is within the limits of a proposed corridor.
- The acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process.
- No project development will proceed until the NEPA process has been completed.
- Threat of condemnation will not be utilized.

Proper documentation shall be submitted to show that the acquisition meets the above criteria.

A major consideration in making a decision on advance acquisition is the effect on federal funding for the parcel and the project as a whole. It is important to keep in mind that if federal regulations (40 CFR Part 24) are not followed in the advance acquisition of a parcel, the FHWA or FTA, as the case may be, may deny federal funding for the whole project or, if it is determined that the advance acquisition of a parcel influenced the environmental assessment of the project, the cost to acquire the parcel may not become eligible for use as the credit towards the agency's share of a federal-aid project. In the latter instance, the project's application for environmental clearance under NEPA may also be denied.

The Commission will not consider the following types of parcels for early or advanced acquisition:

- Properties with historic structures
- Archaeological properties
- Section 4(f) properties (publicly owned park and recreation areas, and wildlife and waterfowl refuge)
- Properties contaminated with hazardous waste

Early and advanced acquisitions are generally approved only after the acquiring agency has given official notice to the public that it has selected a particular location for the project alignment, or a public hearing has been held, or an opportunity for such hearing has been afforded, except when "core parcels" are to be acquired in advance of environmental clearance. "Core parcels" are full parcel acquisitions that are required for every alternative under consideration. Properties not considered "core parcels" may be acquired in exceptional cases as determined by the Right of Way Manager in consultation with the federal funding agency.

#### **6.4.1.00 Early Acquisition**

The Commission may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations, if the above conditions are met.

Early acquisition costs are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the Commission's share of a Federal-aid project.

**6.4.2.00**      **Hardship Acquisition**

Hardship acquisition is early acquisition of property by the agency at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Federal approval must be obtained prior to proceeding with a hardship acquisition in order to be eligible for reimbursement.

**6.4.3.00**      **Protective Acquisition**

Protective acquisition is done to prevent imminent development of a parcel, which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project. Federal approval must be obtained prior to proceeding with a protective acquisition in order to be eligible for reimbursement.

**6.5.00.00**      **COMMISSION ACQUISITIONS WITH SPECIALTY CONSIDERATIONS****6.5.1.00**      **Donation**

Donation is the voluntary conveyance of property without compensation, for the improvement of a public project. Donations must be voluntary and owners must be advised of their benefits under the State and Federal Uniform Relocation Act and of their right to compensation, relocation assistance benefits and must be provided with an appraisal of the real property to be acquired, or a waiver valuation, if appropriate, unless the owner/owners release the Commission from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. The property owner should be advised of the Commission's policy of accepting donations and the offer to donate should not in any way result from an act of coercion. Donations may be made at any time during the development of a prospective project.

Every donation must have a detailed financial analysis of the actual and potential costs. Project management staff should be careful in accepting donations of a contaminated property where the clean-up cost exceeds the value of the property. Relocation benefits and loss of business goodwill should likewise be considered.

In order for the Commission to claim the value of the donated property as a credit against its matching share of projects costs (federal and state assisted projects), certain conditions must be met:

- The value of the donated property must be determined through an appraisal for the purposes of calculating a credit to the Commission's matching funds of the project costs.
- Environmental requirements must be met (NEPA process).
- Environmental assessment (Phase I and if appropriate Phase II) must be conducted on the property.

Any document executed to effect donation prior to approval of the environmental clearance of the project shall clearly state:

- All alternatives to an alignment will be studied and considered. The acceptance of the donated property did not influence the environmental assessment of a project including the decision about the need to construct the project or the selection of a specific location for the project. In other words, the Commission must not be influenced by the donation of the property in its decision on which alternative to approve.
- Any property acquired by gift or donation for projects covered by the Federal Highway Act, shall be re-vested to the grantor or successors, if such property is not needed for the alignment chosen after public hearings and if not required seven years after completion of the environmental document.
- Donations will not be accepted until a hazardous waste assessment has been completed.

The Commission may accept a property owner's offer to donate or a portion thereof in exchange for construction features or services rendered that will benefit the property owner. However, for the purposes of crediting the value of the donation to the Commission's share of project costs, such donation is limited to the fair market value of the property donated less the value of the construction features or services received by the Commission.

#### **6.5.2.00 Dedication**

Dedication is the setting aside of property for public use without compensation as a condition prior to or in exchange for any government or Commission action that will enhance the value of or development potential of property. The property owner must initiate the request for dedication and dedications can be accepted throughout the project development process.

The Commission may accept a parcel of land that a developer of real estate has dedicated or proposes to dedicate for street purposes in developing a subdivision. Land obtained in this manner may be incorporated into a federally-assisted project without jeopardizing participation in other project costs.

Prior to acceptance by the Commission, the property to be dedicated shall be subject to a hazardous waste assessment and a review of the condition of title.

Dedication must be accepted by the Commission formally with an acceptance document.

#### **6.5.3.00 Outdoor Advertising Structures and On-Premise Advertising Signs**

Outdoor advertising structures are defined as all signs, billboards, drawings or paintings which advertise activities conducted elsewhere or services and/or products provided other than at the subject property. Whereas on premise signs advertise activities conducted on the premises or services and/or products provided on the subject property.

**6.5.3.1 Outdoor advertising structures.** The outdoor advertising company must have a written or oral agreement with the owner or lessee of the real property. The agreement must be in effect and authorize the structure to remain placed for a

period of time beyond the date of acquisition. The owner of the structure may be entitled to compensation for loss of business goodwill, in addition to the value of the signboard improvement.

The Commission should determine whether relocation of the sign is feasible and, if so, whether the cost to do so would be less than the cost of acquiring the improvement and any related goodwill. Compensation for the sign may be based on a number of approaches, including a fixture and equipment appraisal, a goodwill appraisal, the State schedule for Poster Panel Removal (7-EX-14) or the cost of relocating the sign to a replacement location. However, prior to any condemnation action, an appraisal must be performed for the sign structure improvement.

Section 5403, Business and Professions Code and Section 721, Streets and Highways Code, regulate outdoor advertising structures on highway right of way. Sections 5405, 5406 and 5408, Business and Professions Code, regulate advertising structures within 500 feet of any highway, included in the interstate and primary highway systems. Removal or relocation of outdoor advertising company structures from right of way for interstate or primary highways to a location outside the area being acquired shall conform to the requirements of the above code sections.

If the structure is fully conforming to state and local law and would create no problems if allowed to remain in place until start of construction, then the site for the structure can be rented to the company without loss of its right of compensation. Rental rates will be determined as described in Chapter 8.

If the structure is not fully conforming and/or its removal is imminent, no rental will be permitted and the contract should provide for immediate removal of the structure.

A quitclaim deed or contract will be obtained from the company to release the rights to the sign.

Existing structures may remain if they do not conflict with the use by the Commission.

- 6.5.3.2 On-Premise Signs. In partial acquisitions, it is the policy of the Commission to treat all on premise signs including trademark and logo signs as personal property under the Relocation Assistance Program. The exception would involve a situation in which there is insufficient land on which to relocate the sign. In these circumstances, the sign will be valued and acquired as real estate. No on-premise signs (except enter and exit signs) will be allowed to remain on the right of way.

6.5.3.3      Signboards on Williamson Act Agricultural Preserves. Land placed in an agricultural preserve contract under the Williamson Act (Government Code sections 51200-51295) is limited to agricultural uses. Other uses are prohibited by the terms of the contract. If the property being acquired has an outdoor advertising structure located in the acquisition area, the compensability status of the structure will have been determined prior to the commencement of appraisal.

#### **6.5.4.00      Hazardous Waste**

The Commission and the RCA must not acquire property contaminated with hazardous waste without adequate prior investigation and property contractual and valuation safeguards. In order to avoid delay in a project or acquiring property with possible contamination, investigation to determine clean-up costs must be made as soon as possible.

If hazardous waste is suspected or discovered during the acquisition process, the Right of Way Department should immediately notify the Project Manager, in writing, and hire a consultant to perform an Initial Site Assessment.

The Project Manager may advise the Right of Way Department to proceed with the acquisition because it is in the best interest of the project and the potential hazardous waste contamination risks and costs are low, or the problem can be handled with engineering methods during construction. The decision to acquire is made by the Project Manager and must be fully documented.

If further investigation is necessary, the Acquisition Agent will contact the property owner to advise of the process being pursued and to obtain Right of Entry Permits.

When testing is complete and cleanup costs are known, the appraisal must reflect the effect contamination and required cleanup has on market value.

Settlements, whenever possible, are to be based on cleanup prior to acquisition. Settlements made where cleanup occurs after acquisition are to be based on the original appraisal contingent upon cleanup, or a revised appraisal that includes the effects of hazardous waste and clean-up costs.

If settlement is reached based on the Commission or the RCA doing the cleanup, close of escrow may need to be delayed until cleanup has been completed (depending upon project requirements) and an amount equal to two hundred percent (200%) of the estimated cleanup costs shall be withheld in escrow or (if closing has occurred) by the Commission or the RCA to assure an adequate source of payment for cleanup costs. Appropriate provisions will be included in the Purchase and Sale Agreement.

#### **6.5.5.00      Mobile Homes**

Mobile homes which cannot be moved from their present locations may be purchased.

The Acquisition Agent will be responsible at the appraisal stage for determining if a mobile home should be purchased. The reasons underlying this decision will be communicated by the Acquisition Agent in writing to the Right of Way Manager, which will become part of the appraisal.

Mobile homes are generally personal property, rather than realty, unless the owner has converted the mobile home to real property. This should be verified prior to the appraisal. The size of the mobile or manufactured home determines whether it is registered with the Department of Housing and Community Development (HCD) or the Department of Motor Vehicles (DMV). Homes with dimensions of 40 feet long or 8 ½ feet wide or more are registered with the HCD and homes under this size are registered with the DMV. Once it has been determined where the mobile home has been registered the transfer of title is handled through the appropriate agency, HCD or DMV. HCD has multiple forms for use in handling the transfer.

To convey title to a mobile home, the owner's signature will be obtained on the following when applicable:

- Purchase and Sale Agreement
- Notice of Transfer
- Bill of Sale
- Authorization for Payoff (if financed)
- Power of Attorney (if needed)
- Certificate of Title
- Quitclaim deed (if tenant occupied)

The owner should have the Certificate of Title that will reflect the legal and registered owner. If not available a duplicate Certification can be obtained.

All fees and charges required by the HCD in connection with the transfer of title to the mobile unit to the Commission, except liens, encumbrances, assessments, taxes delinquent registration or license fees, shall be paid by the Commission.

#### **6.5.6.00**      **Federal and State Lands**

Interests in land owned by federal and state agencies are secured under appropriate federal or state statutes which vary based on the agency that owns the land. Interests in federal and state lands can be obtained through a permit, easement, grant or patent. Acquisition of interests in federal or state lands should be initiated early as the process can be very lengthy.

#### **6.5.7.00**      **Indian Lands**

The Bureau of Indian Affairs approves transactions involving Indian lands. Indian lands are held in trust by the federal government as either "tribal land" or "allotted land." Tribal lands are lands within the boundaries of an Indian reservation that are held in trust by the federal government for the Indian tribe as a community. Allotted land is land within a reservation, which is apportioned and distributed in severalty to tribe members. Title to allotted land is held in trust by the federal government for individual Indians.

The Bureau of Indian Affairs should be consulted for the appropriate procedure for acquisition.

#### **6.5.8.00 Railroads**

The clearance of projects that involve railroads consists of both the acquisition of railroad property rights and the agreement with the railroad for physical construction of the project.

Either of these functions will involve federal and state agencies, such as, Interstate Commerce Commission (ICC) and the State of California Public Utilities Commission (PUC). These properties should be addressed early in the acquisition process to ensure sufficient time for negotiations with the railroad, as well as approval by the appropriate commission.

#### **6.5.9.00 Mining Claims**

An unpatented mining claim establishes an interest in land, which will continue in existence until eliminated, whether by an appropriate conveying document or by legal process before a court of competent jurisdiction.

Every reasonable effort shall be made to obtain quitclaim deeds from persons holding mining claims on the land to be acquired even though the claim may appear to be abandoned. If clearance of the claim cannot be obtained by Purchase and Sale Agreement and quitclaim deed, then condemnation shall be instituted.

If the owner cannot be located after a diligent search, a statement of facts will be noted in the acquisition file and a recommendation may be made to acquire title subject to this outstanding interest. Such recommendation must be approved by legal counsel.

#### **6.5.10.00 Water Wells**

The replacement of an existing water well can be done through the appraisal or by the Commission contracting for the drilling of a replacement well. If the Commission will be contracting for the replacement of the well, copies of all the standard tests on both the existing well and new well should be kept in the parcel file. The new well should produce the same or better quality and quantity of water compared to the old well.

#### **6.5.11.00 Tax-Defaulted Properties**

When acquiring property that has been declared tax defaulted by the Riverside County Treasurer- Tax Collector's office, a resolution objecting to the public sale of the property scheduled for auction will be provided. The resolution will be forwarded to the Riverside County Board of Supervisors for approval. Per Chapter 8 the Purchase Agreement will go to the California State Controller's Office for final approval. When final approval is obtained, the Riverside County Treasurer-Tax Collector's office will then notify the public for a specific period of time whereby the former property owner has the opportunity to reclaim the property if the back taxes are paid. If no response is received, the purchase of the property will be complete.

##### **6.5.11.1 Complete and gather the following information to create a Chapter 8 packet**

- Application to Purchase Tax-Defaulted Property

- Mission statement
- Jurisdiction map
- List of APNs
- Parcels in FEMA map
- Objection to Chapter 7 Sale of Parcels

6.5.11.2 Tax Collector will send a letter of instructions and purchase price for the property

- Quote the purchase price of each property
- Including 3 years of projected taxes

6.5.11.3 Documentation needed to submit to County of Riverside Board of Supervisors (BOS) for approval of purchase

Board Item with required attachments for each parcel:

- Legal description
- Assessor's plat map
- Regional map
- Mission statement

Resolution must include wording addressing the following points:

- Object to the public sale
- Offer to purchase
- Purchase price
- Legal description
- APN
- Specific public purpose
- Costs of giving notice

6.5.11.4 Board Item and Resolution to the Tax Collector

- A fully executed certified copy of the approved Board Item and Resolution to the Tax Collector.
- A letter informing the Tax Collector of the parcels the Commission or the RCA is no longer interested in purchasing.

6.5.11.5 Tax Collector to forward Agreement of Sale

- Tax collector will forward an Agreement of Sale after confirming said APNs to the adopted Resolution
- Complete the agreement and obtain authorized signature
- Forward executed agreement to the Tax Collector



6.5.11.6 Tax Collector routes Agreement to other levels for approval of sale

- County to the Board of Supervisors (if within the city to the Mayor or City Manager)
- State Controller's Office for final authorization (may or may not approved sale T&R Code 3795)

6.5.11.7 Tax Collector will forward Demand for Payment letter

- Pay in full within 14 days from receiving request
- If payment is not received, sale will be voided

6.5.11.8 Tax Collector to send out Notice of "Authorization to Sell"

Notice to set time and date Agreement will go into effect (No sooner than 5:01PM on the 21st day after the first publication of notice.

- Notify all persons of interest by certified mail
- Place an ad in newspaper for 3 successive weeks (including parcel area)
- Personal service to property owners, if necessary
- Obtain title report on each parcel

6.5.11.9 Tax Collector will forward deed of property

Issue recorded Tax Deed to new owner with the following information:

- Name of purchaser
- Effective date of the sale and the date of the transfer of the deed to new owner
- Amount for which the property was sold
- Description of the property conveyed

The acquisition of tax-defaulted property is timely and may continue for a few years.

**6.6.00.00 COMMISSION AND RCA TITLE CLEARANCE****6.6.1.00 Clearance of Unrecorded Interests**

Recorded interests will be addressed through a preliminary title report as outlined in Chapter 3.

However, there are matters that affect title which do not appear of record. It is the responsibility of the Acquisition Agent to protect the Commission and the RCA against loss due to any matters affecting title, which do not appear of record. These matters may be discovered through property inspection during negotiations. Some items which inspection of the property may disclose include the following:

- Parties in possession under an unrecorded deed or contract of purchase
- Community driveways, pole lines, pipelines, irrigation ditches, or roadways indicating easements or rights of way, which do not show in the title report
- Streams, lakes, rivers or ocean which may affect boundaries
- Overlapping or encroaching improvements
- Violations of restrictions or zoning ordinances

The Purchase and Sale Agreement or an amendment thereto shall specifically obligate the property owner to eliminate such interest at owner's sole cost and expense prior to acquisition.

#### **6.6.2.00 Presumption of Interest and Right to Cancel**

A lessee or tenant in possession is to be presumed to have some interest in the property unless the contrary is established.

The Commission shall not attempt to use any lease cancellation clause to acquire improvements at less than their salvage value or contributory value, whichever is greater.

It may be appropriate for a tenant to sign a quitclaim deed waiving their interest in the property.

#### **6.6.3.00 Indemnification Clause**

Whenever the Commission or the RCA is acquiring title subject to exceptions of a questionable nature, an appropriate indemnification clause is to be approved by the Commission's or RCA's legal counsel as to form and substance.

#### **6.6.4.00 Easements**

All easements are to be considered as to both the present and future effect on property being acquired. The location of the easement in relation to the part acquired is to be determined prior to preparation of the Purchase and Sale Agreement. If an easement constitutes a present or future adverse interest in the part acquired, it should be eliminated by appropriate instrument prior to close of escrow, if possible. Where the nature of the easement does not warrant the cost in time and effort to eliminate, or is not in conflict with the acquisition, it may be acquired "subject to" or through an indemnification clause.

- Gross or Appurtenant Easements. All gross or appurtenant easements in favor of third parties for personal or business use, such as driveways, roads or utilities should be cleared prior to scheduling and certification of the project for construction. This clearance should be done concurrently with the fee acquisition.

Interests not cleared prior to the close of escrow may appear as an exception in the Purchase and Sale Agreement since they will also appear as exceptions in the title policy.

- Blanket Easements. The interest of easement holders in so-called "blanket" or "floating" easements should be cleared if the choice of location has been exercised. An example is an easement affecting a whole subdivision. Such easements affect title to the entire

property and will be shown as encumbrances in title policies unless eliminated by property conveyance.

- **Obsolete Easements.** Easements or rights that are discovered by either observation or inquiry to be obsolete, abandoned and extinct, and have no present or future adverse effect are to be listed in the Purchase and Sale Agreement as such.
- **Utility Easements.** Public or private utility easements may have a facility (overhead, surface or underground) located on the property. Clearance and elimination of private/service connection easements from the right of way being acquired will be the responsibility of the Acquisition Agent. This is usually done by quitclaim deed with an obligation in the Purchase and Sale Agreement to secure a replacement easement, if necessary. Relocation of a private facility may be handled by or with assistance from the Relocation Agent or Utility Coordinator.

If the easement is public (easement in gross) and no facility exists, the Acquisition Agent in consultation with the Project Manager, must determine whether to take title subject to the easement. The utility company may have plans for the future facility so it is incumbent upon the Acquisition Agent to negotiate an agreement with the utility company recognizing such future use.

The Acquisition Agent and Utility Coordinator will coordinate to arrange for relocation of all facilities installed in public utility easements and to acquire substitute easements, as appropriate. The substitute easement will be acquired either by the utility company or by the Commission. If acquired by the Commission, the location shall be acceptable to the utility company. This replacement area is subject to the same controls and clearances that apply to regular rights of way, including hazardous waste clearances.

Acquisition of right of way from a utility company involves a variety of approaches, i.e., fee or easement, vacant site or corridor, improved site or corridor, replacement right of way. The Acquisition Agent should be thoroughly knowledgeable with the procedures involved in acquiring right of way from the utility company.

#### **6.6.5.00 Court Actions, Consent to Dismissal**

Title may be acquired subject to the Commission's pending condemnation action. Elimination of other court actions is generally required. In all instances involving right of way on which the Commission has filed condemnation suit, it is imperative that the dismissal clause be included in the Purchase and Sale Agreement.

#### **6.6.6.00 Clearance of Lessee Interest**

The interest of a lessee or other legal occupant, e.g., tenant, is cleared through either a quitclaim deed granted to the lessor or to the Commission or through the eminent domain process. Leases that are in effect must either be eliminated or assigned to the Commission. See further discussion of leasehold interests in section above.

**6.7.00.00 COMMISSION LOSS OF BUSINESS GOODWILL**

State law provides that in certain cases, an owner of a business may be compensated for the loss of goodwill. The law requires that the owner of a business conducted on the property acquired, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves the following:

- The loss is caused by the acquiring of the property or the injury to the remaining property.
- The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.
- Compensation for the loss will not be included in payment under Section 7262 of the Government Code (Relocation Assistance Program).
- Compensation for the loss will not be duplicated in the compensation otherwise awarded to owner.

For purposes of this subsection, “goodwill” consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality and any other circumstances resulting in probable retention of old or acquisition of new patronage.

The burden of proving that the loss cannot be prevented by relocation or other efforts by the business owner to mitigate, rests on the business owner. “Business” as used in this subsection is defined as follows:

- A commercial or mercantile activity engaged in as a mean of livelihood
- A commercial or sometimes industrial enterprise
- A particular field of endeavor-patronage

The operation of residential, non-transient, rental housing is not considered a business. However, the operation of housing units where rental is ordinarily billed on a daily basis (e.g. motels, hotels) is to be considered a business. A farm is not generally considered a business unless there is an on-premise full time, retail, commercial operation involving products grown or developed in the property. A seasonal fruit stand operation would not be considered as a business.

An estimate of the loss of goodwill or the evaluation of documentation submitted by the business owner will be made by the Commission’s appraiser. The results will be used by the Acquisition Agent to conclude the transaction recognizing any “in-lieu” payments that may have been or will be made under Relocation Assistance. State law requires that state tax returns of the business be made available for audit, solely for the purpose of assisting and determining the amount of compensation to be paid for the loss of goodwill.

If a settlement has been agreed upon with the business owners but the claim for loss is deferred, the Purchase and Sale Agreement shall note that a claim for loss of business goodwill must be submitted to the Commission two (2) years from date of the contract. If the business owner and the Commission cannot reach an agreement on compensation within three (3) years from date

of contract, the Commission shall file a declaratory relief action in superior court solely for the purpose of determining compensation, if any, for loss of owner's business goodwill.

#### **6.8.00.00      MEDIATION FOR COMMISSION**

Eminent domain mediation is a process through which a neutral mediator assists the Commission and a property owner in reaching a settlement agreement that each finds acceptable. Mediation can be a cost and time effective way to reach settlement in eminent domain cases. Mediation can be done by agreement of the Commission and the property owner or it can be mandated by the court prior to scheduling an eminent domain case for trial. Legal counsel should be consulted about whether or not to utilize mediation to settle cases. The mediation process for the RCA is described in section 6.1.1 of the MSHCP "Conflict Resolution Process".

#### **6.9.00.00      ADMINISTRATIVE AND LEGAL SETTLEMENTS FOR COMMISSION**

##### **6.9.1.00      Purpose**

Administrative settlements are made for the purpose of concluding negotiations for amounts considered reasonable, prudent and in the public interest after reasonable efforts to negotiate agreements for Just Compensation have failed. When federal or state funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates what available information (e.g. appraisals, recent court awards, estimated trial costs, development permit fees or valuation problems) support such a settlement. (See 49 CFR 24.102(i)).

Administrative settlements are not to be used for the purpose of correcting errors or omissions in an appraisal. Such errors or omissions should be addressed by correcting the appraisal and making a revised offer.

##### **6.9.2.00      Settlement Authority**

The Project Delivery Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 10% in excess of the offer or 2) \$100,000.

A Deputy Executive Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 15% in excess of the offer or 2) \$250,000.

The Executive Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 20% in excess of the offer or 2) \$500,000.

When the difference between the approved Just Compensation and the proposed settlement is in excess of the approval authority of the Executive Director, the proposed settlement must be approved by the Board of Commissioners.

All administrative settlement forms shall be prepared by the Right of Way Manager or designated representative stating the justification for the settlement.

**6.9.3.00 Legal Settlements**

When a condemnation action has been filed and an expert witness has been hired, the Commission may consider making a revised offer based on a higher opinion of value from the trial appraiser, new information discovered during the eminent domain process, or an assessment of a potential adverse trial result. Agreement under these terms will be considered a legal settlement subject to funding source regulations and policies.

Settlement authority for legal settlements will be the same as administrative settlements (see above).

**6.9.4.00 FTA Concurrence**

For FTA projects, administrative settlements in excess of \$50,000 or more than the current fair market value must be submitted to the FTA for advance concurrence before the settlement is consummated. The Commission must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent and in the public interest.

**6.9.5.00 Record Keeping**

The original copy of the administrative and legal settlement forms should be filed in the parcel.

**6.10.00.00 EMINENT DOMAIN FOR COMMISSION****6.10.1.00 General**

Eminent domain is the inherent power of government to acquire private property for public use. The owners of private property shall not be deprived of their property without Just Compensation as provided for in the United States and California Constitutions.

The power of eminent domain is exercised in accordance with Article I, Section 19 of the California Constitution, which states:

“Sec. 19. Private Property may be taken or damaged for public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

**6.10.2.00 FTA Concurrence**

For FTA projects, FTA concurrence is required before filing for condemnation if the appraised value exceeds \$1,000,000.

**6.10.3.00 Notice of Intent to Adopt Resolution of Necessity**

California Code of Civil Procedure (CCP) Section 1245.235 requires that an owner be given notice of the meeting at which the Board of Commissioners will consider a Resolution of Necessity for acquisition of the owner's property. The Notice of the Resolution of Necessity hearing must be mailed to property owners whose property is required. One of the following must sign the Notice:

- The Executive Director or designee
- The Project Delivery Director
- The Right of Way Manager

The Notice should be delivered to the owner no less than fifteen (15) days prior to the date of the meeting at which the Board of Commissioners will consider the request. If the project is on the State Highway System, the State requires a thirty (30) day notice.

If for any reason, any information in the Notice or legal description already provided to the owner ceases to be correct prior to adoption by the Commission, a new Notice should be sent to the owners concerned.

The Commission shall also give notice to the legislative body of the affected city or within the unincorporated area of any affected county as required by section 130220.5(c) of the California Public Utilities Code.

#### **6.10.4.00 Impasse Letter**

If an offer to purchase has been rejected and it is determined that further negotiations will not be productive, the Acquisition Agent shall prepare an Impasse Letter to the property owner. The purpose of the letter is to confirm and document the rejection of the offer and inform the property owner of the Commission's intent to proceed with a Resolution of Necessity hearing. The Impasse Letter will be signed by the Executive Director or designee. After the letter is transmitted to the owner, the Acquisition Agent shall attempt to continue negotiations towards reaching an agreement.

#### **6.10.5.00 Grantor's Request for Appearance**

If an owner believes that its property should not be acquired or that the project should be realigned to avoid its property, the owner may request an appearance before the Commission regarding the Resolution of Necessity. This request must be made in writing within fifteen (15) days from mailing of the Notice by the Commission, however, in practice, the Commission may choose to grant the request to appear whether the Commission receives a written request or not. The negotiating process continues and assures that all issues are identified and resolved, if possible, prior to the Commission meeting.

#### **6.10.6.00 Record of Condemnation Case Status**

The Right of Way Department will maintain a record of the status of condemnation cases commencing with the submittal of the Request for Resolution of Necessity to the Commission. The record is kept current through the duration of the condemnation action.

#### **6.10.7.00 Condemnation Suit**

Legal counsel shall have full control of the condemnation proceeding and should be afforded full cooperation by the Right of Way Department, right of way consultants and expert witnesses.

### **6.11.00.00 REPORTING OF ACQUISITIONS FOR COMMISSION AND RCA**

**6.11.1.00 Commission and RCA Policy**

It is the policy of the Commission and the RCA to report the acquisition of real estate or real estate rights to the Internal Revenue Service (IRS).

**6.11.2.00 1099-Misc. Reporting Procedures**

6.11.2.1 Transactions Reported. The Commission or the RCA, through the escrow company acting on its behalf, is responsible for reporting real estate acquisitions in excess of \$599 to the IRS. This reporting includes all acquisitions by either negotiated settlement or by condemnation. The following must be reported:

- Real estate acquired for Commission or the RCA use
- Property acquired by purchase or condemnation for right of way or permanent easement
- Damages to remainders included with the amount paid for the acquisition of a permanent easement or right of way
- When a jury verdict or a legal settlement results in \$600 or more of interest due the owner
- Lost Rent and Temporary Construction Easements as reportable as rents

6.11.2.2 Transactions Not Reported. The following does not need to be reported:

- Purchases from corporations and governmental agencies
- Transactions where total compensation is less than \$600

6.11.2.3 Year of Reporting. Under IRS rules, an acquisition has to be reported in the year the transaction is closed. For purchases, this is the date the check is received by the escrow agent or the property owner. For condemned property, it is the date the probable compensation is deposited in the Condemnation Deposit Fund of the State Treasury.

**6.11.3.00 Taxpayer Identification Numbers**

It is required that the Commission or the RCA (or escrow agent) request a taxpayer identification number (TIN) from all persons having an interest in the real property to be acquired, at or before the time of closing. Under IRS rules, any person whose TIN is required must furnish such TIN and certify that it is correct. The solicitation must be made in writing to the taxpayer that they are required to furnish a correct TIN and that they may be subject to civil or criminal penalties for failing to furnish a correct TIN. Acquisition Agents should solicit TIN information from owners during negotiations. TIN shall be provided to the Accounting Department prior to any disbursements.

When dealing with a representative of the owner, it is permissible to request that the representative obtain the TIN from the taxpayer, however if they fail to supply the information, a request must be sent to the taxpayer by certified mail.



**6.11.4.00**      **Methods of Reporting to the IRS**

- For negotiated settlements, the escrow company is responsible for reporting to the IRS.
- If the property is condemned and a jury verdict or settlement is obtained, it should be determined if the County Clerk is reporting transactions to the IRS. If not, then the Accounting Department will report the transaction to the IRS.
- If the property is condemned and the jury verdict or settlement is greater than the deposit of probable compensation, a correct 1099-S should be sent to the IRS.

**6.12.00.00**      **PROJECT COMPLETION FOR COMMISSION AND RCA****6.12.1.00**      **Filing of Recorded Documents and Policy of Title Insurance**

Upon completion of acquisition, all original recorded or unrecorded deeds, Final Orders of Condemnation, appraisal reports, escrow closing statement, survey/appraisal plats, legal description, the policy of title insurance, Negotiator's log (parcel diary) and Certificate of Completion (as applicable) are to be filed in the original parcel file kept in the Right of Way Department.

Any changes in the condition of title that occurs after the date of issuance of the title policy shall be noted in the file, as well as Joint Use and Consent to Common Use Agreements, Joint Development Agreements, Abandonments and Special Use Permits.

**7.00.00.00 RELOCATION ASSISTANCE****7.1.00.00 GENERAL POLICIES AND INFORMATION****7.1.0.00 Policy**

The Relocation Assistance Program, as outlined in this chapter of the Right of Way Policies and Procedures Manual, is applicable to all properties acquired by the Commission regardless of whether the project receives federal or state funds. The Relocation Assistance Program will not normally be applicable to the MSHCP land acquisitions, but may be applied on a case by case basis if necessary as determined by the Right of Way Manager.

The only exception relates to voluntary sales where the owner-occupant of a property voluntarily sells their property to the Commission after being informed in writing that if a mutually satisfactory agreement cannot be reached, the property will not be acquired. Any tenants displaced as a direct result of such voluntary sale will be entitled to relocation benefits.

**7.1.1.00 Purpose**

The purpose of this chapter is to promulgate in accordance with the following objectives:

- To provide uniform, fair and equitable treatment of persons who are displaced, to ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement, to ensure that no individual or family is displaced unless decent, safe and sanitary housing is available within the displaced person's financial means, to help improve the housing conditions of displaced persons living in substandard housing and to encourage and expedite acquisition by agreement and without coercion
- To ensure that persons displaced as a result of Commission projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole
- To ensure that Commission employees and consultants implement government regulations in a manner that is efficient and cost effective

**7.1.2.00 Availability of the Relocation Program**

The Relocation Assistance and Payment Program is available to eligible individuals, families, businesses, farm operations and non-profit organizations which are wholly or partially displaced by Commission projects. Relocation advisory services (not payments) are also available to any person occupying property immediately adjacent to property acquired by the Commission when the Commission determines such person is caused substantial economic injury because of the acquisition.

**7.1.3.00 Applicable Law and Regulations**

Federally Funded or Assisted Projects. When the Commission projects are federally funded or federally assisted, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), 49 Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, the Final Rule dated

January 4, 2005, and Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) apply.

State and Locally Funded Projects. When the Commission's projects are state or locally funded, California Government Code Sections 7260-7266 apply.

Conflict. In case of conflicts between federal and state regulations and the provisions of this manual, the regulations and policies that provide greater benefits to the displacee will be followed by the Commission.

#### **7.1.4.00 General Eligibility Requirements**

To be eligible for relocation benefits, displacees must legally occupy the property that is scheduled for acquisition by the Commission at the time negotiations are initiated for the subject property and also meet minimum ownership and/or occupancy time requirements and other specific requirements as discussed in this chapter for each of the various relocation benefits available. Displacees who vacate their parcel prior to the initiation of negotiations shall also be eligible (if they meet other requirements) if they were in legal occupancy at the time the Commission notified them, in writing, of its intention to acquire the property. Such notices shall not be given as routine procedure or without prior concurrence from the Right of Way Manager.

The preceding General Eligibility Requirements also apply to moving cost payments except that displacees who move to and legally occupy properties being acquired by the Commission after the initiation of negotiations can qualify for moving cost payments and advisory services, but normally for no other type of relocation payment, provided they are still in occupancy of the subject property at the time it is acquired by the Commission.

#### **7.1.5.00 Cancellation of Eligibility as Displaced Person**

Eligibility as a "displaced person" can be cancelled and relocation payment offers withdrawn, normally due to a change in construction plans which eliminates the need for a previously designated right of way parcel, if the person is notified in writing that he will not be displaced as originally planned. The written notice must advise that the Commission will reimburse the person's reasonable expenses incurred to satisfy any binding good faith contractual relocation obligations entered into after they were originally notified of relocation eligibility. Relocation eligibility cannot be canceled if the person has moved from the property.

#### **7.1.6.00 Definitions**

The following definitions are applicable to this chapter and to the Relocation Assistance Program in general.

**Acquired.** The time the property owner, his agent or representative receives payment from the Commission for the property and/or rights being purchased; or if condemnation is involved, at the time of the amount of probable Just Compensation is deposited into the court.

**Affordable.** Comparable replacement rental units available to displaced or subsequent occupants with less than ninety (90) days occupancy will be considered "affordable" if the total of the

monthly rent plus utilities does not exceed the total rent and utility costs at the displacement site. Other circumstances may indicate the affordability, or lack thereof, of any available replacement dwelling. The Right of Way Manager will approve on a case by case basis exceptions to the above procedure.

Business. Business, for the purposes of this chapter, is defined as any lawful activity, except farm operations, conducted primarily for the following:

- For the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacture, processing and/or marketing of products, commodities or any other personal property
- For the sale of services to the public, or outdoor advertising displays, when the display must be moved as a result of a project
- A non-profit organization that has established its non-profit status under applicable federal or state law

Comparable Replacement Dwelling. A comparable replacement dwelling is:

- Decent, safe and sanitary (DS&S) as defined in the following subsection
- Functionally equivalent to the displacement dwelling, provides the same utility, is capable of contributing to a comparable style of living and is adequate in size to accommodate the occupants. While it need not possess every feature of the displacement dwelling, the principal features must be present
- In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial public facilities, and is reasonably accessible to the person's place of employment
- On a site that is typical in size for residential development with normal site improvements including customary landscaping
- Within the financial means of the displaced person. It will automatically be considered within financial means if the owner is paid a replacement housing payment or the tenant is paid a rent supplement.
- Currently available to the displaced person on the private market unless the displacee is receiving assistance under a Government Housing Program before displacement, in which case, a comparable replacement dwelling may reflect similar governmental housing assistance. Public housing can be offered to those being displaced from non-public housing if they are advised in writing of their right to non-public housing and do not object.

NOTE: If replacement dwellings meeting the above requirements are not available on the market, dwellings which exceed those requirements may be treated as comparable replacement housing.

Contributes Materially. During the two taxable years prior to the taxable year in which displacement occurs, a business or farm operation had average annual gross receipt of at least \$5,000, or had average annual net earnings of at least \$1,000, or contributed at least 33 1/3 percent of the owner's average annual gross income from all sources.

NOTE: It is permissible, with prior approval from the Right of Way Manager, to use a different period if it will be more equitable to the displacee (in lieu of using the two prior taxable years).

If the business has not been in operation, or has not been operated by the current owner-displacee, for the entire two taxable year period, the computation can be based on the actual period of the owner-displacee's operation projected to annual rate. The rate would be computed by determining the total gross receipts, net earnings, or gross income, whichever is applicable, during the actual period of the owner-displacee's operation; dividing the figure by the number of months of operation, and multiplying by 12 to determine the annual average. A loss for any year should be counted as "0" when averaging, not a negative number.

Conventional Loan. Any loan not guaranteed or directly provided by a governmental agency, or not guaranteed through private purchase of loan insurance, e.g., mortgage guarantee insurance, is considered to be a conventional loan.

Date of Acquisition. The date the subject property is acquired by the Commission.

Decent, Safe and Sanitary Dwelling (DS&S). A dwelling which meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, the dwelling shall meet the following standards (unless waived for good causes by the funding federal agency):

- Be structurally sound, weather tight and in good repair
- Contain a safe electrical wiring system adequate for lighting and other electrical devices
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system
- Be adequate in the size and respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lit and ventilated bedroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, property connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for an oven and refrigerator.
- Contain unobstructed egress to safe, open space at ground level.
- Be free of any barriers for a disabled displacee, which would preclude reasonable ingress, egress or use of the dwelling

Displaced Person (Displacee). Any individual, family, business, farm operation, or non-profit organization who moves from legally occupied real property (and in federally funded projects, self certifies legal residence in the United States) or moves personal property from legally occupied real property, as a direct result of the acquisition of such real property in whole or in part by the Commission including any person who moved from the real property as a result of the initiation of negotiations for the property or is issued a notice of intent to acquire.

Displaced Tenants and Owners not Located Within Right of Way Acquisition. Residential tenants who occupy a portion of a parcel that is affected by a partial acquisition, but who are not actually located within limits of the acquisition, will normally be eligible for the same relocation payments they would have been eligible to receive had they been located within the acquisition if (a) the right of way acquisition causes the remainder which they occupy to be uninhabitable due to the acquisition of a facility or service that is not replaced, or (b) if they are located in the remainder of a mobile home park that was so severely damaged and/or reduced in size by the right of way acquisition that the owner justifiably discontinues the entire mobile home park operation at the subject site within one year after the Commission takes physical possession of the portion of the property that was acquired as right of way.

An owner who occupies a remainder that is made uninhabitable due to the acquisition of a facility or service will not be eligible for relocation payments if (a) his right of way payment includes damages, in addition to the payment for property and rights acquired from him, which were specifically computed as being adequate to pay for a cure of the deficiencies which makes the remainder uninhabitable, and (b) he has the legal right and physical space to accomplish the cure. Owners who are in a position to control the necessity for their displacement, and who can reasonably avoid such necessity, cannot qualify for relocation payments by electing not to provide the cure which they have been paid to accomplish. Condemnation awards and legal settlements, which are equal to or exceed the approved offer will be considered to include payment for such cures if the approved offer included such payment. If a condemnation award or legal settlement is less than the approved offer, the Relocation Agent should recommend a payment eligibility determination to the Right of Way Manager.

Occupants of remainders which become legally and/or physically landlocked due to a right of way acquisition are eligible for the same relocation assistance and payments as occupants of properties which are actually acquired by the Commission, therefore, routine policies and procedures provided throughout this chapter are applicable under this circumstance.

Dwelling. The place of permanent or customary residence. It includes a single-family house, a one-family unit in a multi-family building, a unit in a condominium or cooperative housing project, or any other residential unit, including a mobile home.

Dwelling Site. A land area that is typical in size for similar dwellings located in the same neighborhood or rural areas.

Family. Two or more individuals living together in a single-family dwelling unit who are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all

other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or individuals who live together without an identifiable head of household will be considered one family for the purpose of administering the relocation program, unless otherwise determined by the Right of Way Manager.

Farm Operations. Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Initial Occupant. Applies to any person who has been in legal occupancy of the subject real property for not less than ninety (90) consecutive days prior to the initiation of negotiations for the acquisition of such property, or is in receipt of a written notice of the Commission's intent to acquire the property and moves from the subject property (or moves personal property therefrom) subsequent to the initiation of negotiations for such real property. Residential occupants are normally entitled to a relocation housing payment and/or rental assistance payment, moving costs and advisory services.

Initiation of Negotiations for the Property. Relates to the date on which the Commission or their designated representative presents the owner of the property a written offer for the property or rights to be acquired. When non-resident owners are involved who cannot be contacted in person, initiation of negotiations for the property shall be the date such owner or his designated representative received the first communication by mail or telephone from the Commission in which a monetary offer to purchase is made. Certified mail with return receipt requested must be used when it becomes necessary to contact a property owner or designated representative by mail.

When property owners are donating right of way, they will not be presented a written offer. Under this circumstance, the date that they are invited to execute the conveyance deed will be accepted as the initiation of negotiations for the property.

When displacees are provided a "Notice of Intent to Acquire" the initiation of negotiations will be the earlier of the following, as long as it is subsequent to the issuance of the Notice of Intent to Acquire:

- The date they move from the property
- The date the property owners or their representatives are presented a written offer for their property

Lawful Business. Any business not prohibited by law. Businesses operating in violation of zoning ordinances and/or laws, except those legally operating under a "grandfather clause", will be considered unlawful. It is possible for a lawful business to be operating illegally due to improper licensing. Lawful businesses operating with license deficiencies will, if otherwise qualified, be eligible for fixed moving payments.

Leaseback Agreement. When a replacement site is not available at the close of escrow for the displacee, an owner or tenant may be allowed to lease back the property based on a monthly rental rate. A Leaseback Agreement shall be developed by the Commission with legal counsel's concurrence, and may be terminated by the Commission at thirty (30) days' written notice, provided that the displacee is provided with alternative housing.

Less than Ninety (90) Day Occupants. Persons who are in legal occupancy of a property at the initiation of negotiations for such property, or at the time they were provided a Notice of Intent to Acquire, but who had not been in such occupancy for ninety (90) consecutive days prior thereto, are referred to as "less than ninety (90) day occupants."

Such persons are normally entitled to reimbursement of moving costs and relocation advisory assistance but for no other type of relocation payment unless the comparable replacement housing is not affordable. Under the latter circumstance, the displacee can be paid a relocation housing payment, either rent supplement or down payment assistance payment, whichever is applicable, under the Last Resort Housing Program. Payment computation procedures are explained in the appropriate sections of this chapter.

Non-Profit Organization. An organization that is incorporated under the applicable laws of the state as a non-profit organization and is exempt from paying federal income taxes under Section 501 of the Internal Revenue Code.

Notice of Intent to Acquire. Issuance of a Notice of Intent to Acquire informs owner-occupants that the Commission will be acquiring their property for a public project and that they can relocate prior to the initiation of negotiations without jeopardizing their relocation benefits.

Notices of Intent to Acquire are not available to the owners of businesses, farms and non-profit organizations. Such notices should not be given to tenants unless they initiate the action and make a request in writing to the Commission.

Partial Displacement. Situations when the acquisition does not require the displacement of the occupant, but does necessitate the removal of items of personal property, which are located within the new right of way boundaries.

Person. Any individual, family, partnership, company, corporation, organization or association.

Rental Subsidy Payment. The payment available to displaced residential occupants to cover additional rental costs they will experience in renting comparable replacement housing during the forty-two (42) month period following their displacement. It is synonymous with the terms "Rental Differential Payment" and "Rent Supplement."

Replacement Housing Payment. Payments available to qualified long-term owner-occupants to assist in the purchase of replacement housing, computed as the difference between the amount paid to them for their residential property and (1) the amount necessary to purchase the most nearly comparable DS&S replacement housing available, or (2) the amount actually paid for a



DS&S replacement, whichever is less. A replacement housing payment may also include a mortgage interest differential payment and an incidental expense payment. It is synonymous with the term “Purchase Price Differential.”

Replacement Property. The property being purchased or rented by the displacee to replace the subject property, parcel or dwelling.

Small Business. A business having not more than five hundred (500) employees, working at the site being acquired or displaced by a program or project, which site is the location of economic activity.

Subject Property, Subject Parcel, Subject Dwelling, Displacement Property. When the word “subject” or “displacement property” is used to identify a property, a parcel or a dwelling, it always relates to the property, parcel or dwelling which is being acquired or affected by the Commission and is always the property, parcel or dwelling from which a displacee is being either partially or totally displaced.

Subsequent Occupants. A person who is in occupancy of a right of way parcel at the time it is acquired by the Commission, but who was not in occupancy of such parcel at the initiation of negotiations. Subsequent occupants are eligible for relocation advisory assistance and can normally qualify for moving cost payments, but for no other type of relocation payment unless the comparable replacement housing is not affordable. Under the latter circumstance, the displacee can receive a replacement housing payment, either a rent supplement or down payment assistance payment, whichever is applicable, under the Last Resort Housing Program.

The Commission will make every effort to minimize subsequent occupants by offering to enter into a protective rent agreement (this is also known as a rent to hold vacant agreement) with the owner of the real property at the time of the initiations of negotiations.

Tenant. A person who has the temporary use and legal occupancy of real property owned by another.

Tenant Displaced to Make Room for Rearrangement of Landowners Business Operation. A tenant who is forced by his landlord to vacate the remainder of a partial acquisition to make room for the landlord to rearrange a business operation that was affected by a partial acquisition will normally be considered a displaced person, and as such will be eligible for the same relocation assistance and payments that he would have been entitled to receive if he had been located within the acquisition area. If an owner-occupied residence is involved in this type of situation, the Right of Way Manager will make a determination of eligibility.

Total Displacement. Complete displacement of a person, family, business, farm operation or non-profit organization.

Uniform Relocation Act. An abbreviated title for the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

Utility Costs. Expenses for heat, electrical, water, sewer and trash collection.

**7.1.7.00 Interest Acquired**

The type of interest acquired by the Commission does not affect the eligibility for relocation assistance payments provided the interest acquired is sufficient to cause the displacement.

**7.1.8.00 Ownership Qualifications**

**7.1.8.1** General Ownership Requirements. An owner is an individual(s) who meets one of the following criteria:

- Owns, legally or equitably, the fee simple estate, a life estate, a ninety-nine (99) year lease (regardless of the length of the unexpired term) or other proprietary interest in property. Holders of long-term leases but less than ninety-nine (99) year leases, shall also be considered owners if the unexpired term including options for extension after the date of acquisition of the subject parcel, totals (fifty) 50 years or more.
- Is the contract purchaser of any of the foregoing estate or interests. Displacees who are in the process of purchasing the property from which they are being displaced under a contract to purchase which legally binds both parties to an agreement that calls for the subsequent transfer of title to the displacees, is considered qualified if the contract has been in effect for the required ownership time period.
- Has succeeded to any of the foregoing interest by devise, bequest, inheritance or operation of law. In the event of acquisition of ownership by any of the foregoing methods, the tenure of ownership (not occupancy) of the succeeding owner shall include the tenure of the preceding owner.
- Owns an interest in a cooperative housing project which includes the right to occupy a dwelling.
- Holds any other interest, including leases with less than fifty (50) years unexpired term, which in the judgment of the Commission warrants consideration as ownership.
- The owner, as defined in this subsection, of a residential dwelling who has owned and occupied the dwelling for at least ninety (90) consecutive days immediately prior to the initiation of negotiations for the subject dwelling is more commonly referred to as a “long term owner.”

**7.1.8.2** Owner’s Acquisition by Devise, Bequest, Inheritance or Operation of Law. Displacees who acquire a property that is scheduled for right of way acquisition by devise, bequest, inheritance or operation of law are considered to have met the ownership time eligibility requirements (but not necessarily the occupancy requirements ninety (90) day owner and occupied) if the time they have owned the property since acquiring it plus the time it was owned by the person or persons from whom they acquired it totals the required time period.

This policy applies even though the displacees “inherited” the subject property after the initiation of negotiations for the property. It also applies if the inheritance occurred after the original owners signed the deed conveying the subject property to the Commission or after the property was condemned but the probable Just Compensation has not been deposited and as a consequence, possession had not passed to the Commission.

**7.1.8.3** Part Owners, Partnerships, Estate Members, Subject Right of Way Parcel. If a dwelling acquired by the Commission is partially owned by those who occupy it and partially owned by other parties who are not in occupancy, those in occupancy shall be eligible, if qualified, for relocation payments as owner-occupants.

Estates are not eligible for replacement housing payments (purchase price differential, incidental closing costs, increased interest payments, rental subsidy payments or down payment assistance) but are entitled, when qualified, to moving cost payments.

It is not necessary that another party who owned an interest in the subject, but did not occupy it, also purchase an interest in the replacement. The name of the other party should not be included as payee on the replacement housing check.

**7.1.9.00** **Eviction for Cause**

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance, unless the Commission determines the following:

- The person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted.
- The person is evicted after the initiation of negotiations for serious or repeated violation of material term(s) of the lease or occupancy agreement.

A person evicted due to failure to move or relocate when instructed or failure to cooperate in the relocation process does not lose relocation eligibility.

A displaced person cannot be denied relocation benefits if the eviction was undertaken for the purpose of evading the obligation to make available the relocation benefits the person would otherwise be entitled to.

**7.1.10.00** **Incompetent Owner or Occupant**

If an owner and/or occupant has been legally declared to be incompetent, the Relocation Program should be explained to the legal guardian. Guardians will normally have authority to execute documents for the ward, accept possession notices and handle details related to their ward's displacement. If any complications are encountered, provide all facts to the Right of Way

Manager and request specific instructions. The Right of Way Manager should seek assistance from the legal counsel in handling cases of this nature.

#### **7.1.11.00 Displacee Dies During Displacement Period**

7.1.11.1 Displacee Dies Prior to Occupying Replacement Housing. The following instructions apply when displacees who are eligible for replacement housing payments (either rental subsidy payments, down payment assistance payments, or purchase price differential payments) or moving costs die before they actually occupy a replacement dwelling:

- If the deceased is the head of a household or the member of a displaced family, the relocation payment is not affected.
- If the deceased was the only occupant of the unit acquired by the Commission, the payment would be forfeited as he would never occupy the replacement dwelling. (Any portion of a relocation housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate).

7.1.11.2 Claims Executed Prior to Displacees Death. The unpaid relocation claim of an eligible deceased displacee that has been signed and executed prior to his death should be processed for payment in the routine manner. The check should be forwarded to the administrator of the displacees estate together with an explanation of the relocation payment involved. If an estate has not been opened and/or an administrator has not been appointed, present the facts to the Right of Way Manager and ask for specific instructions. The Right of Way Manager should seek legal advice in handling cases of this nature.

7.1.11.3 Claims Not Executed Prior to Displacees Death. If a head of household dies after qualifying for a relocation payment, but before executing his claim, it is permissible to accept, process and pay a claim executed by the administrator to his estate. The check will be delivered to the administrator.

If the head of household dies prior to filing a claim that qualifies for payment and an estate has not been opened, or an administrator has not been appointed, present the facts to the Right of Way Manager and request instructions concerning execution of the claim and delivery of the check.

#### **7.1.12.00 Rest Home and Nursing Home Patients**

The term “rest home” as used herein also applies to nursing homes, convalescent homes and other similar establishments.

In applying the following policy, it will be necessary to determine whether a subject rest home resident is a temporary or permanent occupant of the rest home.

A temporary resident is one who is in the rest home during an illness, convalescence or illness recovery period, and is currently maintaining permanent residence elsewhere, which he intends to re-occupy when physically able to do so.

A permanent resident is one who has made the rest home his permanent place of residence, is not maintaining a residence elsewhere, and has no plans to leave the rest home at a later date.

In case of doubt or conflict in determining whether a displacee is a temporary or permanent resident or a rest home, legal counsel should be consulted.

**7.1.12.1**      Moving Cost-Rest Home Displaced. When a displaced rest home operation is moved by its owner and reestablished in a new location, the individual residents involved (both temporary and permanent) will not be entitled to relocation payments if the cost of moving them from the existing rest home to the replacement is borne by the rest home owner. The rest home owner will be reimbursed for such moving costs as part of the usual business moving cost payment.

If permanent residents are forced to move to a new location at their own expense, and are not moved by the rest home owner as part of his business move, they shall be entitled to residential moving cost payment based either on actual costs, or on the fixed payment schedule, as the occupant of a furnished sleeping room.

If temporary residents are forced to move to a new location at their own expense, they shall be entitled to a moving cost payment which also applies if the temporary residents return to their original permanent residence instead of moving to a new rest home facility.

**7.1.12.2**      Rental Subsidy Payments-Rest Home Displaced. Rental subsidy payments are not available to temporary rest home residents who maintain permanent and legal residence elsewhere.

A permanent rest home patron, who is displaced due to the Commission's acquisition of the rest home will not be entitled to rental subsidy payment, if the subject rest home is relocated, remains in operation, and is available to the resident after it is relocated unless the existing rental fee is actually increased as a result of the move.

If the displaced rest home does not relocate and does not continue in operation after displacement, and the permanent resident will be forced to relocate to a different rest home, they will normally be entitled to a rental subsidy payment computed as follows:

- Determine the portion of the total monthly rental fee being paid by the displacee prior to displacement that is chargeable to basic "room rent" which

normally includes utilities. It will be necessary to “carve out” and separate the basic room rent payment from nursing services, food, and other services paid for in the overall monthly payment. (Rest home records may establish these figures, if not, the determination must be made and documented by an appraiser).

- Locate the most nearly comparable replacement rest home available to the displacee and determine the portion of the total monthly rental fee charged for the replacement that is chargeable to basic room rent.
- Compute the rental subsidy payment in the same manner based on the difference between the “basic room” rental fees charged by the displaced rest home and the replacement rest home, or on the difference actually paid by the displacee, whichever is less. To determine if the 30% rule applies (see below), each case will have to be discussed with the Right of Way Manager individually.

If the payment computation procedure discussed in this subsection creates an undue hardship on a displacee, the Right of Way Manager should formulate a solution to alleviate such hardship.

**7.1.12.3** Moving Costs-'Rest Home Residents' Property Acquired by the Commission. If a residential, business or farm property is acquired by the Commission while its owner or tenant is residing in a rest home (either temporary or permanent), such owner or tenant is entitled to applicable moving cost payment and may be entitled to other relocation benefits.

**7.1.12.4** Residential Relocation Payments-'Rest Home Residents' Property Acquired by the Commission. Temporary rest home residents who maintain permanent residence elsewhere that are being acquired by the Commission, are entitled to any relocation payment they are eligible to receive and the fact that they are temporarily residing in a rest home has no effect on such eligibility.

Permanent rest home residents may own residential property occupied by others, or unoccupied. If they do, they are entitled to actual cost moving payments.

If a displacee, who is displaced from a conventional dwelling unit, or from a mobile home, moves to and becomes a permanent resident of a rest home, they can qualify for a rental subsidy payment, if eligible, provided that such rest home meets DS&S standards. In determining the amount actually paid by the displacee for their “replacement unit” consider the “basic room fee.” If the displacee moves to a rest home as a temporary basis after displacement, provide all facts to the Right of Way Manager and request instructions before making commitments to the displacee.

### **7.1.13.00** **Displaced Students**

7.1.13.1 Moving Costs. Students who are displaced from “temporary” housing, usually furnished rooms they occupy during the school year are entitled to moving cost payments, either fixed payment or actual costs, if their displacement occurs during the school year and they, of necessity, move to other temporary housing. Students who move to other temporary housing or return to their permanent homes are only eligible for moving. Students who occupy housing on a “year-round” basis are eligible for all relocation benefits.

7.1.13.2 Rental Subsidy and Down Payment Assistance. Students occupying housing on a temporary basis during the school year, as discussed in the preceding subsection, and have permanent homes elsewhere, are not entitled to either rental subsidy or down payment assistance.

Students who occupy housing on a full-time “year round” basis, and establish such housing as their permanent and legal residence, shall be entitled to the same relocation payments as any other displaced tenant.

#### **7.1.14.00 Constructive Occupancy**

To qualify an occupant for replacement housing payments, the dwelling must be the displacees primary residence. (Payment of moving costs does not require occupancy.) Where the cause of the displacees absence is temporary, displacee shall be considered in occupancy. For example, the dwelling is maintained as principal residence, but displacee is:

1. temporarily employed in another location
2. in the hospital
3. on vacation
4. on temporary military duty
5. not able to occupy because of a major disaster.

Displacee can be considered to be in “constructive occupancy” provided that another party has not established eligibility during displacees absence. Cases of constructive occupancy that differ substantially from examples listed above or cases where another party has occupied property and become eligible during the absence must be decided on an individual basis and be fully documented.

#### **7.1.15.00 Losses Due to Negligence**

Losses due to negligence on the part of the displacee, his agent or employees are not eligible for reimbursement under the Relocation Program.

#### **7.1.16.00 Displacees Refusal of Assistance**

There is no provision for the Commission to authorize displacees to waive their right to claim a relocation payment to which they are entitled to receive; unless the acquisition of the property qualifies as a “voluntary acquisition.” However, a displacee cannot be forced to sign and submit a relocation payment claim if he elects not to do so. In any circumstance when a displacee does not

accept a relocation payment, there must be clear evidence in the file that the person was fully informed of all of their potential benefits including probable dollar amounts.

#### **7.1.17.00      Rental of Commission-Owned Property**

- 7.1.17.1      New Renters after Acquisition. Persons who rent property from the Commission after it has been acquired and vacated are not eligible for relocation payments. This must be fully disclosed at the time of the rental.

Decent, safe and sanitary units owned by the Commission will be available for rent when a Leaseback Agreement is used. Improved parcels owned by the Commission that do not meet DS&S standards must not be rented for residential purposes.

- 7.1.17.2      Rental Rates. Rental rate policies are outlined in the Property Management chapter of this Manual.

- 7.1.17.3      Rental Holdovers. California Code of Civil Procedure Section 1263.615 requires that the Commission offer a one-year Leaseback Agreement to the owner of a property to be acquired under threat of eminent domain unless the Commission states in writing that the property is scheduled to be used for the project within two years of its acquisition. The Commission may opt to allow rental holdovers if the property will be used in less than two years. A decision to allow rental holdovers requires the approval of both the Right of Way Manager and the Project Manager.

- 7.1.17.4      Residential Rental Holdovers. If eligible displacees of a property acquired by the Commission desire to rent it after the possession period has expired, they can do so, if the construction schedule permits, without jeopardizing or changing their eligibility for relocation payments, including down payment assistance, incidental closing cost payments, or increased interest payments. Residential rental holdovers will normally be accomplished under a Leaseback Agreement.

An owner occupant must be served notice to vacate (at the time the property is needed for construction) under the terms specified in the Leaseback Agreement, which will normally be thirty (30) days written notice.

A tenant occupant must be served with a 90-Day written Notice to Vacate before the Commission takes possession of the property under the terms specified in the Leaseback Agreement. A 30-Day Notice to Vacate will be sent to the tenant sixty (60) days after the 90-Day Notice to Vacate is issued.

- 7.1.17.5      Residential Rental Holdovers – Moving Costs. When residential property is rented back to the occupant by the Commission, the residential moving cost payment will be made after the move to a replacement dwelling is completed. The payment will



be based on the amount of personal property actually moved, unless it is obvious that the quantity of personal property was substantially increased after the property was rented to the displacee by the Commission. If a substantial increase is noted, an adjustment will be made in the moving cost payment to eliminate payment for the items added after the property was acquired by the Commission.

If fixed-rate moving cost schedule is used, the payment amount will be based on the number of furnished rooms occupied by the displacee at the time the property was acquired by the Commission. Additional “rooms” (i.e., storage shed or fully occupied garage) may be considered for additional payment.

7.1.17.6 Residential Rental Holdovers – Replacement Housing Payment. The replacement housing payment offer that is in effect at the end of the possession period may be adjusted if the comparables offered are more than ninety (90) days old from when they eventually purchase and occupy a DS&S replacement dwelling. A replacement housing claim cannot be processed or paid until the displacee has actually fulfilled all requirements necessary to qualify for this payment, unless a hardship advance is required.

7.1.17.7 Residential Rental Holdovers – Rental Subsidy Payment. Tenants who occupy a dwelling unit being acquired by the Commission and who are eligible for a rental subsidy payment, can rent the subject parcel after it has been acquired by the Commission without jeopardizing or changing his eligibility for the subsidy payment.

The rental subsidy payment offer that is in effect at the end of the possession period may be adjusted if the comparables offered are more than ninety (90) days old from when the tenants eventually move to a DS&S replacement rental unit.

The rental subsidy claim cannot be paid until the tenant actually vacates the subject property, moves to a DS&S replacement dwelling and otherwise qualifies for the payment, unless a hardship advance is required.

7.1.17.8 Business Rental Holdovers. The renting of business, farm or non-profit property, could create serious problems in administering the Relocation Assistance Program. For this reason, the Commission should try to avoid renting back to businesses, farms or non-profit organizations.

#### **7.1.18.00 Relocation Payments Not To Be Considered As Income**

No payment made under the Relocation Assistance Program outlined in this chapter shall be considered as income for the purpose of the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low income housing assistance, consequently, all payments are not reportable to the IRS on Form 1099S.

The above statement also applies in general to state welfare laws; however, if questions exist concerning the effect of such relocation payments on the state welfare payment eligibility of specific displacees, definite answers must be obtained from local state welfare officials.

Relocation payments are generally considered exempt from levy payments as well. If the local IRS field personnel intend to take levy action against a relocation payment, inform Right of Way Manager who will, in turn, seek advice from legal counsel.

#### **7.1.19.00      Delivery of Relocation Payment Checks**

If a check is utilized as the form of payment under the Relocation Assistance Program, they should be mailed to the designated recipient by certified mail or personally delivered. A letter of transmittal setting out the check number, amount and type of payment (e.g. moving cost, replacement housing, etc.) should accompany the check. The certified return receipt should be attached to the file copy of the transmittal letter and retained in the parcel file. Electronic Funds Transfer (EFT) is also an option as a form of payment.

It is also permissible to deliver or assign relocation checks to responsible parties other than the displacee to whom such checks are made payable provided that the displacee specifically and clearly requests such action in writing.

Relocation payment checks must be made payable to the subject property displacees, except as authorized herein (administrators of estate, guardians). Moving cost payment checks can be made payable directly to moving companies under certain specific terms discussed hereafter.

#### **7.1.20.00      “Rounding” of Claim Amounts**

Relocation claims based on actual costs must not be rounded. Claims based on computed amounts (judgments, not actual costs) can be rounded to the nearest dollar. Only the “total amount due” can be so rounded, the component parts of a claim must be set out in their exact amounts.

#### **7.1.21.00      Duplicate Payments**

Under no circumstances can a displacee be paid duplicate relocation payments, covering the same displacement, by two different governmental acquisition agencies.

If the relocate is an employee being transferred by a private company is in occupancy of a parcel being acquired by the Commission at the initiation of negotiations for such parcel, or upon receipt of a Notice of Intent To Acquire, the Commission will pay all relocation payments such displacee is qualified to receive regardless of any transfer payments made to him by his employer and regardless of when the transfer was initiated.

#### **7.1.22.00      Documentation Requirements**

**7.1.22.1      Relocation Case Files.** The Right of Way Consultant shall maintain a Case File for each person who meets the definition of displaced person or persons not displaced. The Case File shall contain the Relocation Agent’s Log or Diary,

Correspondence to and from the displacee or pertaining to the displacement, and copies of claim forms and supporting documents.

7.1.22.2 Relocation Log or Diary. The Relocation Agent shall maintain a complete and legible log that will contain, at least, the following entries:

- Date case was assigned to the Relocation Agent
- Date, status and pending required action when transferred from Agent to Agent
- Date and place of each personal contact, list of persons present and particulars of the discussion
- Date and particulars of all significant phone calls
- Date of Relocation Assistance Program being delivered or mailed, including statement that relocation program was explained and assistance offered
- Amounts of relocation payments offered. Copies of benefit letters delivered or mailed
- Claimant's response to offer of assistance and relocation intentions known
- Date claim forms were delivered and kinds and amounts of payments involved
- Date payment amounts received; if revised, date claimant was advised of change in entitlement and amounts involved
- An entry to the effect that replacement housing and the replacement housing valuation was current as of date of vacation. Case File will contain written backup that valuation is current
- Addresses and prices of replacement properties offered to displace and methods used to transmit information
- Dates correspondence or documents were received or transmitted
- Delivery dates of official notices, such as 90-Day Notice
- Entry when a moving claim is processed indicating circumstances of vacation, e.g., voluntary self-relocation, eviction, subject to a 90 or 30-Day Notice, advisory assistance used

#### **7.1.23.00 Manner of Notices**

The following notices are required by federal regulation and must be in writing and personally served or sent by certified or registered first-class mail with return receipt requested. Parcel files must be documented to show that the notices are provided in the prescribed manner. Persons who are unable to read and/or understand the notices must be provided with appropriate translation and counseling.

- General Information Notice
- Relocation Brochure
- Notice of Relocation Eligibility (Relocation Payment Offer)
- Title VI
- Vacancy Notices

Additional notices developed under the Commission's procedures are discussed in various sections of this Manual.

**7.1.24.00 Relocation Program on Projects Affected by a Major Disaster**

Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to re-occupy their homes by the initiation of negotiations for the subject property can be considered to be in constructive occupancy provided the following occurs:

- That the area has been declared as a major disaster area by the President
- That the funding federal agency has determined that constructive occupancy is acceptable under the circumstances. (When a situation of this nature is encountered, provide facts to the Right of Way Manager prior to making eligibility commitments to the displacee.)

The replacement housing payment for a long term owner occupant will be based on the difference between the amount the Commission pays for the subject property in its damaged condition and the confirmed price of the most nearly comparable replacement property available (comparable to the subject before the disaster) or the difference between the Commission's payment and the amount that the displacee actually pays for a DS&S replacement, whichever is less, minus any proceeds received by the displacee as payment for damage to his residence from insurance companies and/or from any other source.

NOTE: Procedural Instructions will be issued by the Right of Way Manager in consultation with the Commission's legal counsel when tenants, businesses, farm operations or non-profit organizations are involved in a major disaster. Also, instructions for computing relocation payments will be issued when a displacee experiences disaster which damages or destroys his home or business after the initiation of negotiations for the subject parcel.

**7.1.25.00 Notice of Intent to Acquire**

It is the policy of the Commission not to issue Notices of Intent to Acquire (whether verbal or in writing) except when authorized in writing by the Right of Way Manager. The exception applies only when it is obviously in the Commission's best interest to do so or when a displacee will suffer serious personal or financial hardship if such action is not taken.

**7.1.26.00 Administrative Responsibility**

The Right of Way Manager has the primary responsibility for implementing the Relocation Assistance Program on all Commission projects. The Right of Way Manager shall designate, at least one member of the Right of Way Staff whose primary assignment is to carry out the Relocation Assistance Program on projects that involve relocation assistance.

**7.1.27.00 Legal Residency**

If the project is federally funded, the displacee will have to "self-certify" their legal residency in the United States and eligibility for relocation benefits and assistance. The Relocation Agent shall advise the displacee of this requirement as early as the provision of advisory assistance and no later than the application for benefits.

**7.1.28.00 Loss of Goodwill**

When any relocation payment precedes settlement of a claim for compensation for loss of goodwill under the eminent domain law, the Commission, before tendering the relocation payment, shall state in writing what portion of the relocation payment, if any, is considered to be compensation for loss of goodwill and shall explain that it will reduce any future compensation for loss of goodwill payment by that amount.

When any loss of goodwill payment precedes a claim for a relocation payment, the relocation payment will be reduced by an amount, if any, that was considered as part of the loss of goodwill payment. The Commission will advise the displacee in writing the method of the calculation.

#### **7.1.29.00**      **Manner of Disbursement**

Rental subsidy payments will be disbursed in lump sums, unless the Commission determines that payment should be made in installments.

#### **7.1.30.00**      **Basic Rights of Displaced Person**

No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. The Commission shall not require any displaced person to accept a dwelling provided by the Commission (unless the Commission and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

### **7.2.00.00**      **RELOCATION PLANNING**

During the early stages of development, the Commission shall plan federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations to develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the Commission which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families and persons with disabilities when applicable.
- An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Commission should consider housing of last resort actions.
- An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
- An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing

the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

- Consideration of any special relocation advisory services that may be necessary from the Commission and other cooperating Agencies.

### **7.3.00.00 RELOCATION ASSISTANCE ADVISORY SERVICE**

#### **7.3.1.00 General**

The Relocation Assistance Program can be divided into two functions (a) relocation benefits, and (b) advisory services and assistance to those being displaced. The term “advisory services” relates to advice and assistance only.

#### **7.3.2.00 Purpose**

To establish a Relocation Assistance Advisory Services Program which will enable relocation personnel to provide meaningful assistance to those being displaced regardless of race, color, religion, sex, age, special assistance, physical disability or national origin. The services discussed in this section must be provided by personal contact, if reasonably possible. If personal contact cannot be made, the Relocation Agent must document the file to show that reasonable efforts were made to make personal contact with displacees.

#### **7.3.3.00 Eligibility for Advisory Service**

Relocation assistance advisory services must be offered to the following:

- Any “displaced person”
- Any person occupying property immediately adjacent to the real property being acquired when such person(s) are caused substantial economic injury as a result of the acquisition
- Any person who moves from their residential unit, which is not located in the acquisition, due to reasonable necessity, because of the acquisition of their business or farm operation
- Any person who moves personal property from real property not located within the acquisition, due to reasonable necessity, as a result of the acquisition of their business or farm operation

#### **7.3.4.00 Advisory Service Requirements**

The Relocation Assistance Advisory Service Program must include such measures, facilities or services as may be necessary or appropriate to do the following:

- Discuss and explain the service available, relocation payments and the eligibility requirements therefore and assist in completing any applications or other forms required
- Determine the need, if any, of displaced persons, for relocation assistance
- Provide current and continuing information on the availability, prices and rentals of comparable DS&S housing, and of comparable commercial properties and locations for displaced businesses

- Assist a person displaced from the business or farm operation in obtaining and becoming established in a suitable replacement location
- When appropriate, supply information concerning federal and state housing programs, disaster loan programs, and other federal and state programs offering assistance to displaced person
- Advise displaced persons that no payments received under the Uniform Relocation Act shall be considered as income for the purpose of the IRS code or for the purpose determining the eligibility or the extent of eligibility of any person for assistance under the social security act or any other federal law
- Provide other advisory services, as deemed appropriate and necessary, to displaced persons in order to minimize hardships to such persons in adjusting to a new location.

Advisory services shall be administered on a reasonable basis commensurate with the displacees' needs. This could vary from (a) minimum assistance when displacees are well informed, mentally, physically, and financially able to manage their displacement (or overcome their economic injury) and who, as a consequence, neither need or desire Commission assistance to (b) almost unlimited advisory services and assistance for those who are elderly, disabled or otherwise unable to cope with their displacement or economic injury problems. All displacees, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

#### **7.4.00.00 RELOCATION NOTICES**

##### **7.4.1.00 General Information Notice ("GIN")**

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Commission's relocation program which includes the following:

- Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- Informs the person that he or she will not be required to move without at least ninety (90) days of advance written notice and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement has been made available.
- Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.
- Advises the person not to move until their eligibility for relocation benefits has been established.

##### **7.4.2.00 Notice of Relocation Eligibility**

Eligibility for relocation assistance shall begin on the date of Initiation of Negotiations for the occupied property. When this occurs, the Commission shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

#### **7.4.3.00**      **Reminder Notice**

The Relocation Agent shall send timely written notification of the possible loss of rights and expiration date thereof to persons who are eligible for monetary benefits, and have moved from the acquired property, but have not filed a claim.

Notification shall be sent periodically throughout the qualification period. In any event, written contact shall be made no later than within the last six months prior to the filing expiration date. This will allow sufficient time within which to obtain necessary documentation to complete the claim filing(s).

If no response to the written notification is received, the Relocation Agent should make telephone contact within the appropriate time limit and document the contact in the log or diary.

#### **7.4.4.00**      **90-Day Notices**

No lawful occupant shall be required to move unless he or she has received at least ninety (90) days advance written notice of the earliest date by which he or she may be required to move.

The 90-Day Notice may not be served prior to initiation of negotiations for acquisition of a parcel and, as a general rule, shall not be served until the Commission has obtained legal possession of the property. If possession of the right of way parcel is obtained through the court system, the court documentation can be considered to be the 90-Day Notice if it is provided at least 90 days prior.

Lawful eligible occupants must be informed of the maximum relocation housing payment amount to which they are entitled prior to or in conjunction with the issuance of the 90-Day Notice.

The 90-Day Notice shall either state a specific date as the earliest date by which the occupant may be required to move (90-Day Notice to Vacate) or state that the occupant will receive a further notice indicating, at least thirty (30) days in advance, the specific date by which he or she must move (90-Day Informational Notice).

**7.4.4.1**      **90-Day Notice to Vacate.** A 90-Day Notice to Vacate shall not be given until the Commission has control of the property. Control of property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, or the date the Order of Possession is signed by the court (unless the Order of Possession has a specific date-see below).

Since no eligible person shall be served a Notice to Vacate from a residential unit unless appropriate housing is available, at least one available comparable replacement property that is within financial means, must be offered to displacee



simultaneously with the Notice to Vacate. A parcel log or diary entry shall indicate by address the specific dwellings offered at the time of service.

- 7.4.4.2 **90-Day Informational Notice.** The 90-Day Informational Notice is not a notice to vacate. A Relocation Agent serves the 90-Day Informational Notice in person to eligible and ineligible lawful occupants who are required to vacate because of the proposed project, and have personal property located on the acquired property. A 90-Day Informational Notice must be followed by a 30-Day Notice.

If the 90-Day Informational Notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than ninety (90) days after such dwelling is made available.

If a 30-Day Notice to Vacate is not served within six (6) months following issuance of the 90-Day Informational Notice, the original 90-Day Informational Notice shall be canceled and a new one issued.

On an exception basis, such as projects with short lead time or instances where rental delinquencies can be anticipated, a 90-Day Informational Notice may be given on or after initiation of negotiations for the parcel. In such instances, the 30-Day Notice to Vacate shall not be given until the Commission has legal possession of the property.

**7.4.5.00**      **30-Day Notice to Vacate**

A 30-Day Notice to Vacate is issued sixty (60) days or more after the 90-Day Informational Notice is issued. This notice cites a specific date by which the displacee must vacate. This date may be extended, but any extension must be in writing and must cite a new specific date by which displacee is to vacate.

Since no eligible person shall be served a Notice to Vacate from a residential unit unless appropriate housing is available, at least one available comparable replacement property that is within financial means, must be offered to displacee simultaneously with the Notice to Vacate. A parcel log or diary entry shall indicate by address the specific dwellings offered at the time of service.

**7.4.6.00**      **60-Day Notice to Vacate (Mobile Home Park Occupants)**

Civil code Section 798.55 requires a minimum 60-Day Notice to Vacate be given to mobile home park occupants who reside in mobile homes or trailer coaches that require permits to be moved. Service of this notice shall be made in accordance with the instructions for service of a 30-Day Notice to Vacate except that the Notice is effective sixty (60) days after service.

**7.4.7.00**      **Notice to Vacate with Order of Possession**

If the Order of Possession contains a specific date, the Relocation Agent may also issue a 90-Day Notice to Vacate that is served simultaneously and is effective the same date as the Order of

Possession. Addresses of comparable replacement dwellings are supplied in the 90-Day Notice, and a 30-Day Notice to vacate is not required.

If the Order of Possession does not contain a specific date by which it will become effective, the Relocation Agent serves a separate 90-Day Notice to Vacate that is effective the same date as the Order of Possession and accompanies service of the Order.

#### **7.4.8.00**      **Notices to Unlawful Occupants**

Eligible tenants who are either delinquent in their rental payments or in violation of their rental agreement for any other reason are considered unlawful occupants and are served either a 3-Day Notice demanding payment of rent or possession or a 30-Day Notice of Termination of Tenancy and Notice to quit.

Although the Commission is under no obligation to the unlawful ineligible tenant, the Relocation Agent is encouraged to provide advisory services as a method of assisting unlawful tenants in vacating the property, particularly where hardship conditions exist.

#### **7.4.9.00**      **Urgent Need**

In unusual circumstances, an occupant may be required to vacate the property on less than ninety (90) days advance written notice if the Commission determines that a 90-Day Notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Commission's determination shall be included in the relocation file.

### **7.5.00.00**      **COMPARABLE REPLACEMENT DWELLINGS**

#### **7.5.1.00**      **General**

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined above) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if the following occurs:

- The person is informed of its location.
- The person has sufficient time to negotiate and enter into a Purchase and Sale Agreement or lease for the property.
- Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease the property.

One of the Commission's goals is that any available comparable used to determine a price/rental differential should be available at the listed price during the period the displacee is actively seeking replacement housing. This period of active search ends when the displacee enters into a contract to purchase (acceptance of Deposit Receipt), builds, or rents a replacement property or when the displacee vacates the displacement property.

**7.5.2.00 Waiver of Policy on Comparable Replacement Housing Availability**

The federal agency funding the project may grant a waiver of the policy in any case where it is demonstrated that a person must move because of:

- A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121)
- A declared national emergency
- Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

**7.5.3.00 Emergency Move**

Whenever a person is required to relocate for a temporary period because of an emergency, the Commission shall:

- Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling.
- Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation.
- Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling).

**7.5.4.00 Replacement Dwellings for Multiple Occupants of One Dwelling**

If two or more individuals are living together and occupying one dwelling unit, the Commission is not obligated to provide them with more than one replacement dwelling. The Commission is obligated to provide eligible individuals with a comparable dwelling on a reasonable-cost basis. If it costs less to provide one comparable replacement dwelling than two or more, the Commission shall determine the occupants' maximum entitlement based on one replacement dwelling.

**7.5.5.00 Replacement Dwellings for Multiple Families of One Dwelling**

If two or more families occupy the same single-family dwelling unit, the Commission will first attempt to locate a replacement unit that is comparable to the subject unit which will enable the families to relocate together; however, if such comparable is not available, the Commission's obligation to provide comparable replacement housing will be met if a separate DS&S replacement unit is made available to each family which provides functional comparability to the space and utility they enjoyed.

**7.6.00.00 RELOCATION CLAIMS****7.6.1.00 Documentation of Claims**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or

other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

The Relocation Agent must verify qualifying activities, such as moving and occupying replacement housing, by personal inspection with documentation in the parcel log or diary.

#### **7.6.2.00**      **Deadline for Filing Claims**

For tenants, all claims for a relocation payment shall be filed with the Commission within eighteen (18) months after the date of displacement.

For owners, all claims for a relocation payment shall be filed with the Commission within eighteen (18) months after the later of the date of displacement, which is the date that the move was completed, or the date of the final payment for the acquisition of the real property including condemnation awards, stipulated legal settlements and jury awards. This time period may be waived by the Commission for good cause.

#### **7.6.3.00**      **Claims for Multiple Occupants of One Dwelling**

There are separate entitlements to relocation payments only if two or more occupants are clearly maintaining separate households within the same displacement dwelling. The Relocation Agent must document why the occupants should be considered as maintaining more than one household in the displacement dwelling and prepare an economic analysis of available replacement housing alternatives.

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Commission, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Commission determines that two or more occupants maintained separate household within the same dwelling, such occupants have separate entitlements to relocation payments.

### **7.7.00.00**      **RELOCATION PAYMENTS**

#### **7.7.1.00**      **Expeditious Payments**

The Commission shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

#### **7.7.2.00**      **Assignment of Payment**

Displacee may assign part or all of the claim. Examples include assigning to the following parties:

- Payment of rent for the replacement dwelling to the landlord
- Payment of moving company expenses to the moving company
- Deposit of replacement housing payment into escrow to purchase replacement dwelling
- Payment of relocation expenses directly to the vendor/contractor providing the service

- Payment to a lending institution for repayment of loans

NOTE: Relocation payments are not assignable for obligations, such as general debts and rent owed to former landlord.

#### **7.7.3.00**      **Delivery of Payment**

Payment shall be delivered by the Relocation Agent, except in the following cases:

- Payment is delivered to an escrow agent by check or wire transfer.
- Payment is delivered to an assignee.
- Payment is mailed by accounting.

#### **7.7.4.00**      **Advance Payments**

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

When replacement housing is built or rehabilitated, payments are made only when the unit is completed, inspected to be decent safe and sanitary, and occupied by the displacee.

#### **7.7.5.00**      **Occupants Separate or Divorce**

Eligible occupants who subsequently separate or divorce and establish separate households, whether by choice or by litigation, qualify for payments as one displaced family. The family's payments may be divided between the occupants in any proportion on which they agree. This agreement must be in writing and cannot be changed without written consent from both parties.

If the parties cannot reach an agreement, entitlement is calculated as if they relocated together. Payment can be determined by type of eligibility established by the first party to relocate and file a claim. Although only one party needs to sign the claim forms, checks must be made payable to both parties.

If divorce or separation occurs and one spouse vacates the property prior to initiation of negotiations, the spouse who remains in occupancy is eligible for all relocation benefits that may accrue.

#### **7.7.6.00**      **Deduction from Payments**

The Commission shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Commission shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

Courts have held that Relocation Assistance Payments cannot be attached through legal actions. In bankruptcy situations, the displacee must advise Trustees of any possible relocation payments.

#### **7.7.7.00**      **Notice of Denial**

If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination and the procedures for appealing that determination.

#### **7.8.00.00 MOVING COSTS**

##### **7.8.1.00 Payment Eligibility**

All displaced persons, including less than ninety-day occupants, subsequent occupants and occupants partially displaced, are eligible for moving costs.

##### **7.8.2.00 General Moving Cost Policies**

7.8.2.1 Policy Concerning More Than One Move. Moving costs cannot be paid for more than one move of the same personal property without prior approval by the Right of Way Manager. More than one move will not be approved unless it is clearly in the best public interest to do so. This policy does not apply when it is necessary to move personal property to and from storage.

Two moves can be justified when personal property is located within a temporary or permanent easement - one move from the easement area and another to return the personal property after the easement (if temporary) reverts to the property owner.

7.8.2.2 Distance of Move. There is no limitation on the distance a displacee can move personal property. However, moving cost payments must not include the expenses involved in moving the personal property more than fifty (50) miles. When the relocation cannot be accomplished within the fifty (50) miles from the subject location, the Right of Way Manager may allow reimbursement of cost to the nearest adequate and available site.

Moving cost payments can be made to cover the cost of moving personal property on to remaining or other lands owned by the displacee or his or her landlord.

7.8.2.3 Owner Retention of Real Property. When an owner retains any item that was classified as real property, the cost of moving it to a new location is never eligible for reimbursement.

If a retained dwelling is moved without removing the occupant's personal property, the displacee can still be paid a moving cost payment based on the "Fixed-Payment Moving Cost Schedule." No additional moving cost payment will be made. If, however, furnishings are removed during the time the building is being relocated, displacee could be paid the actual cost of removing, storing and replacing the subject furnishings, or the fixed-payment option in lieu of actual costs.

- 7.8.2.4 Personal Property Sold after Initiation of Negotiations and Prior to Displacement. Displaced persons who sell or otherwise dispose of personal property after initiation of discussions and prior to displacement are eligible for a fixed payment (discussed later in the chapter).

Fixed Payment Option. If the owners of residential personal property who selected the “fixed payment” moving cost option, sell or otherwise dispose of their personal property prior to its being removed from the subject parcel, they shall be entitled to the fixed payment under Schedule B of the Fixed-Payment Moving Cost Schedule after such personal property has been removed from the right of way. The fact that personal property was disposed of prior to its removal from the subject parcel has no effect on the eligibility of the displacee to receive his or her fixed moving cost payment. The person who purchased the personal property will not be eligible for reimbursement of the cost of moving the property.

Actual Cost Option. If the owners of personal property select an “actual cost” moving cost payment, then sell or otherwise dispose of any personal property prior to the time it is removed, they will not be entitled to reimbursement for the cost of moving the items that were sold or otherwise disposed of. The party who acquired the personal property may be eligible for a moving cost payment as a Subsequent Occupant. If a business, farm or non-profit organization is involved, the original owner, who owned the items at the initiation of negotiations, may be eligible for a “Tangible Property Loss” payment relating to the items sold and/or disposed of.

No moving cost payment will be paid for items that are sold to customers of a business, farm operation or non-profit organization, as well as the cost of moving items that are sold to customers and delivered by the displacee.

- 7.8.2.5 Real Property Sold to Another Party. If a property owner sells his or her real property which is needed as right of way to another party after initiation of negotiations, and not directly to the Commission, and as a result, vacates such property prior to the time possession is required by the Commission, he or she will not be entitled to a moving cost payment as the displacement will be necessitated by the sale of the real property and not due to the Commission acquisition.

- 7.8.2.6 Payment Assurance to Moving Firms. It is possible that displacees, whose moving cost payments are to be based on “actual costs,” may not be financially able to employ a moving firm and pay for their move prior to receiving a moving cost payment from the Commission. If this situation occurs, it is possible that moving firms will be unwilling to conduct the move without assurance that they will receive payment. In such instances, one of the two following actions may be taken:

Benefits Confirmation Letter. Provide the displacees a letter confirming the moving cost payment offer (based on the lowest, most reasonable moving cost bid or estimate received) which they can present to the moving firm as proof that they will receive payment from the Commission which will enable them to pay the mover.

Check Payable to Moving Company. The displacee and the moving firm can execute an agreement authorizing the Commission to make the moving cost payment check payable to the moving firm and only released to the moving company upon completion of a move satisfactory to all parties

7.8.2.7 Move Bids. The procedures for accomplishing various types of moves normally require at least two (2) moving cost bids or estimates from licensed commercial movers who are qualified to conduct the displacees move. Each bid must reflect the total amount that will be charged for conducting the move. When it is only possible to get one (1) bid, advise the Right of Way Manager of the facts involved and ask for authority to proceed on the basis of one (1) bid or estimate.

If the lowest bid appears to be unreasonable, the Relocation Agent must obtain additional bid(s) to assure that the moving cost will be acceptable. It is expected that bids will be provided without cost; however, with prior approval of the Right of Way Manager, movers can be compensated for preparing bids for specific moves.

If it is not practical to obtain advance moving cost bids due to the complexity of a move, the displacee can be authorized by the Right of Way Manager to conduct the move without them. When the requirement for obtaining bids is waived due to the complexity of the move, the Case File must be documented and state the justification therefore.

The displacee must be given a reasonable opportunity to help select the two moving firms who will be asked to bid on his or her move. This can be accomplished by assembling a list of all certified moving companies in the area which are acceptable to the Commission.

The reasonable preference of the displacee should be honored; however, the Relocation Agent is not permitted to accept unreasonable requests which would not reflect good business practices, or which involve moving firms not acceptable to the Commission. If it is not reasonably possible to agree with the displacee, the Relocation Agent has authority to carefully select qualified movers and to proceed without the displacees concurrence. The Relocation Agent shall advise the Right of Way Manager, in writing, at any time it is necessary to proceed without the displacees concurrence.

Copies of all bids must be retained in the Relocation Case File.



Arrangements for making the move are the responsibility of the displacee. The Commission will not contact or employ the mover on behalf of the displacee and will not supervise the move except under unusual circumstances and only after approval is granted by the Right of Way Manager. Approval will not be granted unless the displacee is physically or mentally incapable of such actions and when they do not have anyone else willing and able to assist them.

- 7.8.2.8 Overtime Charges. Moving cost payments must be based on “straight time” rates and not on overtime rates except in cases where it is essential that the move be conducted during “off duty” hours. Prior approval from the Right of Way Manager is required before a move involving overtime rates can proceed.

**7.8.3.00 General Moving Costs**

The following items are eligible moving costs for all displaced persons:

- 7.8.3.1 Professional Services. The reasonable costs of professional services necessary for one of the following:
- Planning the move of personal property
  - Moving the personal property
  - Installing the relocated personal property at the replacement site
- 7.8.3.2 Reasonable “Out of Pocket” Fees. Reasonable “out of pocket” fees paid to consultants for preparing inventories of personal property are normally reimbursable. Displacees should be encouraged to submit proposals for obtaining professional services, including the anticipated costs, to the Relocation Agent prior to approval. The cost of professional services will be limited to the reasonable hourly rate charged by others in the specific profession.
- 7.8.3.3 Transportation. Transportation of the displaced person and personal property to the replacement location up to a distance of fifty (50) miles. Such costs can be on a mileage basis, computed as one trip from the property acquired to the replacement property, or actual costs if commercial transportation is used.
- 7.8.3.4 Packing and Crating. The reasonable costs of packing, crating, unpacking and uncrating personal property are reimbursable incidental moving costs.
- 7.8.3.5 Insurance. The cost of insurance premiums covering loss and damage of personal property while in transit or storage can be included in a moving cost claim based on actual expenses but must not exceed the reasonable replacement value of the personal property involved, including the deductible, if applicable. Claims including insurance premiums must be supported by paid receipts showing the amount paid for the insurance and the amount of coverage involved.

7.8.3.6 Losses in Moving. The reasonable replacement value of property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employee) in the process of moving is reimbursable, when insurance to cover such loss or damage was not reasonably available. This payment is not authorized when residential moving cost payments are based on the fixed-payment schedule, or when the fixed-payment non-residential option is selected in lieu of moving costs. The replacement value of damaged personal property will not be paid if the damaged item can be reasonably repaired.

7.8.3.7 Storage. If it is necessary for displaced persons to store their personal property, the actual cost of such storage, not to exceed twelve months can be included in their moving cost claim. The Case File must be documented to explain why such storage was necessary and justify the amount of the storage charges. The cost of storing personal property on real property being acquired or on another property owned or leased by the displacee, is not eligible for payment under the Relocation Program. If the most practical solution is for the personal property to be temporarily stored in rented mobile storage units parked on the subject property, such as vans, trailers, etc., the reasonable cost of renting such units may be eligible for reimbursement. In these instances, the approval of the Right of Way Manager is required.

Moving cost claims which include storage costs must be accompanied by a paid receipt showing the amount paid as storage costs, length of storage period, where the personal property was stored, and if applicable, a breakdown of the storage costs.

Storage costs cannot be paid when residential moving cost payments are based on the "Fixed-Payment Moving Cost Schedule", or when a fixed non-residential payment is made in lieu of moving costs.

Should the owners of personal property sell the personal property while they are in storage, their eligible storage cost period terminates at the end of the month in which it is sold and neither they, nor the buyer, shall be entitled to any payment covering the cost of moving such personal property from the storage area. When storage is necessary, the Commission will normally pay the reasonable cost of moving the personal property to the storage site and at the end of the storage period to a place designated by the displacee, provided the combined distance of both moves, to and from storage, does not exceed fifty (50) miles in distance. If the move from the storage occurs later than sixty (60) days after the end of the twelve (12) month storage period, without authorized extension, the Commission will not reimburse the displacee for the cost of moving the personal property from the storage unit.

A storage period in excess of twelve (12) months must be approved by the Right of Way Manager based on necessity.

- 7.8.3.8 Costs of Attempting to Sell Personal Property. The reasonable cost incurred in attempting to sell an item of personal property that is not to be relocated is reimbursable.
- 7.8.3.9 Other Moving Related Expenses. In addition to the specific incidental moving costs discussed herein, eligible displacees can be reimbursed for other moving expenses that the Commission determines to be reasonable and necessary that are not specifically ineligible. Under no circumstances will the Right of Way Consultant discuss with a displaced person any payment under this section until the Right of Way Manager has approved the payment.

#### **7.8.4.00 Residential Moving Policies**

- 7.8.4.1 Two or More Families Occupy Same Single-Family Dwelling Unit. In most instances, the term “families” is used in explaining the procedures in this subsection; however, the principles and instructions also apply when one family jointly occupies a single-family dwelling unit with other individuals who are not a part of the family.

Joint-occupancy families are entitled to separate moving cost payments if they are eligible for separate replacement housing or rental subsidy payments. In most cases joint-occupancy families will be treated as multiple occupants in one dwelling.

- 7.8.4.2 Separation after Displacement. In some instances, two or more families living together in the same single-family dwelling unit prior to displacement, will move into separate dwelling units after being displaced. If this occurs and the Commission determines they are separate households, each family can claim a separate moving cost payment, either the actual cost of moving their portion of the personal property involved or a payment based on the appropriate Fixed-Payment Moving Cost Schedule.

When the payment is based on the fixed-payment schedule, each family can be paid using the schedule method. Their benefit under the schedule method will be determined by their ownership of the furnishings, as with any other residential occupant.

- 7.8.4.3 All Families Relocate Together. Families who live together prior to displacement will not be entitled to separate moving cost payments if they move to the same single family replacement dwelling unit and continue to live together after displacement, regardless of the circumstances involved.

#### **7.8.5.00 Residential Moving Costs**

Residential moving cost payments as discussed in this subsection relate to all personal property generally classified as household goods, furniture, appliances and any other items used in the

establishment and maintenance of a home and is not used in the operation of a business, farm or nonprofit organization. It is important that the Relocation Agent confirm that certain items of personal property, such as satellite dishes, above ground swimming pools, and outdoor spas, were not acquired with the real property. Personal property that was acquired with the real property is not eligible for reimbursement as a move cost payment.

Relocated individuals or families can be paid based on the cost of one, or a combination of the following methods:

- Self-move
- The “Fixed-Payment Moving Cost Schedule

**7.8.5.1      Commercial Mover.** Moves in this category include all situations where eligible displacees, including partial displacements, employ and pay someone (normally a moving company or trucking firm) to move their personal property from the unit acquired by the Commission to a replacement unit and claim reimbursement for their actual and reasonable expenses. Applicable related moving expenses paid by displacees, as shown below, are available for reimbursement under this moving payment option.

The owners of mobile homes which have been classified as personal property can claim the actual and reasonable cost of moving the unit to any location within fifty (50) miles distance. Moving cost bids should be from qualified bidders who are equipped and capable of moving mobile homes. The Commission will reimburse the displacee for incidental expenses related to the move, including disconnection and hookup of utilities, permit fees and appliances. The cost of extending water, sewer, electric or other utility lines to and on the replacement site is not eligible for reimbursement as an incidental moving cost (This is considered a capital improvement to the site).

**7.8.5.2      Residential Self-Move.** A residential occupant, including occupant and non-occupant owners of mobile homes that have been designated as personal property, may conduct a self-move. Payment will be based on one or a combination of the actual and reasonable costs incurred or the lower of two bids prepared by a commercial mover. If payment is based on actual and reasonable costs, it must be supported by receipted bills for labor and equipment. Hourly labor and equipment rental rates should not exceed the rates paid by a commercial mover.

**7.8.5.3      Fixed-Payment Moving Cost Schedule.** Individuals and families who are displaced from their dwelling, or from a seasonal residence, can elect to receive a moving cost payment based on the Federal Highway Administration’s (FHWA) periodically published “UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT-RESIDENTIAL MOVING EXPENSES AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE.” The FHWA moving cost schedule is a

generally accepted industry standard and therefore will be used by the Commission on projects funded by other agencies, unless the funding agency has an alternate schedule.

Anyone using the schedule method must check with FHWA to ensure that the schedules below are current.

Schedule A (Occupant Provides Furniture). This schedule covers situations in which a displacee occupies and provides the furnishings for a dwelling unit.

An attic, basement, enclosed porch, separate shed or other similar-type storage areas can qualify as a compensable room, provided that such area contains furniture, appliances and/or other personal property reasonably equivalent to a routine furnished room. Bathrooms, hallways and closets do not qualify and must not be counted as separate rooms. If the amount of personal property in a room or space actually contains more than the normal contents, the room count can be increased accordingly. If some rooms are considered to be ineligible to qualify as a furnished room due to being sparsely furnished, it is proper to combine two or more of such rooms to qualify as one compensable furnished room.

The number of “eligible rooms” on which the fixed-payment amount is based will be established by the Relocation Agent who is assigned to the unit at the initiation of negotiations and must be compatible with the number of rooms reflected in the Relocation Agent’s report. If the number of rooms shown in the relocation Agent’s report or the letter of eligibility for relocation benefits differs from the number of rooms shown in the needs questionnaire, the difference must be explained on the Relocation Agent’s Report.

Occupants of mobile homes which are classified as real property shall be paid under this schedule for moving their furnishings in the same manner as occupants of conventional dwellings, based on the number of rooms in the subject mobile home.

When an acquisition includes an occupied residence located on a parcel larger in size than a normal building lot in the area, including those located on farms, the qualified owner shall be permitted to select the fixed-payment option for the residential move and also claim the actual cost of moving any items of personal property located on such “extra land.”

Number of Rooms	Payments
1	\$725
2	\$930
3	\$1165
4	\$1375
5	\$1665

6	\$1925
7	\$2215
8	\$2505
Each additional Room \$265	

Schedule B (Furniture Provided By Landlord). This schedule applies to occupants when the furnishings in a dwelling unit are owned by someone other than its occupant, normally by the landlord in “furnished units.” “Sleeping rooms” normally fall within this category.

The occupants of mobile homes who do not own the unit or its furnishings shall be paid by use of this schedule as any other occupant of a conventional furnished dwelling unit based on the number of rooms in the mobile home. The owner of the furnishings cannot be paid a fixed-schedule payment, but could normally qualify for a moving payment based on actual costs.

Number of Rooms	Payment
1	\$475
Each Additional Room \$90	

Schedule Exceptions. If a person has minimal possessions and occupies a dormitory style room, or if the person’s move is performed by an agency at no cost to the person, moving costs are limited to \$100.

When a partial displacement residential move is involved and the displacee (occupant or non-occupant) elects to conduct a self-move based on the fixed-payment schedule, a flat rate of \$175 per room or equivalent will be used not to exceed \$1,750.

Combined Residential and Business or Farm Moves. Should a non-residential moving payment be involved, or a separate business move, it is the Relocation Agent’s responsibility to ensure that the personal property related to the business is not considered when determining the number of eligible rooms that are to be included in the schedule payment and that there is no duplication of payment.

#### 7.8.5.4 Additional Eligible Residential Moving Costs. Potential additional moving costs for residential moves include:

- **Removal and Reinstallation Expenses.** The reasonable costs of disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property are reimbursable. Cost of altering or modifying residential items of personal property, to adapt to the replacement dwelling, cannot normally be a reimbursable incidental moving cost.

- Transportation, Meals and Temporary Lodging. Transportation costs can include special services such as the cost of an ambulance to transport relocates up to a distance of fifty (50) miles.
- The actual reasonable costs of meals and lodging can be paid if it is necessary for the displacees to “eat out” or spend a night in a motel or hotel because of the move. Lodging rates and meals must not exceed the routine rates paid by the Commission to its employees when they travel on Commission business. Receipts will be required to prove that such expenditures were made and the actual costs involved.
- Temporary lodging provisions are not to be used to house displacees, unless extraordinary circumstances dictate otherwise, while other quarters are being acquired or constructed, as comparable replacement housing must be available for occupancy prior to the time the displacee is required to move.
- Mobile Home Appurtenances. The reasonable cost of disassembling, moving and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility hookup charges.
- Mobile Home Repairs. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe and sanitary.
- Nonrefundable Mobile Home Park Entrance Fee. Nonrefundable mobile home park entrance fees at the replacement site are reimbursable as incidental moving costs. Reimbursement for such fees cannot exceed the entrance fee charged by the selected comparable replacement mobile home park on which the displacees relocation housing payment was based.

#### **7.8.6.00 Business, Farm and Nonprofit Organization Moving Cost Policies**

**7.8.6.1** Monitoring Moves. Moves that involve large moving cost payments must be monitored at both the displacement and replacement sites by the Relocation Agent, to the extent necessary to assure that the personal property involved was actually moved (at the displacees expense) to their remaining or replacement property and that the moving cost claim is reasonable and accurate. Displacees are required to give advance written notice of the date the move will begin. Failure to provide the written notice or to permit the Relocation Agent to monitor both at the displacement and replacement sites can cause forfeiture of moving payment eligibility. On-premise monitoring may be waived by the Right of Way Manager in cases of non-complicated moves.

**7.8.6.2** Furnished Rental Units. The owners of furnished multi-family dwellings or furnished single family dwellings, which they do not occupy, can be reimbursed

for the cost of moving such furnishings as a routine business move. In an effort to minimize administrative burdens in the relocation process, it is permissible to reimburse the cost of moving the personal property for these types of businesses using the moving schedule. The businesses would be additionally eligible for other related moving costs such as reestablishment payment.

**7.8.6.3**     Partial Displacement. If the majority of a business property or farm operation is being acquired as right of way, and/or if the right of way acquisition is so severed that the business or farm operation cannot be continued, the owner can be paid for moving all personal property used in connection with the business or farm operation including items located outside of the right of way acquisition, provided that such items are moved within a reasonable time after acquisition. This is normally by the end of the displacees authorized possession of the acquired area unless an extended time period is agreed upon in writing between the Commission and displacee. The Case File must be documented to show why the entire business or farm operation must be relocated when a partial acquisition is involved.

**7.8.6.4**     Two or More Owners of Personal Property Involved. In instances where several different persons or firms own personal property located on business or farm real property being acquired by the Commission, each owner is entitled to the cost of moving his or her items of personal property. Each must file a separate claim.

**7.8.7.00     Business, Farm Operations and Nonprofit Organization Moving Costs**

Owners of displaced businesses, farm operations and nonprofit organizations can employ commercial movers to relocate their personal property, conduct self-move, or have a combined commercial and self-move.

**7.8.7.1**     Commercial Mover. Moves in this category include all situations where the qualified owners of displaced businesses, farm operation and nonprofit organizations employ someone to move their personal property from real estate acquired to a replacement site and claim reimbursement for their actual and reasonable moving expenses. Applicable related moving expenses paid by the displacee are reimbursable under this moving cost payment option.

If the displacee moves more than fifty (50) miles, the payment will be based on the prorated portion of the moving costs that would have been applicable to a fifty (50) mile move.

If there is a need for specialized moving equipment and/or expertise, it is permissible for the owner to employ two or more commercial movers. It is also permissible for such owners to conduct a move by employing a commercial mover to move part of their personal property and move the balance by self-move.



An inventory should be obtained from the displacee or the fixture and equipment appraisal showing the items of personal property to be moved. It is permissible for small items to be grouped into “lots” or to be “lumped” together in some other type of identifiable unit such as specific number of bins, boxes, barrels, etc. The Relocation Agent must make an on-site inspection of the items involved and assure that the inventory is accurate. The Case Files must be documented to show the inspection and photographs taken. Inventories should be prepared at the earlier of the actual move or the acquisition of the parcel.

The Relocation Agent, working in concert with the business, must create moving specifications ensuring that there is a meeting of the minds how the personal property will be disconnected (as necessary), packed, disconnected, moved, reconnected and unpacked.

The Relocation Agent must obtain at least two (2) moving cost estimates from qualified movers based on the inventory.

After the move is complete, the displacee must provide the Commission an inventory of the items of personal property that were actually moved to his or her remaining or replacement property. The post-move inventory must contain a statement that all of the items listed therein were actually moved from the project location.

The Relocation Agent must conduct an on-site review of the post-move inventory to attest that it is reasonably accurate and that does not contain any items of real property that were retained and moved by the displacee. If the post-move inventory is substantially the same as the pre-move inventory, the displacee can be paid the actual moving costs. Eligible documented incidental expenses may likewise be paid.

**7.8.7.2**     Self-Move. Qualified owners of any displaced businesses, farms or nonprofit organizations have the option of conducting a self-move. Under this option, the displacees will move their personal property and will not employ a commercial mover to conduct the move.

Similar to a commercial move, the Relocation Agent must determine the inventory, obtain moving bids and verify the move.

If the post-move inventory is substantially the same as the pre-move inventory, the displacee may be paid the amount of the lowest moving cost bid, without presenting additional documentation. They can also be paid eligible documented incidental expenses.

7.8.7.3 Additional Business, Farm and Nonprofit Organization Moving Costs. Additional moving costs relevant only to business, farm and non-profit organization moves include:

Removal and Reinstallation of Equipment. The reasonable costs of disconnecting, dismantling, removing, reassembling and reinstalling machinery, equipment and other personal property can normally be included in moving cost payments that are based on actual moving expenses.

The reasonable costs of making modifications to the personal property as necessary to adapt it to the replacement structure, replacement site, or to the utilities at the replacement site, are reimbursable incidental moving costs, but must be preapproved by the Right of Way Manager. The cost of modifications to adapt the utilities at the replacement site to serve the personal property are also reimbursable.

Licenses. Any license, permit, fee, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fee or certification.

Signs and Stationery. Actual reasonable cost of re-lettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move are reimbursable. Generally, the cost of replacing stationery will be limited to the amount of stationery the person had "on hand" at the date of the move. In instances when a business has less than a "minimum run" of stationery on hand the Commission may, at its option, pay the full cost of the minimum run. A pre-determined maximum expenditure should be agreed upon between the Commission and the displaced person for these items of cost before a payment commitment is made.

Search for Replacement Site. The owner of a displaced business, farm operation or nonprofit organization can be reimbursed for the actual reasonable and documented expenses incurred in searching for a suitable replacement property, not to exceed \$2,500. Applicable search expenses include:

- Transportation for search – based on actual fees charged for commercial transportation or allowable RCTC employee mileage rate when a private vehicle is used
- Meals away from home – not to exceed the rate paid to RCTC employees when they travel on business
- Lodging away from home – not to exceed standard rates charged by motels and hotels in the area
- The value of time actually spent in the search, based on the applicable and reasonable salary or earnings of the person(s) conducting the search

- Fees paid to a real estate agent, broker or other consultant to locate a replacement property, exclusive of any fees or commissions related to the purchase of the site
- Time spent in obtaining permits and attending zoning hearings
- Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings

All expenses claimed (except the value of time spent in the search) must be supported by receipts or bills. Time spent will be documented with an invoice that reasonably explains the time actually spent in the search.

Eligible search costs incurred prior to the initiation of negotiations are reimbursable if they were incurred due to reasonable anticipation of the property being acquired by the Commission, and the displacee becomes eligible for a moving cost payment.

**Purchase of Substitute Personal Property.** If the item of personal property, which is used as part of a business, nonprofit organization or farm operation, is not moved but is promptly replaced with a substitute item that performs comparable function at the replacement site, the displacee is entitled to payment of the lesser of the following:

- The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item.
- The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate for relocating the item including incidental costs, but excluding any allowance for storage and any allowance for modifying the equipment, the utilities or the replacement structure. One bid or estimate is acceptable in determining the estimated cost of relocating an item when a low cost and/or uncomplicated move is involved.

This procedure should be recommended to displacees when it will cost more to move an item than to replace it in kind or with a suitable substitute at the replacement site. If displacee insists on moving the item, procedural advice from the Right of Way Manager must be requested.

If a situation is encountered where the cost of moving an item that cannot be replaced or suitably substituted is substantially more than its value, all facts must be provided to the Right of Way Manager and procedural instructions requested prior to making a commitment to the displacee. Facts submitted must clarify the importance and/or necessity of the item in carrying out the displacees business, farm or nonprofit operation.

Professional services. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commission directly related to the purchase or lease of such site). All expenses must be pre-approved by the Right of Way Manager prior to the costs being incurred by the business.

Impact fees. Impact fees or one-time assessments for anticipated heavy utility usage, as determined to be necessary by the Right of Way Manager.

Tangible Personal Property (49 CFR 24.301 (g) (14)). The owners of displaced businesses, farm operations or nonprofit organizations (either partial or complete displacement), who are eligible for a moving cost payment, can elect not to move some, or all, of their personal property and be reimbursed for the monetary loss they will experience by not moving such item provided.

The displacee made a bona fide effort to sell the items involved. The Commission can determine that such effort is not necessary (items "traded in" on replacements will be considered as having been sold). Displacees should not be excused from this requirement unless it is rather obvious that the item(s) involved have no resale value. When the Relocation Agent determines that an effort to sell is not necessary, the Case File must be documented to justify the decision.

The tangible property loss payment will be the lesser of the following:

- The fair market value in place of the item, as is for continued use, less the proceeds from its sale.
- The estimated cost of moving the item including disassembling and reassembling, but with no allowance for storage or any allowance for modifying the equipment, the utilities or the replacement structure.

The Right of Way Manager can approve any reasonable method of determining the fair market value including, but not limited to, an independent appraisal procured by the Commission.

The fact that displacees claim tangible property losses for some of the items involved has no effect on their moving cost claim covering other items that were relocated. The claim should be carefully reviewed to make sure cost of moving items included as a tangible loss are not included in a moving cost claim. Items for which tangible property losses are paid must not be included in moving cost inventories, bids and estimates or relocation claim forms.

When payment for property loss is claimed for goods held for sale, the fair market value will be based on the cost of the goods to the displacee, not in its potential selling price.

**7.8.8.00 Ineligible Moving Expenses**

Expenses that are not eligible for reimbursement and/or payment under the Relocation Assistance Program and must not be included in moving cost claims are as follows:

- The cost of moving structures, improvements or other real property in which the displaced person reserved ownership
- Interest on a loan to cover moving expenses
- Loss of goodwill
- Loss of profits
- Loss of trained employees
- Any additional operating expenses of a business, farm or nonprofit organization incurred because of operating in a new location, except as provided for previously in this section.
- Personal injury
- The cost of preparing the application for moving and related expenses
- Any legal fee for representing the displacee in relocation matters, including appeals;
- Expenses for searching for a replacement dwelling
- Physical changes to the real property at the replacement location of a business, farm, and nonprofit organization, except as provided for previously in this section
- Cost for storage of personal property on real property owned or leased by the displaced person except as provided for previously in this section
- Costs incurred to comply with OSHA, federal, state or local requirements except as provided for previously in this section
- Refundable security and utility deposits
- The cost to represent the displaced person during the relocation process, the cost to prepare a claim for the displaced person or any other costs for services that are available from the Commission or its right of way consultants

**7.9.00.00 BUSINESS REESTABLISHMENT****7.9.1.00 Eligible Reestablishment Expense (49CFR 24.304)**

In addition to the moving payments previously discussed, a small business, farm or nonprofit organization may be eligible to receive reestablishment payment not to exceed \$25,000, unless the Commission adopts an increased amount. This payment is for expenses actually incurred in relocation and reestablishment at a replacement site and does not apply to part-time businesses in the home which do not contribute materially to the household income as defined previously.

**7.9.1.1** Eligible Expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Commission. They may include, but are not limited to the following:

- Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance
- Modifications to the replacement property to accommodate the operation or make the replacement structures suitable for conducting the operation

- Construction and installation costs for exterior signage to advertise the operation. If the displacee was paid for a sign at the displacement site, their eligibility will be limited to the difference between what they were paid for the sign and the amount necessary to replace it with a comparable sign. Salvage value should be included as part of the replacement cost.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting
- Advertising the replacement location. Payment of monthly advertisement costs, after vacation of the project site, when the cost could not be avoided and the business can demonstrate that it gains no benefit from the continuing ad. At no time will advertisement costs be reimbursed if the contract for the ad was initially committed to after the initiation of negotiations.

In instances when the advertisement predominantly markets a phone number and the number does not have to be changed as a result of the move, there will be no payment under this subsection.

In instances when a phone number has to be changed and the advertisement predominantly markets the phone number, the cost under this subsection may be limited to reimbursement of call forwarding for one (1) year from the date of displacement.

- Estimated increased costs of operation during the first two years at the replacement site for such items as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees. The Relocation Agent must verify that replacement sites were not available which would allow the operation to relocate without increased operating costs. The Case File must contain documentation of this verification.
- Other items that the Commission considers essential to the reestablishment of the operation.

In no event, can the total reestablishment cost exceed \$25,000, unless the Commission chooses to adopt a policy increasing the limit.

7.9.1.2 Ineligible Expenses. The following is a non-exclusive listing of reestablishment expenses not considered to be reasonable, necessary or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures
- Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of operation
- Interior or exterior refurbishment at the replacement site which are for aesthetic purposes

- Interest on money borrowed to make the move or purchase the replacement property
- Payment to a part-time business in the home which does not contribute materially to the household income

#### **7.10.00.00 FIXED/IN LIEU PAYMENT**

The terms “fixed payment”, “in-lieu payment”, “displaced nonprofit organization payment”, and “fixed payment for moving expenses, non-residential moves” are synonymous.

##### **7.10.1.00 Fixed/In Lieu Payments – Businesses**

**7.10.1.1** Payment Eligibility Requirements. The owner of any business which qualifies for a moving cost payment may elect to claim a fixed payment for moving instead of a moving cost payment based on actual cost plus related expenses.

The fact that the owners of a displaced business intend to purchase or establish a different type of business after displacement has no effect on their eligibility for a fixed payment.

If the owner of a business scheduled for acquisition sells the business to another party after negotiations are initiated for the subject property, or after receipt of a “Notice of Intent to Acquire”, they will not be eligible for fixed payment. The new owner of the business, if eligible, could qualify for the payment if they continue the business operation on the subject property after it is acquired.

In addition, the following five additional eligibility requirements must be satisfied:

- The business contributes materially to its owner’s income during the two taxable years prior to displacement. Displacees who claim fixed payments must provide copies of their federal income tax returns for the two applicable tax years to prove that the business operation meets the “material contribution” test, and for use in computing the amount of their fixed payment. Only the portion of the tax returns necessary to prove material contribution and average annual net earnings is required. Income information provided by the displacees may be verified with the IRS if for any reason the amount of net income appears questionable.
- The business cannot relocate without substantial loss of existing patronage. To qualify for a fixed payment, it must be determined that the business cannot be relocated, or in case of a partial acquisition, that it can’t continue to operate on the remaining property and it can’t be relocated without substantial loss of its existing patronage. “Patronage” as used in the term “substantial loss of existing patronage” relates to either “clientele” or “net earnings.”

When making a determination concerning the ability to satisfactorily relocate the business, a business is presumed to suffer a substantial loss of its existing patronage unless the Commission proves otherwise. Business owners are given the benefit of the doubt concerning their ability to relocate. The presumption of loss of existing patronage is outlined in the Final Rule of the Uniform Relocation Act. Presumption, as required under those regulations, is not a statement that the Commission assumes there will be a loss of earnings or patronage for any purpose other than compliance with applicable provisions of the Payment in Lieu of Moving and Related Expenses.

- The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities. A business which does not “contribute materially” to the owner’s income is not considered “another entity” and does not disqualify the owner from receiving a fixed payment.

To be declared ineligible for a fixed payment, both the business being displaced and the similar businesses not being acquired must have a common ownership. Businesses and corporations are both considered to have common ownership even though they are known by different business or corporate names, if their owners are substantially the same.

- The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site. An estate is eligible for a fixed payment when the business owned by the estate is displaced.
- The business is not operated at a displacement dwelling solely for the purpose of renting to others.

**7.10.1.2** Two or More Business Operations, Same Site and Same Owner. When several business activities are located on the same property and operated by the same party, which are closely related and complement each other, they will be considered as one business. This is especially true if it is necessary to combine the income from all of the activities to produce a reasonable business profit.

If the different activities are not related and if they do not complement each other, they will normally be considered as separate businesses and the owner will be entitled to separate fixed payments, provided that each business qualifies on its own merits.

Other factors to be considered in making a multi-business determination is the extent to which the same premises and equipment are shared, substantially



identical or interrelated business functions are carried out, business and financial affairs are commingled, and how the entities are held out to the public and to those customarily dealing with them, or if the same person or closely related persons own, control or manage the affairs of the entities.

- 7.10.1.3 Consideration of Acquisition Payments. Business owners who also own the property on which the business is located cannot qualify for a fixed payment when the right of way payment is adequate to pay for rearranging their remaining facilities to enable them to continue the operation.

Business tenants of properties owned by persons who receive a right of way settlement adequate to reasonably “cure” the impacts caused by the acquisition, or who receive a part of the right of way consideration themselves, which is adequate to “cure”, will not become eligible for this type of payment.

- 7.10.1.4 Payment Determinations. The owners of a displaced business who qualify for a fixed payment are entitled to an amount equal to the average annual net earnings of their business (adding back in any payments made to the owners directly as salary), not to exceed a maximum payment of \$40,000 or less than \$1,000.

The term “average annual net earnings” means one-half of any net earnings of the business, before federal, state, or local income taxes have been deducted, during the two taxable years immediately preceding the taxable year the business is displaced.

If a loss occurred in one year and a gain in the other, the year in which the loss was incurred should be considered as zero income when determining the average net income for the two-year period.

If a business has operated less than two full taxable years, the fixed payment can be computed by projecting its net earnings to an annual rate.

Interest payments made by a business to the owners of the business cannot be included as a part of the average annual net earnings of the business.

When unusual circumstances exist which indicate that a different period of time (other than the two taxable years prior to displacement) should be used in determining a business’ annual net earnings, seek approval from the Right of Way Manager to use alternate periods.

#### **7.10.2.00 Fixed/In Lieu Payments – Farm Operations**

- 7.10.2.1 Payment Eligibility Requirements. A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses

In the case of a partial acquisition, the farm operation will be considered to have been displaced if the acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land or the partial acquisition caused a substantial change in the nature of the farm operation.

If a sharecropper or tenant is actually conducting the farming operation that is being displaced, he/she is entitled to a fixed payment, even though the landowner may share in the profits.

When minerals are being produced on a farm on a commercial basis and/or when quarrying operations are so conducted, they are to be considered as a separate businesses and not taken into consideration as a part of the farm operation.

Farm operations owned by Estates are entitled to this type of payment.

- 7.10.2.2 Payment Determinations. The owners of a displaced farm operations who qualify for a fixed payment are entitled to receive an amount equal to the average annual net earnings of the farm operation not to exceed a maximum payment of \$40,000 or less than \$1,000. (Subsection, Payment Computations).

#### **7.10.3.00 Fixed/In Lieu Payments - Nonprofit Organizations**

- 7.10.3.1 Payment Eligibility Requirements. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$40,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Commission determines that it cannot be relocated without substantial loss of existing patronage (membership or clientele).

A nonprofit organization is presumed to meet this test unless the Commission demonstrates otherwise. Any payment in excess of \$1,000 must be supported by certified financial statements for the two 12-month periods prior to the acquisition.

- 7.10.3.2 Payment Determination. The amount to be used for payment is the average of two years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of funds collection that enables nonprofit organizations to operate. Administrative expenses include rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses.

#### **7.10.4.00 Time for Filing "Fixed Payment Claims"**

The eligible owners of a displaced business, farm operation or nonprofit organization which is displaced from the acquisition site can claim their fixed payment any time after (1) negotiations

are initiated for the real property involved (or Notice of Intent to Acquire), and (2) the operation has been completely discontinued on the displacement property or the Commission has acquired possession of the property (partial acquisitions), but no later than the end of the 18-month period. Subsequent occupants cannot be paid until after the real property involved has been acquired by the Commission. Operations owned by subsequent occupants must be in operation on the site at the time it is acquired by the Commission. If not, the owner is not eligible.

#### **7.11.00.00 PURCHASE PRICE DIFFERENTIAL PAYMENT**

##### **7.11.1.00 General Policy**

Individuals and families displaced from dwellings including condominium and cooperative apartments they owned and occupied for at least ninety (90) consecutive days prior to the initiation of negotiations for the property are entitled to a replacement housing payment, including a Purchase Price Differential Payment, to enable them to purchase replacement housing. They must meet the payment eligibility requirements outlined in this section.

7.11.1.1 Advance Relocation Housing Payments. If eligible displacees request it, they may receive their relocation housing payment at the escrow closing on the replacement home, provided the following has occurred:

- The displacees' request is made in writing.
- The displacees have entered into a Purchase and Sale Agreement or some other written agreement to purchase for a specific and available DS&S replacement dwelling.
- The displacees have a loan commitment from a qualified lender which will enable them to purchase the replacement.
- The Commission has acquired the existing dwelling.

Advance relocation housing payments will not be processed unless and until all four of the preceding requirements have been satisfied and the Case File documented accordingly. If, in the opinion of the Right of Way Manager, it is in the best interest of the Commission the Right of Way Manager may waive the above requirements.

7.11.1.2 Replacement Housing Escrow Agreements. An Escrow Agreement is desirable in making an advance payment if the seller of the replacement dwelling is agreeable to closing the transaction and permitting the displacees to occupy the dwelling prior to receipt of the entire purchase price, with the provision that the relocation payment will be placed in escrow for immediate delivery after the displacees' purchase and occupancy eligibility requirements are fulfilled.

7.11.1.3 Mortgage Waiver. Displaced homeowner-occupants may hold negative equity in what is commonly referred to as "upside-down" mortgages where the fair market value of the property (or just compensation) is less than the outstanding debt (the mortgage). In these circumstances, an administrative settlement negotiated to acquire the property may eliminate the replacement housing payment otherwise

available to the homeowner-occupant to assist in relocating to a replacement dwelling. While the FHWA had established a waiver for these situations, that program has now expired. Consequently, use of the waiver for projects with any funding agencies requires pre-approval of those agencies. If funding is exclusively from the Commission, then the Executive Director shall approve the use of any waivers for these situations.

The waiver is applicable only to those situations where displaced homeowner-occupants have negative equity in the property being acquired. This waiver eliminates the normal requirement that the replacement housing payment calculation use the amount finally determined and paid as just compensation for the property. Instead, the replacement housing payment calculation uses the appraisal-based just compensation amount in the original offer to acquire, even though the final just compensation amount may have been increased through an administrative settlement that takes into account the amount by which the mortgage/lien balance exceeds the fair market value of the property acquired.

#### **7.11.2.00 Payment Eligibility Requirements**

- 7.11.2.1 Ownership and Occupancy Requirements. The individual or family being displaced must have owned and occupied their dwelling unit for at least ninety (90) consecutive days immediately prior to the initiation of negotiations for the subject property or, if they are provided a “Notice of Intent to Acquire” by the Commission, they must have owned and occupied it for at least ninety (90) consecutive days prior to the date they actually vacated the property if it was vacated prior to the actual initiation of negotiations. When a “Notice of Intent to Acquire” is used, the ninety (90) day period is measured from the date that negotiations are initiated for the subject or from the date that it was vacated by the owner-occupant, whichever is earlier.
- 7.11.2.2 Sale of Property After Initiation of Negotiations. Displaced owner-occupants will not be eligible for a relocation housing payment if they sell the subject dwelling to any party other than the Commission after the initiation of negotiations for the parcel. The “other party” who purchases the dwelling will not be eligible for the payment.
- 7.11.2.3 Displacement Must Be Necessitated By Right of Way Acquisition. The displacement must be necessary due to the actual acquisition of the subject dwelling by the Commission, or, due to its being rendered legally or physically landlocked and uninhabitable by the acquisition.
- 7.11.2.4 Owner’s Principal Residence. A replacement housing payment cannot be made unless the dwelling acquired as right of way by the Commission or landlocked, is the owner’s permanent or customary and usual residence and/or legal place of residence.

- 7.11.2.5 Timing of Replacement Dwelling Purchase. The displacees must purchase and occupy a replacement dwelling which meets DS&S standards within a one-year period beginning on the later of the following:
- The date the displacees or their Escrow Agent receives payment from the Commission for the acquired dwelling or in case of condemnation, the date the final judgment is paid into court.
  - The date the displacees move from the displacement dwelling.
- 7.11.2.6 Displaced Owner Occupies Previously Owned Dwelling as Replacement. Displaced owner-occupants of a residential dwelling unit who move to and occupy a DS&S replacement dwelling that they had previously owned may be eligible for a replacement housing payment, provided that the current value of their interest in the replacement dwelling unit is equal to the entire amount paid for the subject property plus their computed replacement housing payment offer.
- 7.11.2.7 Displacee Purchased Replacement in Partnership With Other Parties. If qualified displacees purchase their replacement dwelling in partnership with other parties who did not own an interest in and occupy the subject dwelling, they must invest an amount equal to the entire amount paid for the subject property plus the computed replacement housing payment in the purchase of their interest in the replacement.

### **7.11.3.00 Amount of Payment**

The replacement housing payment for an eligible ninety (90) day homeowner-occupant may not exceed \$31,000. The payment shall be the sum of the three components of the Replacement Housing Payment for ninety (90) day Owner Occupants:

- Price Differential. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, and
- Interest Differential. The increased interest cost and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling as described below; and
- Incidental Closing Costs. The reasonable expenses incidental to the purchase of the replacement dwelling, as described below.

In some instances the addition of incidental closing or increased interest costs to the basic replacement housing payment will cause the total to exceed \$31,000. Situations will also be encountered in which the Commission will not be able to make the required comparable DS&S replacement housing available to a displacee within the maximum payment limitation. When these situations are encountered, advise the Right of Way Manager, in writing, and request authority to pay the total under the Last Resort Housing Program.

Replacement housing claims in excess of \$31,000 should include a notation of the back of the form “authority to process payment in excess of \$31,000 granted by the Right of Way Manager letter dated\_\_\_\_\_.”

Eligible owner-occupants who rent a replacement dwelling instead of purchasing DS&S replacement housing are entitled to a rent supplement payment. The rent supplement cannot exceed \$7,200 unless there is a qualification for Last Resort Housing.

#### **7.11.4.00 Payment Computations**

A replacement housing payment must be for the lesser of an amount equal to the difference between the final amount received by eligible displacees in payment for their displacement dwelling (prior to any deductions covering the value of salvage retained by the owners) and either the actual amount paid for a DS&S replacement dwelling by the displacees (not including incidental closing costs and increased interest payments), or the amount determined by the Commission as necessary to purchase the most nearly comparable DS&S replacement dwelling available. Determination of the most comparable dwelling will be made by the Relocation Agent. The payment, together with authorized incidental closing costs related to the purchase of the replacement and increased interest costs, must not exceed \$31,000.

7.11.4.1      Mobile Homes. If the replacement dwelling is a mobile home, the cost of furniture and appliances should not be included as part of the “consideration paid”, even though they were purchased with the mobile home as part of a “package” unless such furniture and/or appliances are built-in and are considered to be an integral part of the mobile home.

7.11.4.2      DS&S Deficiency Corrections. If a displacee purchases a replacement dwelling that has DS&S deficiencies and after purchase corrects those deficiencies, the documented actual expenses may be considered as having been spent in the purchase of the property. The actual cost of correcting the DS&S deficiencies can be added to the purchase price of the replacement. However, under no conditions would a displacee receive more than the differential between a comparable DS&S dwelling and the acquired dwelling.

7.11.4.3      Improvements to Make Functionally Equivalent. Displacees who acquire a replacement dwelling that is not functionally equivalent to their displacement dwelling can include, as a part of the replacement purchase price, any documented expenditure they make in improving the replacement to a level of functional similarity.

The cost of improvements to the replacement dwelling, other than those required to eliminate DS&S deficiencies or replace functionality, cannot be included as a part of the purchase price of the replacement dwelling.

7.11.4.4      Previously Owned Dwelling. Eligible displaced residential owner-occupants who move to and occupy a previously owned DS&S dwelling as their replacement

dwelling will be entitled to a replacement housing payment. The payment will be based on the lesser of the difference between their payment for the displacement property and the adjusted price of the selected comparable that was used in computing their replacement housing payment offer or the current value of the previously owned replacement dwelling.

7.11.4.5 Determining Acquisition Amount. For a single-family dwelling, the entire offer made by the Commission to the owner-occupants for their residential property is used. For situations where there are multi-family residences, land in excess of normal residential standards, properties with residential and business operations, and other specialty situations, the Relocation Agent must work in conjunction with the appraiser to carve-out the acquisition amount appropriate to be used for the replacement housing payment.

7.11.4.6 Multiple Occupancy of Same Single-Family Dwelling Unit. The procedure discussed herein is applicable in computing payment offers for the eligible occupants even though some of the families or separate individuals involved do not meet occupancy time requirements or for some other reason are not eligible for a replacement housing payment.

If two or more eligible individuals and/or families which occupy the same single-family dwelling maintain separate households, they will be entitled to separate replacement housing payments.

If the individuals and/or families do not maintain separate households, they will be entitled to only one joint replacement housing payment if a comparable, or better, DS&S replacement dwelling is available to them. The one payment can be prorated between eligible individuals and/or families if they choose to relocate into separate DS&S replacement dwellings. If a comparable DS&S dwelling is not available which will enable them to relocate together, they will be entitled to separate replacement housing payments.

7.11.4.7 Multi-Unit Dwelling Complexes. If the owner of a multi-unit dwelling occupies one of the units therein being acquired, their maximum replacement housing payment will be computed as follows:

- An appraiser must prorate the Commission's total offer for the property to determine the portion that is chargeable to the specific unit occupied by the owners.
- The most nearly comparable dwelling must be determined. If the same type of complex is not available, the most nearly comparable complex of the next lowest density that is available can be used.
- If the selected comparable is a single-family residence, deduct the prorated portion of the offer that is chargeable to the occupied unit from the adjusted

price of the selected comparable. The resulting figure will be the maximum replacement housing payment.

- If the selected comparable is a multi-unit complex, prorate the adjusted price of the comparable to determine the portion that is chargeable to the specific unit that is most comparable to the unit occupied by the displacees in the acquisition dwelling complex. Deduct the prorated portion of the offer that is chargeable to the unit occupied by the displacees in the acquisition complex from the prorated portion of the adjusted price of the comparable to determine the maximum replacement housing payment. To qualify for the computed replacement housing payment, the displacees must spend an amount equal to the prorated value assigned to the occupied unit plus the total replacement housing payment.

7.11.4.8 Mobile Homes. If the displaced owner of a mobile home classified as real property qualifies for a replacement housing payment covering both the mobile home and supporting land area, compute the maximum payment similar to owner occupied single-family dwellings. If a comparable DS&S mobile home and/or site is not available, it will be necessary to calculate the payment on the basis of the next higher type of dwelling that is available and meets applicable DS&S standards.

The determination of whether a mobile home is, or is not, real property must be determined during the appraisal process and approved by legal counsel.

The displaced owner-occupant of a mobile home which is located on land belonging to another party can be paid a replacement housing payment covering the mobile home, but not the land, when a mobile home has been determined to be real property, the owner has owned and occupied the mobile home while located on the site from which it is being displaced for the required ninety (90) day period and all other eligibility requirements have been met.

The owner of the mobile home could also be paid the equivalent to a rental subsidy payment covering the site if they meet the eligibility requirements for the separate payments involved.

The displaced owner-occupant of a mobile home can be paid a replacement housing payment covering the land on which the mobile home is located when a mobile home was not considered to be a part of the real property and was not acquired, the mobile home was occupied by the displacee on land he/she also owned (subject site) for at least ninety (90) consecutive days prior to the initiation of negotiations and all other eligibility requirements have been met.

7.11.4.9 Insurance Proceeds Due to Catastrophic Occurrence. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a



catastrophic occurrence (fire, flood, etc.,) shall be included in the acquisition cost of displacement of dwelling when computing the price differential.

7.11.4.10 Owner Retention of Displacement Dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- Cost of moving and restoring the dwelling in a condition comparable to that prior to the move
- The cost of making the unit a decent, safe, and sanitary replacement dwelling
- The current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is reasonable opportunity for the claimant to rent a suitable replacement site
- The retention value of the dwelling, if such retention value is reflected in the “acquisition cost” used when completing the replacement housing payment.

The combined cost of relocation, rehabilitation, and improvement to DS&S standards are eligible for reimbursement to the extent they do not exceed the maximum price differential entitlement based on comparable replacement properties. This may include construction features such as garages if they cannot be moved.

7.11.4.11 Condemnation Cases. The same procedure is applicable in carrying out the various phases of the Relocation Program when condemnation is involved, except when the owner of a residential property being acquired through condemnation is entitled to a replacement housing payment. Displacees who are entitled to replacement housing payments and whose properties are being acquired through condemnation can enter into a Condemnation Agreement and receive their replacement housing payment prior to final adjudication of the condemnation case. The agreement can be signed after the deposit of just compensation and after the displacees have purchased a replacement dwelling.

Condemnation agreements are not applicable when an owner elects to rent rather than purchase replacement housing. When a condemnation agreement is used, the replacement housing payment must be recomputed after the court order for probable Just Compensation has been ordered and prior to execution of the agreement, and shall be the difference between the portion of the probable Just Compensation that is chargeable to the subject residential property and the actual amount paid for a DS&S replacement dwelling by the displacees or the difference between the probable Just Compensation and the adjusted price of the most nearly comparable DS&S replacement housing available, whichever is the less.

The displacee can also wait until final adjudication of their condemnation case and then file a replacement housing claim. If the owners chose to wait until final

settlement of their condemnation case before filing a claim for their replacement housing payment, deduct the portion of the final legal settlement that is chargeable to the residential property from the adjusted price of the most nearly comparable DS&S replacement available as determined on the “Replacement Housing Comparison Record” and in a separate computation, deduct the same portion of the final legal settlement from the amount actually paid for the DS&S replacement property purchased and occupied by the displacees. The displacees are entitled to a replacement housing payment equal to the lesser of these two computed figures.

Owner-occupants whose residence was acquired by condemnation can be reimbursed for their eligible incidental closing costs and paid any increased interest payment without the need for a condemnation agreement.

7.11.4.12 Owner-Occupants with Partial Ownership Interest. When a dwelling is owned by several persons and occupied by one or more owners, the replacement housing payment is the lesser of the following:

- The difference between the owner-occupant’s share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling
- The difference between the total acquisition of the acquired dwelling and the amount determined by the Commission as necessary to purchase a comparable dwelling

When the partial owner-occupant purchases a replacement that is less costly than the estimated replacement cost and is DS&S for the owner-occupant, then “spend to get” is that party’s share in the acquisition price plus the price differential.

#### **7.11.5.00 Replacement Housing Comparison Record**

7.11.5.1 When the Record is Prepared. The Relocation Agent must make eligible owner-occupants a written replacement housing payment offer at the initiation of negotiations. A Replacement Housing Comparison Record will be used in establishing this offer.

For parcels that are included in the critical path, the Replacement Housing Comparison Record should be completed during the period that the appraisals of the parcel are being reviewed so that negotiations can be initiated immediately after a negotiating figure is approved.

7.11.5.2 Selection of “Comparables.” In every case, the comparables used in the Replacement Housing Comparison Record must meet the following requirements:

- Is currently available for purchase on the market
- Meet DS&S requirements

- Meet the definition of comparable replacement dwelling
- Be the three dwellings that are most nearly “comparable” to the subject than any other available properties which meet the above requirements

Comparables must be “functionally equivalent” to the displacement dwelling with particular attention to the number of rooms and gross living space. The comparable must perform the same primary function as the displacement dwelling and enable the displacees to maintain a similar lifestyle in the dwelling as before displacement.

It is desirable that the comparable replacement be physically similar to the subject in regard to age, type of construction, room arrangement, or minor attributes. Gross living space is based on outside measurements excluding garages and unfurnished areas.

#### **7.12.00.00 INCIDENTAL CLOSING**

##### **7.12.1.00 Definition of Incidental Closing Costs**

The incidental closing cost payment is the amount necessary to reimburse qualified displacees for the actual and reasonable costs incurred by them incident to the purchase of their replacement dwelling.

Reimbursable incidental closing costs may include the following items, if the amounts involved are reasonable and if such costs are normally paid by the buyer.

- Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges incident to recordation
- Lender, FHA or VA appraisal fees
- Lender, FHA or VA application fees
- Inspections fees, such as structural inspection, termite inspection, asbestos inspection
- Credit report fees
- Title insurance, not to exceed the costs that would have been involved in the purchase of the selected comparable on which the RHP was based
- Escrow fee, based on comparable
- Sales or transfer tax (not to exceed the costs for a comparable replacement dwelling)
- Professional home inspection, certification of structural soundness, and termite inspection
- Other costs which the Right of Way Manager agrees to be incidental to the purchase

Incidental closing costs must not include any prepaid expenses, such as, prepaid taxes, prepaid insurance or prepaid interest. The costs incurred in securing mortgage financing in cases where there is not mortgage on the property acquired and any additional costs in securing large mortgage on the replacement dwelling than existed on the acquired property are not reimbursable. Appraisal fees and survey fees may, however, be reimbursable.

The reasonable cost of transferring a mortgage when an existing mortgage on a replacement property is assumed by a displacee is eligible for reimbursement as incidental closing costs. Reasonable refinancing expenses paid by displacees who retain and move their existing dwellings to their remaining land or who build replacement dwellings on their remaining properties are reimbursable. One-time mortgage default insurance premiums are reimbursable.

Loan service fees and points and loan origination fees can be included in increased interest and down payment assistance on a limited basis.

#### **7.12.2.00**      **Payment Eligibility Requirements**

Any displacee who meets the eligibility requirements for either a replacement housing payment, or down payment assistance is entitled to an incidental closing cost payment.

### **7.13.00.00**      **INCREASED INTEREST PAYMENT**

#### **7.13.1.00**      **General Policy**

Increased interest payments (interest rate differential) are available to eligible displaced long term owner occupants of residential property. These payments are intended to compensate owners for the additional expense that may be encountered due to a higher interest rate for a new mortgage on a replacement residential property.

#### **7.13.2.00**      **Payment Eligibility Requirements (49 CFR)**

To be eligible, all of the following conditions must exist:

- The displacee must have been an owner-occupant for more than ninety (90) days prior to the date of initiation of negotiations or the date of the Notice of Intent to Acquire.
- The displacee must have purchased and occupied a suitable replacement dwelling within the prescribed time limits.
- The mortgage or contract of sale must be bona fide and have been a valid lien for not less than ninety (90) days prior to the date of initiation of negotiations or date of the Notice of Intent to Acquire. All mortgages shall be used to compute the payment.
- There must be a mortgage or contract of sale on the replacement dwelling.
- Mortgages or similar notes used to purchase mobile homes are mortgages for the purpose of this procedure.
- Temporary construction loans and short-term notes covering the period relocation payments are being processed will not be considered on any increased interest computation.

#### **7.13.3.00**      **Payment Computations**

The payment will be the amount which will reduce the balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

**7.13.3.1**      **When to Compute Payments.** Displaced owners must be advised of the estimated amount of this payment and conditions that must be met to receive it. This must

be done as soon as owners provide the necessary information on their existing mortgage to the Relocation Agent. Displaced owners will receive an eligibility notice which advises them to contact the Relocation Agent immediately after they have signed a contract to purchase their replacement residence to obtain an estimate.

7.13.3.2 Payments Computed By Whom. The Relocation Agent is authorized to compute increased interest payments and have approved by the Right of Way Manager.

7.13.3.3 Payment Computation. Displacees are entitled to an increased interest payment if the interest rate applicable to the mortgage on their replacement property has been increased above the rate charged on the mortgage on their existing residential property. Increased interest payment computations are based on the remaining term of the existing mortgage or on the actual term of the new mortgage, whichever is less, and on the unpaid balance of the existing mortgage or on the actual amount of the new mortgage, whichever is less.

Displacees are also entitled to reimbursement for the actual amount they paid as “points” on the amount refinanced and for any amount paid by them as an origination or service fee.

Displacees must provide Relocation Agent with the following documents:

- For estimates or payments, provide a copy of all Notes and Deeds of Trust and current payoff amounts on existing mortgages on the subject property.
- For payments, provide a copy of the loan application and commitment.
- For payments, provide a copy of all Notes and Deeds of Trust on new mortgages on the replacement property.
- For payments, a copy of estimated closing costs, for payments, a copy of the closing statement covering the replacement property purchase which clearly reflects any origination or loan service fees and/or any “points” paid by the displacee.

## **7.14.00.00 RENTAL SUBSIDY PAYMENTS**

### **7.14.1.00 General Policy**

Tenants and owners who rent rather than purchase replacement housing, are entitled to a rental subsidy payment if they meet the payment eligibility requirements outlined in this section.

Payments for displaced tenants are based either on the increased monthly rental costs above the rental they were paying for the unit acquired that they would have to pay over forty-two (42) months for an available comparable DS&S replacement dwelling unit, or the increased rental for forty-two (42) months that the tenants actually pay for their replacement dwelling unit, whichever is less.

For owners who rent rather than purchase a replacement dwelling, the payment will be based on either the difference between the economic rental fee of the subject dwelling and the actual rental fee charged for the most nearly comparable DS&S replacement dwelling available, or the difference between the economic rental fee and the actual rental fee paid for the replacement unit, whichever is less.

Rental subsidy payments cannot normally exceed \$7,200. The total amount due will be paid in one lump sum (assuming the displacement property has been vacated) unless the Commission determines that it should be made in installments.

#### **7.14.2.00**      **Payment Eligibility Requirements for Tenants**

7.14.2.1      **Prior Occupancy Requirements.** The individual or family being displaced must have rented and legally occupied the subject dwelling unit for at least ninety (90) consecutive days, or if they are provided a “Notice of Intent to Acquire”, they must have rented and occupied it for at least ninety (90) consecutive days prior to the date they actually vacated the property if it was vacated prior to the actual initiation of negotiations.

If any doubt exists concerning the actual length of time tenants occupied a subject dwelling, the date of occupancy should be confirmed by their landlord and the file documented accordingly.

When an owner-occupied mobile home that has been classified as personal property and must be removed from a rented site, the site occupancy date is the controlling factor. Displacees must have occupied a mobile home on the subject site for the required ninety (90) day period.

If both the mobile home and site are rented, the displacees’ rental subsidy payment will be based on the rental fee of both the mobile home and site for the required ninety (90) day period. Consecutive occupancy of other sites (within the displacement property) can also be considered when determining the displacees’ occupancy period.

In determining the applicable occupancy period of a displacee in a multi-unit residential complex, it is permissible to consider consecutive occupancy of other units which are being acquired or demolished due to the Commission project.

7.14.2.2      **Occupancy Required at Initiation of Negotiations.** The tenants must have been in legal occupancy of the subject dwelling unit at the initiation of negotiations for the parcel acquired, or if they are provided a “Notice of Intent to Acquire”, at the time they receive the notice.

7.14.2.3      **Timing for Replacement Occupancy.** The displacees must rent and occupy a DS&S replacement dwelling within one year after they move from the subject dwelling.

This one-year time period may be extended, with Right of Way Manager approval, for good cause.

7.14.2.4 DS&S Standards. A displacee must rent and occupy a replacement dwelling that meets decent, safe and sanitary standards, to be eligible for a rental subsidy payment.

7.14.2.5 Sleeping Room. Displaced tenants of sleeping rooms who meet the payment eligibility requirements are entitled to a rental subsidy payment.

#### **7.14.3.00 Payment Eligibility Requirements for Owners**

Owners who occupied their displacement dwelling for at least ninety (90) consecutive days and who elect to rent rather than purchase a replacement dwelling are eligible for a rental subsidy payment if they meet the same requirements as a tenant, except that the one-year period allowed for renting and occupying a replacement will begin on the later of the following occurrences:

- The date on which the owners, or their Escrow Agent, receive their right of way payment from the Commission when negotiated settlements are involved.
- In case of condemnation, the date the court ordered probable Just Compensation, stipulated settlement, or jury award is paid into court, or the date on which they move from the displacement dwelling.

If the displacees later decide to purchase a replacement within the original one-year period, they can do so and claim a replacement housing payment. The amount of any rental subsidy payment previously paid must be deducted from the replacement housing payment, incidental closing costs and increased interest payment.

#### **7.14.4.00 Payment Computations**

7.14.4.1 Existing Rental Rate. The existing rental rate is determined by using the average monthly rental rate being paid by displacee during the three months immediately prior to the month in which the Commission initiated negotiations for the subject property or when the tenant received a Notice of Intent to Acquire and vacated the subject unit prior to the initiation of negotiations, whichever came first. The existing rental rate shall include the any rent supplements supplied by others (such as government subsidies), when, by law, such supplement is to be discontinued upon vacation of the subject property.

A copy of the tenant's lease agreement or rent receipt should be filed in the Case File.

7.14.4.2 Economic Rental Rate. The term "economic rent" as used herein is the normal monthly rental fee being paid on the open market for similar dwelling units within the area of displacement. If the displacees' existing average monthly rental rate is

substantially less than the economic rent applicable to the displacement unit, the economic rent will be used in the rental supplement payment computations in lieu of the “average monthly rental rate.” This policy should not be applied if an unfair hardship is placed on the displacee.

7.14.4.3 Rental Fee Charged for Most Nearly Comparable Unit. Displacees should be offered the same type of replacement unit as that from which they are displaced; however, this not mandatory if it is not practical to do so if the selected replacement is functionally equivalent to the displacement unit.

7.14.4.4 Utility Services Adjustments. Unless all utilities are provided by the landlord in both the displacement dwelling and in the selected comparable, the estimated average monthly costs of those utilities must be added to the basic monthly cost of the comparable should a comparable be selected which provides the same utilities as the subject dwelling unit.

Utility cost estimates can be determined through one of the following ways:

- Average of actual utility costs over the past twelve (12) month period, based on bills paid
- Average utility cost from the utility company based on square footage and number of family members
- If the annual utility costs are known for another unit, it may be practical to estimate the cost of the utility at the other unit by comparing the two units and adjusting the known costs for difference in unit size, physical features, appliance, etc.

7.14.4.5 Furniture Provided by Landlord. The general procedures in the preceding subsection relating to utilities also apply when furnishings are provided by the landlord in the displacement dwelling, but not in the selected comparable. If possible, comparables should be selected which provide the same furnishings to the displacee.

Furnishings can be provided to the displacees at the replacement site in either of the following two methods that is less costly:

- Rent comparable furnishings and add the monthly rental of the furnishings to the monthly rental of the replacement dwelling when computing the rental supplement offer. Refundable deposits on such rentals are not compensable.
- If rental furnishings are not available, or if the rental procedure is more expensive over a forty-two (42) month period, add the cost of purchasing comparable used furnishings to the rental subsidy offer.

7.14.4.6 Rental Subsidy Computation Sheet. A Rental Subsidy Computation Sheet shall be developed and used in computing all rental subsidy payment offer.



The computation sheet should be completed during the time appraisals of the subject property are being reviewed or soon after the negotiations are initiated for the property. A written rental subsidy payment offer must be made to eligible displacees within forty (40) days after such negotiations are initiated.

The Relocation Agent should complete the computation sheet. The completed form must be approved by the Right of Way Manager.

The rental subsidy payment offer, not to exceed \$7,200, is computed by subtracting the lesser amount arrived at in any option below, from the total amount necessary to rent the most nearly comparable DS&S replacement dwelling unit for the next forty-two (42) months. Rental subsidy payment computations are as follows:

- Forty-two (42) times the average monthly rental paid plus utilities by the displacee during the last three months
- Forty-two (42) times the economic monthly rental rate plus utilities. If the average monthly rental being paid substantially less than the economic rate, or, if an owner elects to rent rather than purchase a replacement
- Forty-two (42 times) 30% of the displacees monthly income

If the only comparable DS&S replacement rental unit available required rental subsidy payment in excess of \$7,200 or if there are no acceptable comparables available in the area, the entire payment must be made under the Last Resort Housing Program. This program will not be applied to owner-occupants who desire to rent rather than purchase replacement dwellings if comparable DS&S replacement dwellings are available to them for purchase through the replacement housing payments.

If an owner elects to use rental subsidy as a down payment, compute a replacement housing payment. The down payment assistance cannot exceed the computed RHP amount.

7.14.4.7 Pets or Service Animals. It is preferable that selected comparables also permit pets, however, it is not mandatory if the most nearly comparable does not accept pets.

Service Animals are not considered pets under this policy. Comparables must be selected which will accept displacees Service Animal.

7.14.4.8 Disabled Displacee. To meet DS&S requirements, the selected replacement dwelling unit for a disabled person must be free of any barriers which would preclude reasonable ingress, egress and use of the unit by the displacee.

If a suitable replacement cannot be located which will accommodate the displacee, it is permissible to increase the monthly rental of an otherwise comparable replacement unit to compensate the owner for the cost of rearranging the unit as necessary to meet DS&S standards.

- 7.14.4.9 Multiple Occupancy of Same Dwelling Unit. If a comparable or better DS&S replacement dwelling unit is available for rent within the maximum \$7,200 rental subsidy payment limitation when two or more eligible individuals or families who do not maintain separate household are displaced from the same single-family dwelling, only one rental subsidy payment will be made.

If comparable or better DS&S unit is not available, each eligible individual and/or family involved will be entitled to a separate rental subsidy payment offer.

- 7.14.4.10 Short Term or Subsequent Occupants. If an affordable replacement is not available for a short-term tenant or subsequent occupant, it will be necessary to present the displacees a rental subsidy payment offer if the comparable rent, including utilities, exceeds the monthly rental, including utilities, of the displaced dwelling.

- 7.14.4.11 Moves after Original Displacement. A displacees' payment amount will not be recomputed or changed if they move even though they pay a different monthly rental fee, either higher or lower, for the subsequent replacement unit. This policy applies regardless as to whether the subsequent move occurs within, or after, the one-year period.

- 7.14.4.12 Rental Fee for Replacement Unit Increased by Landlord. If the monthly rental fee for an occupied replacement rental unit is increased after the displacees receive their rental subsidy payment, no additional payment will be made by the Commission to cover the increased monthly rental expenditure. This policy applies regardless of whether the rental fee was increased within the first year after the original displacement or in subsequent years.

- 7.14.4.13 Displacee Displaced from Conventional Dwelling or Mobile Home Becomes Occupant of Rest Home. The payment is computed by using the portion of the monthly rest home fee chargeable to basic "room rent" and utilities as the replacement rental fee.

- 7.14.4.14 Conversion to Purchase. Displaced tenants and owners who rent their original displacement dwellings can within the one-year time period purchase and occupy a replacement dwelling and claim a down payment assistance, however, the amount of any previously paid rental subsidy must be deducted from the down payment assistance.

Owners who originally rent their replacement dwelling can, within the one-year period, purchase and occupy a replacement dwelling and claim a replacement

housing payment. Any previously paid rental subsidy payment will be deducted from the replacement housing payment.

#### **7.15.00.00 DOWN PAYMENT ASSISTANCE**

##### **7.15.1.00 General Policy**

Displaced tenants and owners who elect to purchase in lieu of renting a DS&S replacement dwelling, and who actually do so, are entitled to a down payment assistance if they meet the eligibility requirements discussed in this section.

The payment amount is equal to their computed rental subsidy payment and can be applied towards a down payment or reimbursable incidental costs, the total of which cannot normally exceed \$7,200.

The payment will be based on the lesser of (1) the amount of the computed rental subsidy plus incidental closing costs, or (2) the amount the displacees actually paid down in the purchase of their replacement dwelling plus eligible incidental closing costs.

Any down payment assistance in excess of \$7,200 must be specifically authorized by Right of Way Manager as a Last Resort Housing Payment.

##### **7.15.2.00 Last Resort Payment Assistance for Tenants**

Last resort down payment assistance is available to displaced tenants only when there are no comparable DS&S replacement rental dwelling units available on the market; or the only comparable DS&S replacement units available would require a rental subsidy payment in excess of \$7,200.

Last resort down payment assistance available to tenants cannot exceed the amount the displacee would be entitled to as a rental subsidy payment based on the monthly rental of the most nearly comparable DS&S replacement dwelling unit available on the market including incidental closing costs.

##### **7.15.3.00 Last Resort Payment Assistance for Owners**

Payments made to displaced owners under the provisions of last resort housing cannot exceed the amount to which they would be entitled if they rented the most nearly comparable DS&S replacement dwelling available. Payments may not exceed what the displacee would receive if they were a ninety (90) day owner for a replacement housing payment.

##### **7.15.4.00 Payment Eligibility Requirements**

Eligibility requirements include all of those requirements previously stated for rental subsidy payments.

- Down payment assistance must be applied to purchase price of replacement
- Replacement dwelling must be acquired and occupied within one year

##### **7.15.5.00 Payment Computations**

In order to determine the amount of down payment assistance, compute the rental subsidy payment to determine the maximum rental subsidy payment the displacee could be entitled to. If the computed offer is \$7,200 or less, their down payment assistance will be limited to \$7,200 including incidental expenses.

If the rental subsidy offer exceeds \$7,200, payment may be made under the provision of last resort and will be limited to the computed rental subsidy amount including incidental costs.

#### **7.15.6.00**      **Down Payment Claims**

Down payment claims will not be filed until an eligible displacee has purchased and occupied a DS&S replacement dwelling unless advance payment is approved.

Down payment assistance claims from owners and tenants must be filed no later than six (6) months after the expiration of the one (1) year period.

### **7.16.00.00**      **REPLACEMENT HOUSING OF LAST RESORT**

#### **7.16.1.00**      **General Explanation**

The Uniform Relocation Regulations establish maximum payment limitations for the various types of relocation housing payments. The regulations also prohibit acquiring agencies from causing residential occupants to move from their dwelling unless comparable DS&S replacement housing has been made available to them.

Without relief from these limitations and prohibitions, it would not be possible to proceed with a project when the only replacement dwelling available requires relocation housing payments in excess of the maximum payment limitations or when there is no existing replacement housing available. Relief is provided in the Uniform Relocation Regulations which authorize Last Resort Housing Payments.

Agencies are given broad latitude in providing replacement housing under this program, provided that the costs are reasonable and the measures taken to provide last resort housing are cost effective.

#### **7.16.2.00**      **Last Resort Determination (49 CFR 24.404(a))**

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the Commission shall provide additional or alternate assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either on a case-by-case basis for good cause, which means that appropriate consideration has been given to the following:

- The availability of comparable housing in the program or project area
- The resources available to provide comparable replacement housing
- The individual circumstances of the displaced person

Or by a determination of the following:

- There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area and, therefore, last resort housing assistance is necessary for the area as a whole.
- A program or project cannot be advanced to completion in a timely manner without last resort housing assistance.
- The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs.

#### **7.16.3.00 Tenured Occupants**

Ninety (90) day homeowner-occupants and ninety (90) day occupants are entitled to have last resort housing made available to them when comparable replacement housing is either not available, or available, but the calculated replacement housing payments exceed the \$31,000/\$7,200 statutory limits. Note that the \$31,000 limit is the aggregate of the price differential, interest differential and incidental cost payments.

#### **7.16.4.00 Short Term and Subsequent Occupants**

Less than ninety (90) day occupants are entitled to have last resort housing made available to them when comparable replacement housing is either not available; or available, but the monthly rental rate, including utilities, of the replacement dwelling exceeds the rent and utilities at the displacement site.

#### **7.16.5.00 Made Available**

“Made available” means that displacee exercises independent choice and obtains comparable replacement housing for themselves and has the right of possession to that housing or it means the Commission offers displacee replacement housing that is available for immediate occupancy by the following methods:

- Determining that comparable replacement dwellings are available and informing displacee of their availability and location
- Informing displacee of the monetary entitlements available to help provide such replacement housing
- Providing sufficient time and assistance to negotiate for and obtain possession of the replacement property

The Commission’s obligation to provide replacement housing is met when comparable housing is made available to displacee. The Commission can then proceed to issue notices to vacate.

#### **7.16.6.00 Methods of Providing Comparable Replacement Housing**

The methods of providing housing of last resort include, but are not limited to:

- A replacement housing payment in excess of the limits.
- Rehabilitation of and/or additions to an existing replacement dwelling.
- The construction of a new replacement dwelling.

- The provision of a direct loan, which requires regular amortization for deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
- The relocation, and, if necessary, rehabilitation of a dwelling.
- The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.
- The removal of barriers to the handicapped.
- The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing housing of last resort permit consideration of replacement housing. This shall be based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller, replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced 90-day person be required to move into a dwelling that is not functionally equivalent.

The Commission shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person "financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

#### **7.16.7.00**      **Last Resort Housing Plan**

All last resort relocation housing payments must be approved in advance by the Right of Way Manager.

The Relocation Agent must submit a last resort housing plan to the Right of Way Manager for approval prior to making any commitment to the displacee. The plan can be in the form of a letter outlining the problem and the proposed solution. The amount of the proposed relocation housing payment must be shown as well as the manner in which it was determined. The displacee should be identified by name, occupancy status and parcel number. The plan need not be elaborate but must provide the facts, supporting documentation and a clear picture of the proposal for making a DS&S comparable dwelling available to the displacee.

### **7.17.00.00**      **APPEALS**

#### **7.17.1.00**      **General (49 CFR 24.10(a))**

"The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part."

Commission staff will review all appeals not later than ninety (90) days after written notice of appeal is received. All Notices of Appeal shall be addressed as follows:

Riverside County Transportation Commission  
Attention: Right of Way Manager  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92502

**7.17.2.00**      **Appealable Actions (49 CFR 24.10(b))**

“Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person’s application for assistance under this part. Such assistance may include, but is not limited to, the person’s eligibility for, or the amount of, a payment required under Section 24.106 or Section 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.”

Commission staff shall consider all relocation assistance appeals on their merit, unless a claim is abandoned, either formally, or informally.

**7.17.3.00**      **Time Limit (49 CFR 24.10(c))**

“The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency’s determination of the person’s claim.”

If a claimant was not required to relocate, or was determined to not be eligible for relocation benefits, the appeal must be filed within sixty (60) days of receiving notification of the Commission’s initial determination of ineligibility.

If a claimant disagrees with the amount or type of eligibility determination, the appeal must be filed within sixty (60) days of receiving notification of that determination. The Commission may extend the time period for anyone to appeal, upon showing of good cause as determined at the Commission’s sole discretion.

**7.17.4.00**      **Right to Representation (49 CFR 24.10(d))**

“A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person’s own expense.”

**7.17.5.00**      **Review of Files (49 CFR 24.10(e))**

“The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person’s right to inspect, consistent with applicable laws.”

The Commission will make available for review its relocation file, at Commission offices, as it pertains to the appellant upon request by the appellant. A request to review the file shall be made in writing and must be made at the time the appeal is initiated pursuant to Section 7.17.01.00. The Commission may set a reasonable time limit for appellant to review the file. The

Commission may charge reasonable fees for any copied material in accordance with Commission policy. Any materials that are protected from disclosure pursuant to any legal privilege or under the California Public Records Act shall not be made available. These materials are hereby classified confidential by the Commission.

**7.17.6.00**      **Scope of Review (49 CFR 24.10(f))**

“In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.”

All materials that the applicant wishes to have considered at the appeals hearing (see Section 7.17.08.00) must be submitted no later than ten (10) days prior to the date of the hearing to allow the appeals panel sufficient time to consider such materials.

**7.17.7.00**      **Agency Official – Commission Executive Director (49 CFR 24.10(h))**

“The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.”

**7.17.8.00**      **Appeal Process**

The Right of Way Manager or his or her designee shall respond to the appellant or the appellant’s representative in writing, no later than fourteen (14) days after receipt of Notification pursuant to Section 7.17.01.00.

If the Right of Way Manager is unable to resolve the disputed determination to the appellant’s satisfaction, the Right of Way Manager shall set a hearing for the appeal no later than forty-six (46) days from the date of the initial Notice.

The hearing shall occur before an Appeals Board, which shall be compromised of one or more persons, at the discretion of the Executive Director or his or her designee.

The appeal hearing shall be recorded, either through the use of a court reporter or videographer, or both at the Commission’s election and cost. The appellant shall be entitled to obtain a copy of the transcript and/or video at the Commission’s expense. The Commission shall also pay for the cost of a copy and/or video to be provided to the Appeals Board should the matter be taken under submission.

The appeal hearing shall be held at the Commission offices to the greatest extent practicable, unless the Right of Way Manager and the appellant agree otherwise.

The appeal hearing shall continue day to day until all evidence has been presented and all necessary testimony has been given.

If the appellant is represented by counsel, the Commission shall have the right to be represented by counsel.



The following persons may be on the Appeals Board:

- Any person from a local agency or Caltrans Right of Way Department with right of way and relocation experience.

The following persons may not be on the Appeals Board:

- Any individual who is employed by a firm that is contracted with the Commission on any active or pending right of way project.
- Any person that has a contract or is a subcontractor with an entity that has a contract with the Commission on any active or pending right of way project.
- Any individual who is holding an elected public office within the Commission's jurisdiction.
- Any person directly involved in the determination being appealed.

**7.17.9.00 Determination and Notification After Appeal (49 CFR 24.10 (g))**

"Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision."

The Commission shall issue a written determination of its final decision no later than thirty (30) days after the conclusion of the appeals hearing. If the appellant is dissatisfied with the determination, the appellant may seek judicial review of the determination within the time limits prescribed by law.

**7.17.10.00 Additional Rights (Title 25, California Code of Regulations Chapter 6, Article 1, Section 6000 et seq., Section 6158 (a))**

"The public entity shall consider the request for review and shall decide whether a modification of its initial determination is necessary. This review shall be conducted by the head of the public entity or an authorized, impartial designee. (The designee may be a committee). A designee shall have the authority to revise the initial determination or the determination of a previous oral presentation. The public entity shall consider every aggrieved person's complaint regardless of form, and shall, if necessary, provide assistance to the claimant in preparing the written claim. When a claimant seeks review, the public entity shall inform him that he has the right to be represented by an attorney, to present his case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts, and to seek judicial review once he has exhausted administrative appeal."

The appellant has a right to representation by legal counsel or other counsel at his or her expense at any and all stages of the proceedings. The appellant also has the right to present his or her case by oral or documentary evidence. Rebuttal evidence must be submitted at the time of the hearing or within seven (7) calendar days of the date of the hearing, to conduct such cross-examination as may be required for a full and true disclosure of facts and to seek judicial review once he or she has exhausted administrative appeal.

#### **7.18.00.00 EVICTION FOR DISPLACEDS**

##### **7.18.1.00 Eviction Timing**

For residential owner-occupants, a 30-Day Notice to Vacate may be issued after sixty (60) days have passed since the 90-Day Information Notice was issued if control of the property is expected within thirty (30) days. Owner-occupants are provided a fifteen (15) day grace period. The Commission will move forward with eviction after the grace period has ended. Revisions can be issued if the anticipated date of control is delayed. Extending the 30-Day Notice to Vacate may affect the validity of any notices preceding an unlawful detainer action.

##### **7.18.2.00 Eviction Process**

Once the Commission decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion. Eligible tenants who are evicted by the Commission because of unlawful occupancy must be advised that they retain eligibility for relocation advisory assistance and payments. The Commission will solicit the assistance of legal counsel to proceed with an unlawful detainer (UD) action when displaced tenants do not move from the property after control has been obtained from the owner. Personal property may be moved into storage.

## 8.00.00.00 PROPERTY MANAGEMENT

### 8.1.00.00 GENERAL PROVISIONS

The Commission acquires real property for rail, highway and other transportation purposes. The Commission strives to manage its real property with the objective of maximizing existing and future public transportation benefits, safety, and financial income by means of professional property management policies and procedures. This includes issuing licenses and rights of entry for authorized third-party uses, as well as investigating and resolving issues regarding uses that are not authorized by the Commission. In certain extraordinary circumstances, the Commission may also grant easements. General maintenance activities and security measures are also part of the property management scope of work on all the Commission properties.

The property management policies established by this Chapter 8 apply to Commission owned properties. All the RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Reserve Management and Monitoring Manager except surplus property as set forth in Section 8.7.00.0.

#### **8.1.1.00 Definitions**

**Easement.** A grant of easement will only be authorized in certain, infrequent circumstances. In most cases, the intended purpose is a public necessity (highway, etc.) and the proposed grantee is a governmental agency, having the right of eminent domain, e.g., the State, etc. The policies and procedures established herein for rights of entry and license agreements can also generally be applied to grants of easement.

**Encroachment.** A use or trespass of the Commission property that has not been authorized by a right of entry, license agreement, or grant of easement.

**Lease.** A contract that grants possession of property for a specified period of time in return for specified compensation.

**Licensee.** An authorized user of the Commission property by virtue of a license agreement, this may also include a lessee under a lease issued by Burlington Northern & Santa Fe (BNSF) prior to 1993.

**Rights of Entry.** Short-term use of the Commission property, generally less than one (1) year, may be authorized by a right of entry. These documents are frequently used for construction activities, parking, or other temporary purposes. Other than a one-time processing fee (see application process below), rental amounts may be assessed, at the Commission's discretion.

**Tenant.** Any licensee, lessee, or recipient of a right of entry who is authorized to use the Commission property which includes individuals, corporations, utilities, and governmental agencies.

**User.** Any entity occupying the Commission property, either authorized or unauthorized.

**8.2.00.00 PROPERTY MANAGEMENT POLICIES****8.2.1.00 Policies for the Management of Property and Resolution of Encroachments**

**8.2.1.1** General Information. The Right of Way Staff shall have management responsibilities for all properties acquired for transportation purposes, including the following:

- Manage existing rights of entry, licenses, and leases through periodic field inspections to assure compliance with the terms and conditions of the respective agreement.
- Review the terms and conditions of existing agreements, ensuring annual license rates are based on the property's fair market value and Commission policies.
- Prepare and issue new rights of entry and license agreements for use of the Commission's property in conformity with Commission policies. Easements may be granted in rare circumstances.
- Consult with other railroad and local agencies as appropriate and Commission personnel, when necessary, to determine the impact of property uses by third parties affecting existing or future transportation projects.
- Consult with legal counsel for approval of changes requested to the standard form right of entry and license agreements.
- Consult with the insurance department for approval of changes to the standard insurance requirements.
- Coordinate with the accounting department in the organization and maintenance of a license revenue collection system designed to operate in conjunction with other Commission systems.
- Manage all properties to minimize maintenance and prevent unauthorized uses.
- Create, organize, and maintain a database of all Commission fee-owned properties, including location, assessor's information, size, fair market value, etc.
- Create, organize, and maintain a database of all Commission license agreements (including licenses and leases assumed from private companies, other agencies, various railroads and by property acquisition or donation) and rights of entry, providing important terms and conditions, property location, annual rate, etc.
- Identify surplus property that is a candidate for sale and maximize the benefits to be received from the sale.

**8.2.1.2** Use of Property by Third Parties. When the Commission acquires real property in advance of the time it is required for a transportation project, the property may be utilized during the interim period to create revenue and reduce maintenance expenses for the Commission. Such uses may also continue once the

transportation project has been completed, so long as the use is compatible with the project.

8.2.1.3 Availability of Property for a Right of Entry or License. Prior to issuing a right of entry or license, the Right of Way Staff shall make the following decisions concerning a proposed use:

- It is in the best interest of the Commission to authorize the proposed use.
- It will not interfere with any present or future BNSF, RCTC or SCRRRA transportation uses.
- Any required building permits or other authorizations can be obtained by the proposed tenant under the current zoning regulations or with appropriate variances and conditional use permits (to be acquired by the tenant prior to the execution of any document).
- The proposed use is not illegal, would not constitute a public nuisance, and is not contrary to public or Commission policy, and that the property is in a suitable, safe, and sanitary condition for such use.
- It does not require the installation of substantial improvements or would otherwise encumber the property to the extent that it would not be available when the need arises for a transportation use.
- It is not intended to meet any city regulatory code requirements imposed on the occupants of adjoining or nearby property.
- It is not used for any purpose that poses an environmental risk from hazardous materials.
- Grading, paving and other work on Commission property, as well as any adjoining property used by the proposed tenant, will not adversely impact any of the Commission property.
- The proposed tenant understands the property must be restored to its original condition or better once its term of use is completed.

8.2.1.4 Assigned License Agreements. In some instances, it may be of benefit to the Commission to accept an assignment of an existing license (or BNSF agreement) upon acquisition of a property, instead of issuing a new license agreement. Prior to acquisition, all such license agreements to be assigned to the Commission shall be reviewed by the appropriate personnel and legal counsel to determine if the tenant is in compliance with the terms and conditions of the agreement. In addition, the terms, conditions and parties to the license shall be verified through an Estoppel Certificate, prepared as part of the escrow process. The original license agreement shall be attached to the Estoppel Certificate for processing into the Commission's system. Additional terms may be negotiated with the tenant and included in a revised license. Whenever possible, assigned agreements should be converted to conform to the appropriate Commission standard license form. A rental adjustment may be made (upward only) to the annual rate established for

the property. All other terms and conditions are reviewed and any changes made, when necessary.

In some cases, the existing agreement to be transferred to the Commission may not accurately reflect the current tenant or use of the property. This provides an opportunity for the Commission to prepare a new license agreement on its standard form.

All assigned license agreements shall be given a Commission agreement number for control purposes. All original documents may be stored off-site for security purposes and a copy of the fully executed agreement included in the working file. Like other licenses, the Right of Way Staff ensures that the tenant meets the terms and conditions of the agreement through periodic site inspections and review of the agreement.

The written permission of the Commission is required in most licenses/leases transferred to RCTC when a licensee/lessee desires to assign its interest to another entity.

8.2.1.5 Maintaining and Protecting Rail Property. Right of way staff shall endeavor to keep operating railroad rights of way maintained and protected by the Commission or SCRRA against unauthorized use, vandalism, and damage. BNSF or local public agencies (city, county, etc.) may also get involved. The appropriate Shared Use Agreement, as amended, shall dictate responsibilities for the San Jacinto and San Bernardino Subdivisions, in addition, the SCRRA Public Projects Manual shall apply for all railroad rights of way affected by SCRRA operations. In general, the following maintenance and protection responsibilities shall apply:

- SCRRA shall have responsibility for the operating portion of the San Jacinto Subdivision. The operating portion of the right of way is considered to extend outward twenty-five (25) feet on both sides from the centerline of the main track(s). The Commission shall maintain the remaining portion of the right of way.
- At certain operating SCRRA grade crossings, SCRRA and the applicable public agency share responsibilities.
- The Commission shall have responsibility for all rail station sites and other properties (including excess rail and highway parcels).
- When applicable, some security matters shall also be forwarded to the appropriate law enforcement agency.
- When a parcel has actually been assigned to a construction project, the security of the construction site, including all materials, equipment, supplies and the off-site area is the responsibility of the construction contractor. The Right of Way Staff shall monitor the contractor's activities throughout the project.

- The security of equipment, facilities, or other structures on the Commission's licensed property shall be the sole responsibility of the tenant until the license or right of entry is terminated. The Right of Way Staff is responsible for conducting periodic property inspections to verify that the tenant is securing the property as required by the agreement in a reasonable manner.

### **8.3.00.00      PROPERTY MANAGEMENT PROCEDURES**

#### **8.3.1.00      Application Process**

The website (<http://www.rctc.org>) contains all required information and forms to apply for the use of the Commission's fee-owned property via a right of entry or license agreement. All third-party users must approach the Commission to initiate the application process. The following summary briefly describes each information page and form:

- Application Process for Use of Commission Property.
- Application Package. Email appropriate application with engineering plans attached to [row@rctc.org](mailto:row@rctc.org). Submit a hard copy of the application, plans, and fee to RCTC, \$1,000 for a right of entry application or \$6,000 for a license application.
- Railroad Property. If proposed use impacts, or can potentially impact, the railroad right of way (within 25 feet of centerline on active rail) an additional application must be submitted to SCRRA for an encroachment permit in addition to RCTC's application process. Any person working on or near tracks must be certified by the appropriate railroad agency for safety, security, etc.
- Insurance Requirements. Rights of entry and license agreements will require the applicant to carry appropriate insurance. Insurance requirements change from time to time in accordance with the Commission's risk threshold. Applicants will be required to provide the appropriate insurance certificates in effect at the time of their application.

#### **8.3.2.00      Authority to Approve a License of Commission Property**

Authority to approve a license on the Commission's property, as well as any special terms and conditions of the agreement, shall be determined based on the specific terms and conditions of each agreement, including annual rate, length of term, special provisions, etc. Approval by legal counsel is required for all license agreements. After appropriate approvals, processing and execution by the licensee, the Executive Director shall execute all licenses.

#### **8.3.3.00      Database for Fee-owned Property**

A database is maintained for all of the Commission's properties which, among other things, will reflect their current status, e.g., operating, licensed to a third party, or declared surplus. Most properties are initially acquired for rail or highway transportation purposes. Any properties which are subject to a right of entry will be marked as such. The database will include most of the same basic information as a license, including term, location, etc. The database will provide specific detailed information for each parcel. It will be available to respond to various departmental and agency information needs including:

- The Commission's reporting requirements, such as budgetary projections and revenue projections
- Regulatory agency information requests
- Identification of surplus land

#### **8.3.4.00 Database for License Agreements and Rights of Entry**

To effectively and efficiently manage all of the Commission's licensed properties, as well as those subject to a right of entry, a database has been developed and is maintained by the Commission, and includes, among other things, the following general information for each agreement:

- Agreement number
- Tenant
- Use
- Location (including rail mile post if applicable)
- APN
- Map reference
- Area dimensions
- Agreement terms and conditions
- Insurance coverage
- Date entered into system
- Field survey information
- Additional information if needed

The database also includes properties that are subject to an existing lease(s) or license(s) previously entered into by previous property owners and assumed by the Commission).

#### **8.3.5.00 Property Inspections**

The Right of Way Staff shall periodically inspect all fee-owned properties including those properties where a third party has a right of entry or license agreement (easement properties may also be included). Documentation shall include:

- Location and assessor's parcel number
- Occupation by an authorized tenant via a right of entry, license or lease
- Description of improvements
- Conformity to an authorized use by any building or occupant
- Description of any available utilities
- Identification of any environmental/hazardous concerns
- Observation of any unauthorized encroachments
- Any physical changes or issues that need to be addressed
- Other pertinent data related to the property

Periodic inspections will be performed as necessary for operating properties with no third-party use, at least annually for licensed parcels and more frequently for parcels encumbered by rights



of entry, as well as those having potential problem conditions. Staff will implement any required property and building management activities, including arrangements needing the assistance of a railroad agency, State, or local agencies, such as locking or boarding up facilities, posting the property, removing debris, and controlling dumping (including contaminated/hazardous materials), removing weeds and reducing fire hazards, inspecting for pest infestation, removing/relocating transients, and notifying local authorities when appropriate.

#### **8.3.6.00 Grants of Easement**

For those occasions where a grant of easement is required, the Right of Way Staff prepares an approval report, indicating why a grant of easement is the preferred document, instead of a license agreement. The Board of Commissioners or the Executive Director will make the final approval.

#### **8.3.7.00 License Agreements and Rights of Entry**

The Right of Way Staff performs the following activities for third-party uses of fee-owned properties (where appropriate, all references to existing license agreements shall also include licenses and leases which have been assumed by the Commission from BNSF):

- Determines that a proposed use is compatible with current operations and future plans of the Commission, BNSF, SCRRRA, and other local agencies.
- Determines whether proposed use is compatible with surrounding land uses and current zoning designations and all applicable local laws. The third-party user is not entitled to rely on this determination and, at all times, remains responsible for compliance with applicable local laws.
- For licenses, determines the appropriate annual rate based on market data, valuation analysis and Commission policies.
- Determines if a right of entry or license agreement is the proper document to accommodate a proposed use, and whether any changes are required to the standard form. In special circumstances only, an easement may be appropriate.
- Determines if approval from the Board of Commissioners is required and, if necessary, prepares the appropriate approval report.
- Obtains any required approvals of proposed use, e.g., legal counsel, insurance, SCRRRA, etc.
- After receiving an application and fee (see Application Process above) from the proposed tenant, Right of Way Staff prepares the appropriate right of entry or license agreement, obtains the appropriate Commission agreement number and sends to third-party user for execution. Once it is returned the agreement is then approved as to form and forwarded to the Commission along with any required insurance certificate(s) and/or initial payments for execution by the Executive Director on behalf of the Commission.
- After execution, the document is entered into the accounting system and property management database.
- Files original document in original file records depository and returns one original copy to the tenant.

- A file copy should be placed in the file, along with the insurance certificate and any subsequent amendments, address changes, correspondence, etc. Extra copies of the contract should be made for Commission personnel, legal counsel, and SCRRA, as appropriate.

#### **8.3.8.00**      **Notice to Vacate Property**

When a property is needed for operating purposes, or when a tenancy is to be terminated for other than a breach of the applicable agreement, a Thirty-Day (or longer if necessary) Notice to Vacate shall be issued by the Commission. In some cases, the third-party user may be eligible for relocation benefits under federal or state law. In this event, the relocation is coordinated with the Right of Way Manager well ahead of the scheduled vacation date.

#### **8.3.9.00**      **Property Maintenance**

All Commission owned property shall be maintained in a safe, hazard-free , clean and orderly condition that does not detract from the general appearance of the neighborhood. If this condition does not exist, the Commission, shall implement the appropriate corrective measures to improve the property's appearance. All non-operating properties, rail or highway, shall be maintained by the Commission.

The responsibility for all maintenance activities on operating property within twenty (20) feet of centerline is handled by SCRRA.

### **8.4.00.00      INTERIM PROPERTY MANAGEMENT**

During an acquisition project, at the close of escrow, it is possible that an owner or tenant may occupy the impacted property due to the one of the following:

- The relocation process has not been completed upon close of escrow and the owner or tenant has not yet moved to replacement housing or a business location. In this case the Commission may prepare a month-to-month Leaseback Agreement to be executed by the Commission and the owner or tenant;
- A new lease with no relocation benefits has been procured for a vacated property prior to commencement of the project; or
- The occupant is leasing back the property prior to commencement of the project. This leaseback option is available when the project will not commence within two years from transfer of title from the owner to the Commission.

Interim property management will be required for these properties and all of the property management policies and procedures in this chapter will apply.

Properties that have been vacated, including vacant land and vacant structures will also require interim property management. Tasks will include:

- Periodic property inspections
- Removal of accumulated debris

- Maintenance or repair of safety issues
- Weed abatement

#### **8.4.1.00 Leaseback Agreements**

California Code of Civil Procedure, Section 1263.615 states the Commission shall offer a one-year Leaseback Agreement to the owner of a property to be acquired for that property owner's continued use of the property upon acquisition, subject to the property owner's payment of fair market rent unless the Commission states in writing that the use of the property for its stated public use is scheduled to begin within two years of its acquisition. This will not apply if the Commission states in writing that a leaseback of the property would create a public nuisance.

The lessee must carry adequate insurance coverage.

The Commission may require a security deposit to cover any potential liability arising from the leaseback.

The lessee shall be subject to unlawful detainer proceedings and holdover damages.

A public entity shall offer to renew a leaseback agreement for one-year terms, unless the Commission states in writing that use of the property for its stated public use is scheduled to begin within two years of the termination date of the lease. At least sixty (60) days prior to the lease termination date, the Commission shall either offer a one-year renewal of the lease or send a statement declaring that the lease will not be renewed because the use of the property is scheduled to begin within two years of the lease termination date. The lessee shall either accept or reject a lease renewal offer at least thirty (30) days prior to the lease termination date. The lessee's failure to accept a renewal offer in a timely manner shall constitute a rejection of the renewal offer.

#### **8.4.2.00 Preparation of Rights of Entry and License Agreements**

Upon receiving a request from a third party through the Application Process set forth above, the Right of Way Staff takes the following actions to accommodate an existing or proposed use of Commission property.

8.4.2.1 Application Review. The Right of Way Staff receives the following:

- Completed Application Form
- One set of detailed plans showing proposed use
- Application fee of \$6,000 (license) or \$1,000 (right of entry). The Right of Way Staff forwards the fee to Finance/Accounting
- Appropriate certificates of insurance

8.4.2.2 Design Review. The Right of Way Staff will perform the following:

- Reviews plans showing proposed use
- Forwards plans to the Commission's engineer for review, if necessary

- Receives plans from the Commission's engineer
- If plans are approved, informs applicant, the status of fees is also mentioned
- If plans are not approved, informs applicant of discrepancies and needed revisions
- If applicant submits revised plans, initiates new design review

8.4.2.3 Agreement Preparation. The Right of Way Staff determines if a right of entry or license agreement is the proper document to accommodate the proposed use and whether any changes are required to the standard form. If changes are required, the Right of Way Staff obtains concurrence from legal counsel, insurance, or other. For licenses, the Right of Way Staff determines the following:

- Appropriate annual rate, see methodology in Rental Amounts section set forth below
- Receives and reviews appraisal
- Determines if approval from the Board of Commissioners is required

After the appropriate concurrence has been obtained, the Right of Way Staff instructs legal counsel to prepare the appropriate right of entry or license agreement, including any approved changes, and begin the right of entry or license agreement process as follows:

- Prepares exhibit map
- Prepares any other necessary exhibits and attachments
- Obtains the Commission agreement number
- If necessary, forwards exhibit map and attachments to legal counsel for attachment to document (this may be done prior to, or along with, the request for its preparation)
- Receives right of entry or license agreement from legal counsel
- Attaches exhibit map and attachments (if not done previously) and sends electronic copy to applicant for execution. A copy is retained in file
- Agreement execution
- Receives electronic signatures of right of entry or license agreement, along with any additional correspondence and initial annual payment (if a license agreement)
- Forwards electronic executed copy to the Executive Director for execution
- Send fully-executed electronic copy to the applicant (now considered a tenant)
- Send fully-executed electronic copy to legal counsel
- Send fully-executed electronic copy to Right of Way Department
- Enter document into the property management database
- Send fully-executed electronic copy to Commission for records depository
- Places a copy of document in the file, along with a copy of the insurance certificate and any subsequent amendments, address changes, correspondence, etc.

Electronic copies and signatures are preferred, but in the event it is required by either party that an original signature is obtained, one will be routed

8.4.2.4 Construction and Closeout (if applicable). Tenant provides a five-day notice of construction to the Commission. During construction, the Right of Way Staff performs the following:

- Inspects property during construction and upon completion of construction.
- Receives as-built drawings.

8.4.2.5 Completion of Project. Right of Way Staff performs the following:

- Notifies Finance/Accounting Department of annual fee instructions.
- Processes project close out.

## **8.5.00.00 REMOVING ENCROACHMENTS**

If the Commission property is encumbered by a use that is not authorized or compatible with existing or future transportation projects (encroachment), it must be removed as soon as possible. The Right of Way Staff takes the following actions:

- Creates working file.
- Makes an effort to locate user.
- Informs appropriate Commission and/or Caltrans, other public agency, SCRRRA personnel, including legal counsel, of the encroachment and suggests a course of action to remove the encroachment.
- Course of action is confirmed and documented in writing in file.
- Determines if local law enforcement agency needs to get involved.

If the local law enforcement agency involvement is required, agency makes contact and informs them of proposed course of action and possible future need of their services (the agency may request to be informed of progress of the Commission's efforts).

If user cannot be located, right of way staff shall coordinate with legal counsel to remove encroachments. If contaminated/hazardous materials are involved, right of way staff shall follow the Contaminated Materials section set forth below.

- If necessary, has parcel fenced, posted with a sign, etc., to prevent further encroachments.
- Closes file.
- Database is updated.

If user is located, the Right of Way Staff informs user that the encroachment(s) must be removed. The Commission generally takes responsibility for all clean-up activities in accordance with Contaminated Materials section, set forth below, and bills the tenant for all measures taken.

- If necessary, establishes time schedule for completing removal process.
- If contaminated/hazardous materials are involved, coordinates all efforts with the Commission environmental consultant.
- If necessary, to prevent further encroachments, has parcel fenced, posted with a sign, etc.
- Closes file.
- Database is updated.

If user is uncooperative, the Right of Way Staff will conduct the following:

- Contacts appropriate personnel and legal counsel to develop course of action.
- Implements course of action.
- If necessary, notifies user of the Commission's intended course of action.
- If necessary, notifies local law enforcement agency of the Commission's intended course of action.
- If necessary, to prevent further encroachments, has parcel fenced, posted with a sign, etc.
- Closes files.
- Database is updated.

#### **8.5.1.00 Resolution of Encroachments**

An activity or use which encroaches onto a Commission fee-owned property is usually discovered by a field inspection or notification by a third party, e.g., neighbor, governmental agency, etc. After determining that such use is not covered by an existing right of entry, license, or lease, the Right of Way Staff shall determine the best course of action to take to resolve the matter, including review by legal counsel, if necessary.

If the use is one that is typically allowed by the Commission and does not interfere with existing or future transportation plans for the property, authorization may be accomplished by requiring the user apply for the appropriate right of entry or license agreement.

If the use or user is unacceptable to the Commission or SCCRA, the appropriate measures must be taken by the Right of Way Staff, including the following:

- Attempt to make a contact with the user, trying to determine all pertinent information including, how long have they been on the parcel and did anyone give them prior permission? If so, was permission given verbally or in writing?
- Consult with legal counsel regarding best course of action to remove user.
- If possible, inform user in writing that they must vacate the premise.
- If user cannot be contacted, have property cleared of encroachment by the Commission or outside contractor.
- Request assistance, if necessary, from the local law enforcement agency.
- If possible, take steps to prevent re-entry or other unauthorized uses, e.g., fence parcel, post signs, etc.
- Create a file to document all activities in writing.
- Input all information into the database.

**8.6.00.00 REMOVING CONTAMINATED MATERIALS**

If the Right of Way Staff believes contaminated/hazardous materials or other substances occupy the Commission property, the following course of action should immediately be taken to rectify the problem in a timely manner by the Right of Way Staff:

- Determine which regulatory agency has jurisdiction first starting with the County
- Notifies the California Environmental Protection Agency and Department of Toxic Substances Control (State EPA ID number is CAL000461207), if needed.
- The County of Riverside, Community Health Agency and Department of Environmental Health should also be notified to determine if its input is required.
- If necessary, coordinates all efforts with the Commission environmental consultant.
- Secures a Commission approved contractor to commence clean-up activities.
- Conducts periodic onsite inspections to monitor activities of contractor.
- After final inspection, verifies satisfactory completion of clean-up activities, files appropriate forms with the California Environmental Protection Agency.
- Database is updated.

**8.6.1.00 Contaminated Materials**

The Commission shall use best efforts to assure that its properties do not pose a hazard to public health or the environment. Prompt action is taken when an unsafe situation is discovered. All tenants on the Commission property are responsible for its maintenance and protection, including keeping it free and clear of all debris, litter or contaminated/hazardous materials that may pose a hazard to public health or the environment.

**8.6.2.00 Management of Contaminated Properties**

All properties, whether used by third parties or not, are periodically inspected for adverse environmental conditions and such conditions are noted on an inspection form.

If any evidence of contaminated/hazardous materials is detected, the Right of Way Staff will inform the Right of Way Manager, legal counsel, and/or the Commission's environmental consultants, as appropriate. A plan of remediation will be developed in consultation with the environmental consultants and other designated departments.

**8.7.00.00 DISPOSAL OF SURPLUS PROPERTIES FOR COMMISSION AND RCA****8.7.1.00 Authority; Purpose; Definitions**

Government Code Sections 54220-54234 ("Surplus Land Act") provide authority and guidelines for the Commission and the RCA to dispose of the majority of its surplus land. In addition, the state Legislature has emphasized certain future uses of surplus government land, placing a priority on low- and moderate-income housing, park and recreation or open space purposes, "enterprise" zones, and development projects near transit stations. The State's Department of Housing and Community Development ("HCD") is the agency charged with enforcing the Surplus Land Act and has promulgated Guidelines interpreting and implementing the Surplus Land Act (the

“Guidelines”). The Guidelines are available at <https://www.hcd.ca.gov/community-development/public-lands-for-affordable-housing-development.shtml>

The following definitions are taken from the Surplus Land Act:

“Surplus land” is defined as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.”

“Agency’s use,” in turn, is defined by non-exclusive lists of examples of what it is and what is not. For example, “agency’s use” includes “land that is being used, is planned to be used pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.” “Agency’s use” explicitly does not include “commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency’s use.”

When contemplating disposition of land, first consider as a threshold matter whether the Surplus Land Act even applies. In considering how the land will be used by the transferee, first determine whether the land is “surplus” for purposes of the Surplus Land Act.

#### **8.7.2.00 Exemptions**

There are exemptions to the provisions of the Surplus Land Act, which include:

- Surplus land, which is transferred pursuant to Government Code Section 25539.4, which states among other things that a county may sell real property at less than its fair market value "to provide housing affordable to persons or families of low or moderate income."
- Surplus land which is sold to an owner of contiguous land and is:
  - Surplus land less than 5,000 square feet in area; or,
  - Surplus land less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less; or,
  - Surplus land which has no record access and is less than 10,000 square feet in area.

The property must not be contiguous to land owned by a state or local agency which is used for park, recreational, open space, or low- and moderate-income housing purposes. If the land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to the provisions of the Surplus Land Act.

- Surplus land exchanged for another property necessary for the Commission’s or RCA’s use.



- Surplus land that the Commission or RCA is transferring to another local, state, or federal agency for the transferee agency's use.
- Surplus land that is subject to valid legal restrictions that are not imposed by the Commission or RCA and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site.
- Surplus land that was granted by the State of California in trust to the Commission or RCA or that was acquired by the Commission or RCA for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute.

These exemptions do not apply in certain circumstances, including if the property is located within a coastal zone, or System or eligible for the National Register of Historic Places.

The governing body of the Commission or the RCA must, in a regular meeting, adopt a resolution declaring the subject land "exempt surplus" and must make findings to support that declaration. If it is not clear whether an exemption applies, please consult legal counsel.

#### **8.7.3.00**      **Property Advertisement**

Subject to the requirements and restrictions of the Surplus Land Act, when it has been determined that a Commission or the RCA property is available for sale, the Right of Way Manager may utilize staff and Commission approved consultants to advertise properties for sale or may contact local real estate agents/ brokers to market the property when it is determined that a very specialized user is required for the property and the other means of advertising or solicitations has not yielded a suitable user per Section 8.07.04.00. When a broker is used, the Commission or the RCA shall bear the cost of any commission due to the broker.

#### **8.7.4.00**      **Policies for the Disposition and Sale of Surplus Land and Land Rights**

8.7.4.1      Purpose. The purpose is to establish the Commission and the RCA policies and procedures related to the disposition and sale of surplus land. The intent and purpose of the policies and procedures are to assure uniform practices that will provide consistent and equitable treatment of purchasers of surplus land and helps ensure the Commission and the RCA receive the highest value for sale of Commission and the RCA-owned properties while complying with state and federal regulations governing disposal of surplus of agency-owned land. Even though the bulk of the sales will be for fee-owned parcels, the policies and procedures mentioned herein could also be used, wholly or partially, for surplus land rights, e.g., quitclaim of easements.

8.7.4.2      Who Conducts Negotiations. Either the Right of Way Staff or consultant under the direct guidance of the Right of Way Manager is authorized to negotiate the sale of surplus land on the Commission's and RCA's behalf.

- **Right of Way Staff:** Negotiations for the sale of surplus land may be conducted by Commission Right of Way Staff. Such personnel must meet the minimum qualifications for the position of Right of Way Manager as outlined in the RCTC Personnel Manual. Other personnel not meeting these minimum qualifications may perform negotiations under the direct guidance of the Right of Way Manager.
- **Consultants:** Negotiations may also be conducted by consultants under written agreement with the Commission or the RCA and under the direct guidance of the Right of Way Manager.

8.7.4.3 Field Inspection. The Right of Way Staff will conduct a field inspection of the subject property, to confirm the land to be disposed of is no longer needed for operating purposes.

8.7.4.4 Determination of Sales Price. The Right of Way Manager prepares a sales price recommendation which is based on a recent appraisal of the subject property conducted by the Commission-approved appraiser. The appraiser is usually chosen from the Commission's approved list of on call appraisers.

8.7.4.5 Good Faith Negotiations and Basis of Value. It is the policy of the Commission and the RCA that all negotiations shall be expeditious and result in the Commission or the RCA receiving Just Compensation. Even though it is not required by law, in most cases an appraisal of the surplus land should be conducted to determine its fair market value. Also, the appraisal guards against a low sales price, as well as accusations that the sale was a gift of public funds.

8.7.4.6 Declaration of Surplus Land; Notice of Availability; Good Faith Negotiations. As delineated in Government Code Section 54222 and HCD's Guidelines, before disposing of any surplus land, the governing body of the Commission or RCA (as applicable) must adopt a resolution declaring the subject land "surplus." The same resolution should also approve the form of written notice of availability required under section 54222 (Notice of Availability) and authorize the Executive Director and his/her designee to comply with all aspects of the Surplus Land Act, including issuance of the Notice of Availability, negotiations with interested developers, and communications with HCD. Immediately after adoption of the resolution, the Commission or the RCA is required to send the Notice of Availability to various entities within whose jurisdiction the land is located.

All Notices of Availability shall be sent by electronic mail, or by certified mail and include the location and a description of the property. Those entities are as follows:

1. Any local public entity (as defined in Health and Safety Code section 50079) within whose jurisdiction the land is located, for developing low- and moderate-income housing.

2. Housing sponsors, as defined by Health & Safety Code section 50074, who request a written offer to sell or license the surplus land. The most updated list of housing sponsors is available on HCD's Surplus Land Act website at <https://www.hcd.ca.gov/community-development/public-lands-for-affordable-housing-development.shtml>.
3. A city parks or recreation department within which the surplus land is located, for park and recreation purposes or open space purposes.
4. A county parks or recreation department within which the surplus land is located, for park and recreation purposes or open space purposes.
5. Any regional park authority having jurisdiction within the area where the surplus land is located, for park and recreation purposes or open space purposes.
6. The State Resources Agency, or any agency that succeeds it, for park and recreation purposes or open space purposes.
7. A school commission in whose commission the surplus land is located, if the property is suitable for school facilities construction or use by a school commission for open-space purposes.
8. A nonprofit neighborhood enterprise corporation in which the surplus property is located, for enterprise zone purposes.
9. Any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located, for the purpose of developing the surplus land if the surplus land is located within an infill opportunity zone (pursuant to Government Code section 65088.4) or within an area covered by a transit village plan (pursuant to Government Code section 65460 et seq.).

Any of the entities desiring to purchase surplus land must notify the Commission or the RCA within sixty (60) days of the date of issuance of the Notice of Availability. Thereafter, assuming a qualified notice of interest pursuant to Government Code section 54222.5 (Notice of Interest) is timely received by the Commission or the RCA, the Commission or the RCA must then enter into good-faith negotiations for ninety (90) days to determine a mutually satisfactory sales price and terms or lease terms. The 90-day good-faith negotiation clock commences on the first day after the 60-day Notice of Availability clock expires – regardless of whether any Notices of Interest were received by the Commission or the RCA during the 60-day Notice of Availability period. In the event the Commission or the RCA receives Notices of Interest from more than one housing developer, it shall give priority to the entity which agrees to at least 25% affordability. If the Commission or the RCA receives offers from more

than one entity that agrees to meet the 25% affordability requirement of Section 54222.5, then the Commission or the RCA shall give priority to the entity that proposes to provide the greatest number of units that meet the 25% requirement. In the event that more than one entity proposes the same number of units that meet the 25% requirement, priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units. The Commission or the RCA may negotiate concurrently with all entities that provide a Notice of Interest for the purpose of developing affordable housing that meets the 25% affordability requirement. If no agreement is reached during the good-faith negotiation period, the Commission or the RCA may proceed with the general disposition process, subject to approval by HCD pursuant to Government Code section 54230.5(b)(1) and the recording of a covenant on the subject surplus land that if more than ten (10) residential units are ever developed on the land, at least 15% of the units must be sold at an affordable cost or leased at an affordable rent.

As previously mentioned, the notice requirements do not apply in certain limited cases, such as small parcels that are sold to the contiguous property owner, unless one of the following applies:

- Adjoins publicly-owned land used for parks and recreation, open space, or low- and moderate-income housing
- Located within 1,000 yards of a historical unit of the State Parks System or property listed on or eligible for the National Register of Historic Places

8.7.4.7 Notice to Department of Housing and Community Development. Government Code Section 54230.5(b)(1), prior to disposing of any surplus land, the Commission or the RCA is required to send (i) a copy of the governing body's resolution declaring the land surplus, (ii) a copy of the Notice of Availability, (iii) evidence of delivery of the Notice of Availability to all entities entitled to notice, (iv) a description of negotiations conducted, and (v) a copy of any restrictions to be recorded against the property (including the affordability restrictive covenant described above) to HCD. Commission or the RCA shall submit required documents to HCD via email to: [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov). Commission or the RCA shall submit required documents in accordance with sample HCD forms. In addition, before disposing of any surplus land, the Commission or the RCA must wait at least 30 days for HCD to respond to the Commission's or RCA's required notices as described above in this subsection. If the 30-day period (as shown on HCD's website) has lapsed and no response has been received, the Commission or the RCA may dispose of the surplus properties pursuant to the procedures set forth in Section 8.7.5.00.

8.7.4.8 Yearly Inventory. By December 31 of each year the Commission and the RCA will prepare an inventory of real property that is surplus of its foreseeable needs. The inventory is a matter of public record. To alert entities who develop low- and moderate-income housing, the Commission and the RCA must provide the

inventory to any citizen, housing corporation, or non-profit corporation who requests a copy.

- 8.7.4.9 Disposition and Management. If the subject land is (i) deemed “not surplus” or (ii) declared “exempt surplus” by resolution or (iii) was declared surplus by resolution and went through the Surplus Land Act process outlined above, the property may be marketed by a real estate marketing firm chosen by the Commission or the RCA. The Commission or the RCA may wish to directly market these and other parcels, especially those of minimal value.

Advertising may be posted on the subject property, in the local and regional newspaper as well as online websites. See section 8.7.3.00 above.

Parties interested in purchasing the Commission or the RCA surplus properties shall submit their formal written offers or proposals directly to the Commission or the RCA. The Right of Way Staff will initially review each offer and proposal and determine if the terms and conditions are in conformance with the Commission's or RCA's plans for the subject parcel.

After initial review by the Right of Way Staff, all offers and proposals to purchase will be reviewed for consideration, with final approval on most parcels granted by the Board of Commissioners or RCA's Board of Directors.

In the event the Commission or the RCA receives offers from more than one of the above-mentioned public entities, it shall give priority to the entity which agrees to use the property for housing for persons or families of low or moderate income, except that first priority shall be given to an entity which agrees to use the property for park or recreational purposes if the land being offered is already being used, and will continue to be used, for park and recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

After all approvals have been obtained and the potential buyer has been informed, a formal escrow will be opened at an approved escrow company.

Any Commission or the RCA surplus properties subject to a license agreement will be classified and analyzed in accordance with the above-mentioned policies in order to determine their future potential use at the termination of the license.

- 8.7.4.10 Direct Sales to Adjoining Land Owners. The Commission or the RCA may directly sell any small, odd-shaped surplus parcels to adjacent land owners without going through a competitive bidding process. These parcels usually have no value for development. Only the adjacent owner would have a logical use of the parcel, especially if needed for access to a public street. The minimum sales price will be the parcel's appraised market value. If the adjacent land owner does not wish to

purchase the parcel, the Right of Way Staff may proceed to offer it for sale as if it were any other surplus property.

8.7.4.11 Document Preparation. All documents regarding the sale of surplus land shall be prepared and/or approved by the Commission or the RCA legal counsel and forwarded to the Right of Way Staff or consultants for final review and transmittal to escrow.

8.7.4.12 Occupation Prior to Closing. No purchaser of surplus land shall be allowed to occupy or take possession of the property prior to the full payment of the purchase price and close of escrow without the prior written consent of the Executive Director.

**8.7.5.00 Procedures for the Disposition and Sale of Surplus Land and Land Rights Outside of the Surplus Land Act**

The Commission and the RCA has the power to declare properties that are not needed for public use as “surplus” and approve their disposition and sale. The Executive Director may also perform this function for certain small parcels, e.g., those containing less than 5,000 square feet. In both cases, a memorandum shall be submitted to the Executive Director by the Right of Way Staff requesting approval. Prior to submission to the Executive Director, the memorandum shall be concurred to by the Project Delivery Director and the Right of Way Manager.

Outside of the Surplus Land Act, the property must be offered to the appropriate public entities, in accordance with 8.07.04.07. Their response must be received within sixty (60) days of the notice sent by the Commission or the RCA. Concurrently, the Right of Way Staff will order an appraisal to determine the fair market value of the land and obtain the approval of the Board of Commissioners, the RCA Board of Directors or Executive Director, as appropriate.

If any public entities are interested in purchasing the subject property, agreement must be reached within a reasonable amount of time to sales price and terms and conditions. If no public entities are interested within the sixty-day (60) time period, the Commission or the RCA may offer the parcel to the general public. Smaller parcels of minimal value may be handled directly by the Right of Way Staff.

All offers to purchase must be reviewed by the Right of Way Staff and approved by the Board of Commissioners, the RCA Board of Directors or Executive Director, as appropriate. Counteroffers may be necessary if the initial offered price or terms and conditions are not acceptable to the Commission or the RCA. In the event of a tie, the Commission or the RCA will have the sole discretion to award either bidder. Once an offer has been approved and accepted by the Commission or the RCA, the buyer is notified and escrow is opened at an approved escrow company. For smaller parcels with a minimal value, it is allowable to complete the transaction without an escrow, as long as a closure acceptable to the Commission or the RCA can be achieved.

Upon completion of the sale, the Commission personnel notifies the appropriate Commission personnel of the property's sale. The file is then closed and the database revised to reflect the parcel's sale.

#### **8.7.6.00      Disposition and Sale Process Checklist**

The following may be used to guide the Right of Way Staff through the process of disposing of surplus land and land rights. It is designed to provide specific, more detailed guidelines to supplement the general procedures mentioned above.

**8.7.6.1      Declaring the Property as Surplus.** Right of Way Staff is made aware, either by internal means or notification by a third party, that a parcel could be declared surplus and offered for sale. The Right of Way Staff obtains and reviews relevant information regarding the parcel including the following:

- Assessor's parcel map
- Acquisition data, including purchase price, acquisition date, legal description, title policy, etc.
- Current zoning
- Available valuation data, including recent Commission or the RCA appraisals for nearby properties

The Right of Way Staff performs the following tasks:

- Inspects property and completes inspection form, noting any visible encumbrances, hazardous waste, access problems, etc. Also, notes any "for sale" signs in the area.
- Checks acquisition title policy to determine encumbrance items.
- Compares encumbrance items delineated in title policy with those observed during property inspection, lists remaining encumbrances, those which no longer occupy parcel and any new ones observed during inspection.
- Estimates property's fair market value using best means available by reviewing existing appraisals, checking with listing agents having "for sale" signs in area, Assessor's information, etc.
- An appraisal could be ordered if the property will have substantial value, no other valuation data is available and it is reasonably certain the parcel will be declared surplus (an appraisal will usually be ordered only after the property has been approved for surplus status and sale).
- Obtains internal concurrence to have parcel declared surplus and available for sale.
- Routes for approval through Right of Way Manager, Deputy Executive Director and Executive Director. Property is determined to be: (i) not "surplus" for purposes of the Surplus Land Act; (ii) exempt surplus land; or (iii) surplus land that must be put through the Surplus Land Act process. If the property is deemed to be "exempt surplus land" or "non-exempt surplus land," the Board

of Commissioners or the RCA Board of Directors must adopt a resolution so declaring and support such a declaration with written findings.

- Receives fully authorized approval.

8.7.6.2 The Sale Process. If the property is declared “non-exempt surplus land,” the Right of Way Staff sends notice to each entity statutorily entitled to notice per Government Code 54220, et seq.

During the 60-day period after issuance of the Notice of Availability and as Notices of Interest may arrive, the Right of Way Staff determines property's fair market value, generally by ordering an appraisal. The Right of Way Staff will perform the following functions:

- Receives and reviews each bid
- Awards appraisal contract
- Receives appraisal
- Reviews appraisal
- If necessary (for complex or high market value appraisals), routes for review to be performed by Right of Way Manager, Deputy Executive Director or outside consultants

The Right of Way Staff determines fair market value and obtains approvals from the following:

- Right of Way Manager
- Executive Director or designee
- Board of Commissioners or the RCA Board of Directors, if necessary

After the 60-day Notice of Availability period has expired, the Right of Way Staff may proceed as follows:

- Respond to any questions from entities who have responded to the Notice of Availability
- Reviews offer(s), makes recommendation, and submits to the Right of Way Manager
- Informs potential buyer(s) of Committee's decision
- Receives potential buyer(s)' response

If necessary, repeat process until an offer is acceptable for recommendation to the Board of Commissioners or the RCA Board of Directors.

The Right of Way Staff obtains approval from the Board of Commissioners or the RCA Board of Directors and notifies potential buyer of offer's acceptance and verifies sales documents. The Executive Director is authorized to approve sales less than \$100,000 when the bid is 90% or greater of the appraised value. Any



unsuccessful bidders should also be notified. The Right of Way Staff then proceeds as follows:

- Requests legal counsel to prepare Purchase and Sale Agreement.
- If the property is “non-exempt surplus land” and is going or has gone through the Surplus Land Act, sends package of information to HCD pursuant to Government Code section 54230.5(b)(1) and wait for thirty (30) days.
- Receives Purchase and Sale Agreement from legal counsel.
- Routes for execution by Executive Director.
- If applicable, opens escrow at an approved escrow company and submits Purchase and Sale Agreement executed by the Commission or the RCA. Escrow officer secures buyer's execution of Purchase and Sale Agreement, as well as other necessary documents.
- If necessary, completes any due diligence items required of the Commission or the RCA e.g., resolution of encroachments, removal of contaminated materials, removal of any tenant, etc.
- Receives all necessary documents, including grant deed, from escrow officer, reviews, and routes for execution by Executive Director.
- Receives executed document(s) from Executive Director.
- Requests RCTC Finance/Accounting to submit any funds into escrow required of the Commission or the RCA, e.g., tax pro-ration, escrow fee, etc.
- Upon close of escrow, the Right of Way Staff will perform the following:
- Receives sale proceeds due the Commission or the RCA and copies of recorded document(s).
- Remits sale proceeds to the Commission or the RCA Finance/Accounting Department.
- Makes copies of all documents, inserts one in file, and distribute other copies to Insurance, Finance/Accounting, Rail/Property, and Legal Counsel (this will serve as their notification of the parcel's sale).
- Forwards original document(s) to the Commission's or RCA's records vault.

When the file is closed, the Right of Way Staff will perform the following:

- Revise database to reflect parcel's sale.
- Receive, complete, and return appropriate assessor's form, requesting sales price information ("Change of Ownership Form" is no longer required).

#### **8.7.7.00 Funding Sources**

Before disposing of any property purchased by the Commission or the RCA, the Commission staff should consult the terms of the agreement under which the funding was accepted and the source of funds with the Chief Financial Officer. The Commission and the RCA are required to follow the rules of the agency that provided the funding which could include reimbursing the agency that contributed funds for the property's original acquisition.

8.7.7.1 FTA Funded Projects. Per FTA Circular 5010.1.E if the Commission determines that real property is no longer needed, and FTA funds were used, the FTA may approve the use of the property for other purposes. They may include the use in other federal grant programs or in non-federal programs that have consistent purposes with those authorized for support by FTA.

- Valuation of Property Pending Disposal. For properties no longer needed for transit purposes, the Commission is expected to follow the valuation requirements of 49 CFR part 24 and obtain an appraisal to ascertain the value of the property considered for disposal.
- Disposition Methods. The allowable disposition methods are described in Chapter 4, Section 2(j)(2)(b) of the FTA C 5010.1E and are as follows:
  - Sell and reimburse FTA
  - Offset against the cost of a replacement property under the same program
  - Sell and use proceeds for other FTA eligible capital projects
  - Sell and keep proceeds in project
  - Transfer to public agency for non-transit use in accordance with 49 U.S.C., 5334(h)(1)–(h)(3)
  - Transfer property to another FTA eligible project
  - Retain title with buyout of the FTA's contribution
  - Sales Procedure

8.7.7.2 FHWA Funded Projects. The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710. FHWA does not require reimbursement of the federal share of proceeds from the sale of excess real property as long as the proceeds are used for subsequent highway (US Code Title 23) eligible projects. Selling an excess land property for less than fair market value requires FHWA approval unless the property will be utilized for public utilities, railroads, bikeways or other highway projects.

Sales credits are due to FHWA when right of way bought with federal funds is sold, then subsequently declared to be excess because of an alignment change, modification or termination action.

If the excess right of way results from an alignment change, the excess should be disposed of before final vouchering of the project or no later than two (2) years from the time the highway is opened to traffic, whichever is earlier. If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.

If excess results because the property is no longer needed for the purposes of the highway project and within ten (10) years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal

project, then the FHWA must receive credit for the market value of the property at the end of ten (10) years.

8.7.7.3 California Highway Users Tax Fund. Per Government Code 54231, land acquired by the Commission for highway purposes through the expenditure of funds allocated pursuant to Chapter 3 (commencing with Section 2100) of Division 3 of the Streets and Highways Code may be transferred to another local agency for public park and recreational purposes. Said land shall be developed within ten (10) years and shall be used for at least twenty-five (25) years following such retention or transfer in accordance with the general plan for the appropriate city or county. Otherwise, the land shall be sold by the Commission and the funds received from the sale used for highway purposes. If the land originally had been transferred for such purposes, it shall revert to the original acquiring local agency for such sale. Disposal of excess on State Highway projects should be addressed in the cooperative agreement for design and right of way.

8.7.7.4 Commission Funded Projects. The Commission may provide funding to cities for capital projects, including acquisition of right of way. The following provisions outline the policies for disposal of excess for Commission funded projects.

In order to protect a city's ability to deliver a project in a timely and cost effective manner, a city may purchase parcels of property in advance of the completion of the project's final design (i.e. Plans, Specifications, and Estimates "PS&E") with funds received by the Commission. Acquired parcels or remnants purchased in advance of final design may not ultimately be required for the project.

Upon completion of the project's final design, the city shall provide the Commission with a detailed list of all parcels purchased by the city for which it received Commission funds and identify any parcels or remnants thereof which were acquired using Commission funds and are not required for construction of the project. A preliminary list shall be submitted to the Commission thirty (30) days before the issuance of bid documents for construction of the project and a final list shall be submitted to the Commission no later than thirty (30) days following the recording of the Certificate of Completion for the project.

Upon receipt of the city's final list, the Commission shall meet with the city for the purpose of identifying any parcel or reasonably usable remnant of a parcel for which Commission funds were expended that may reasonably be developed for other use by the city and/or sold. The Commission and the city shall agree upon the disposition of such parcels and remnant parcels and their fair market value as of a date agreed to by the parties, but in no event later than or prior to the date of completion of the project.

Following recordation of the Certificate of Completion for the project, the city shall be responsible for promptly reimbursing the Commission for any Commission

funds which were used to acquire parcels which are completely unused in the project.

#### **8.7.8.00 SURPLUS REAL PROPERTY POLICY PROVISIONS UNIQUE TO RCA**

In addition to the provisions set forth above disposition of surplus property of the RCA shall adhere to the policy set forth herein.

8.7.8.1 Wildlife Conservation Board (Section 6 Grant Funds). The RCA will follow the procedure outlined in the agreement entered into with the Wildlife Conservation Board.

8.7.8.2 Annual Inventory. The RCA shall list property in its inventory as surplus real property provided the RCA makes all of the following determinations: (i) the biological value of the property is low or marginal in terms of species recovery or sustainability; and (ii) the property is not required to assemble the Reserve.

8.7.8.3 Research Prior to Disposal of Surplus Property. Prior to disposing any surplus real property, the RCA should do the following:

- Determine Biological Need for Land: Prior to disposing of any property acquired by the RCA, the RCA shall perform a habitat assessment to determine the value of the land for conservation purposes. Except in exceptional circumstances, property may be conveyed only if it is determined that its conservation value is low or marginal or that the property is not required to assemble the Reserve.
- Determine whether there are any conveyance or use restrictions: The RCA should research whether the property in question is subject to covenants or conditions imposed by any original grantees of the property. For example, gifts of real property often involve conditions whereby real property “reverts” back to the grantor if the property is not used for a specific purpose. Such restrictions could also form the basis of an exemption under the Surplus Land Act.
- Determine whether Property was purchased with federal or state grant funds: Prior to disposing of any real property purchased by the RCA with state or federal grant funds, the RCA should consult the terms of the agreement under which the grant funding was accepted. In some cases, disposal of property purchased with grant funds may be prohibited or restricted, or subject to other regulations. Also, upon the sale of surplus property, the RCA may be required to reimburse any federal or state agency that contributed grant funds for the acquisition of the property.
- Determine whether Property is subject to any leases, licenses, or other encumbrances: The RCA should determine whether there are any leases, licenses, or other encumbrances attached to the property.

8.7.8.4 Sale of Property. The procedures of this Section shall govern the disposition of any surplus property once the RCA has fully complied with the procedures set forth above and Chapter 8.07.

- Sale to Prior Owner: If the RCA decides to dispose of a property within three (3) years of acquisition and the RCA paid no more than the appraised value for the property as determined in an appraisal prepared by the RCA at the time of purchase, the RCA shall first offer the property to the person or entity who sold the property to the RCA. The RCA shall not sell the property at a price less than the total of all of the following: (i) amount the RCA paid the seller for the property (including all costs and expenses incurred by the RCA for the purchase), plus interest calculated at the average rate earned by the RCA on invested funding during the time of its ownership and (ii) administration, maintenance and repair costs incurred by the RCA during its ownership of the property.
- Notice to Certain Affected Agencies: Prior to commencing the sale of property to a third party, the RCA should notify and receive the concurrence of the following agencies:
  - The city or county within which the property was located when originally purchased by the RCA; and
  - The city or county within which the property is currently located and/or within which sphere of influence the property is currently located.
- Sale or Trade to Other Parties: If “Sale to Prior Owner”, as mentioned above , is not applicable, the RCA may proceed with the sale or trade of the property to any party. The RCA shall conduct an appraisal of the property to determine its fair market value. The RCA shall not sell property below its fair market value unless approved by the Board of Directors. Further, the RCA shall not trade the property for other property below the fair market value of the property to be traded unless approved by the Board of Directors).
- Limitations: It is anticipated that RCA shall not:
  - Sell property within five (5) years of acquisition; and
  - Sell water or mineral rights unless fully compensated therefor.

## **8.8.00.00 RENTAL POLICY**

### **8.8.1.00 Re-Rent**

On a per project basis, the Commission or the RCA may decide whether to license improvements located on recently vacated property (such as residential units or other types of nonresidential structures). If the Commission or the RCA decides not to license, the vacated improvements on such property should be cleared as quickly as reasonably possible.

### **8.8.2.00 Rental Agreements**

When real property is acquired by the Commission in advance of the time it is required for construction or operation of a transit project, the Commission may license the real property to private or public entities during the interim period to create revenue for the Commission. The following rental agreements shall be used:

- License. All new outside users of Commission-owned vacant land and facilities (e.g. buildings) shall enter into a license agreement on the standard license form of agreement.
- Right of Entry. All new outside users of Commission property with a definite term between one and ninety days may be authorized by use of a temporary permit prepared on the standard Right of Entry form of agreement.
- Relocation Assistance. Eligibility for any relocation benefits should be clearly stated in the agreement.

No revisions or modifications to these agreements will be permitted unless specifically approved by the Right of Way Manager and the Commission's General Counsel.

Please note: Under the Guidelines, *leases* are dispositions of surplus land subject to the Surplus Land Act. However, for purposes of the Surplus Land Act, "leases" do not include a lease of land on which no development or demolition will occur or which has a term that is less than five (5) years (including any extensions, amendments or options). A "lease" and a "license" are two distinct legal instruments. A lease is a contract between a tenant and a landlord that provides the tenant with exclusive interest in the property. A license, on the other hand, is used when the owner gives permission to a licensee to conduct an action on the owner's property. Licenses may be non-exclusive. The main difference between the two is that leases give an individual the right to control property (i.e. a property interest), while licenses only give an individual the right to act on it (i.e. no property interest). So long as the agreement for a third party to access and use the subject land is clearly a license, and not a lease, the Surplus Land Act will not apply.

#### **8.8.3.00 Assignment of Rental Agreements**

In some instances it may be of benefit to the Commission to accept an assignment of an existing tenancy upon acquisition of a property. All such rental agreements to be assigned to the Commission through property acquisitions are subject to the following:

- Review by the Right of Way Manager prior to acquisition to determine if the tenant is in compliance with the terms and conditions of the agreement.
- Verified through an Estoppel Certificate prepared as part of the escrow process by the designated Right of Way Staff.
- The original rental document shall be attached to the Estoppel Certificate for processing into the Commission's document custody system. Agreements are converted to conform to the appropriate the Commission rental agreement document whenever possible.
- Additional lease/license terms may be negotiated with the owner(s) or representative(s) and included in a new or amended rental agreement. In addition, a rental adjustment may be made (upward only) to equal the fair market rental rate established for the property.

#### **8.8.4.00 Rental Amounts**

The Right of Way Staff prepares an analysis of the subject property's fair market value, based on a market rate survey of comparable or similar properties in the same general area. A current real property appraisal may be utilized, if necessary. In most cases, the annual rental rate (fair market rent) is equivalent to 10% of the fair market value of the property. However, the rate may be adjusted to reflect any special terms and conditions imposed by the Commission.

8.8.4.1 Rent Collection for Properties Used by Third Parties. The Right of Way Staff performs the following actions to assure the proper and timely payment of rent and late charges (ongoing payments are generally applicable to license agreements, but may also apply to certain rights of entry):

- **Collection of Rent:** All rents shall be collected in accordance with the terms and conditions of the license agreement. Payments (usually annual) shall be mailed to the Commission Finance/Accounting Department, who prepares and sends an invoice before the payment is due, reminding a tenant of the amount and due date. A check should not be given directly to the Right of Way Staff, unless it is the first payment prior to the establishment of the account or other special situation. All checks shall be recorded in the Commission's accounting log and posted to the appropriate revenue account.
- **Collection Efforts for Delinquent Accounts:** Any account where the current payment is not received in total by the due date is considered delinquent (usually after thirty (30) days). The Right of Way Staff will work with the tenant to bring the account current. The Right of Way Manager will determine if termination of the license should be commenced. A clear and complete written record of all such actions shall be maintained for each file. Legal counsel may be consulted, if necessary.
- **Assessment of Penalties:** Additional amounts are assessed delinquent tenants based on provisions in the license agreement.
- **Three-Day Notice to Quit:** In the event delinquent rent is not paid immediately after contacting the tenant, a Three-Day Notice to Quit may be served on the tenant. This notice will demand and give the tenant one last opportunity to pay the total delinquent rent within three (3) days or vacate the property. If the month-to-month tenant is habitually delinquent and it is decided to terminate the tenancy, a Thirty-Day Notice of Termination, terminating the tenancy may be sent.

*NOTE:* Serving a Thirty-Day Notice of Termination after a Three-Day Notice to Quit has been served may negate the legal effect of the Three-Day Notice in the event the tenant does not quit (vacate) the site. If necessary, the matter is then turned over to legal counsel for the filing of an Unlawful Detainer Complaint to evict the tenant through the court system and regain possession of the property, as well as to obtain a money judgment for the delinquent amount and any attorney's and related costs. The money judgment may then be turned over to an outside collection agency or, if recommended by legal

counsel, the matter may be pursued through legal proceedings against the tenant.

- After all of the above-mentioned proceedings have been completed and the tenant has vacated the property and the license formally terminated, the Right of Way Staff has the option of determining if the property is available for a new license.
- If necessary, the Right of Way Staff shall coordinate the storage or removal of any remaining personal property belonging to the former tenant and secure any building to prevent unauthorized entry.

8.8.4.2 License Agreements. License agreements may be utilized for long-term uses (usually over ninety (90) days). Where transportation project schedules permit, and on projects where immediate use of the real property is not required, the Commission may license the property, as well as any improvements thereon, to private or public entities. All new licenses shall be prepared by the Commission on its standard form of agreement. No revisions or modifications will be permitted unless specifically approved by appropriate personnel and legal counsel, on occasion, approval by the Board of Commissioners is required. Also, it may be necessary for SCRRA to review a proposed license if there is a possible adverse impact to an existing or proposed transportation project.

All new license agreements include the Commission's standard provision requiring the tenant to accept the condition that it is not eligible for any relocation assistance upon termination of the agreement.

All license agreements with private entities shall provide for payment to the Commission of a one-time processing fee and an annual fair market rent (public agencies are not required to pay).

8.8.4.3 Utilities. Private Utilities (shareholder owned) and Public Utilities (governmental agencies)

- Utility crossing rental rates will be based on fair market land value per linear foot based on the actual length of the crossing and a standard width of ten (10) feet.
- Longitudinal utility rental rates will be based on fair market value per square foot for vacant industrial/commercial land.
- An annual administrative base fee of \$200 will be charged for each license in addition to the calculated rent.
- Utility facilities will be charged the \$6,000 application fee as well as the annual rental fee.

8.8.4.4 Member and other Exempt Agencies.



- RCTC member agencies will not be charged an annual rent fee and will not be charged an administrative fee or application fee.
- Agencies will be prohibited from subleasing without written approval from the Commission or for a profit.

#### 8.8.4.5 Private Users. (Individuals, businesses, and non-profit organizations)

Private use types include the following:

- Backyard landscaping
- Sprinkler and irrigation systems
- Patios, garages, gazebos, and other permanent structures
- Parking and shade overhangs
- Billboards
- Access roads
- Commercial agricultural uses, including associated irrigation equipment
- Industry spur tracks

Residential Uses. Rental rates will be based on a minimum of 25% of fair market rent, defined in Section 8.08.04.00, for vacant residential land. An annual administrative base fee of \$200 per license is charged in addition to the calculated rent.

Commercial Uses. Rental based on 100% of fair market rent for vacant industrial/commercial land. An annual administrative base fee of \$200 per license will be charged in addition to the calculated rent.

Non-Profit Organizations. Rental rates will be based on 25% of fair market rent for vacant industrial/commercial land. An annual administrative base fee of \$200 per license is charged in addition to the calculated rent. At its discretion, the Commission may waive the fees on a case by case basis.

#### Utility Service and Drainage.

- Rental rates will be based on 25% of the fair market value calculated for private and public utilities.
- An annual administrative base fee of \$200 per license will be charged to residential and non-profit users in addition to the calculated rent.
- An annual administrative base fee of \$200 per license will be charged to commercial users in addition to the calculated rent.

Carry-Over Tenants and Owner-Occupants during Interim Period. When a property is purchased for a project from a private owner, and the timing of the project is such that the previous tenant or owner can remain on the property for an interim period, the following policies will apply:

- Carry-Over Tenants may be charged the same contract rent as was paid to the former owner. A comparison will be made between the contract rent and the FMV rent as contained in the approved appraisal to determine if the contract rent is reasonable. An upward adjustment will be made to the rental amount if the contract rent is below the current FMV rent for the property.
- Carry-Over Owner-Occupants' initial rental amount will be the FMV rent contained in the appraisal upon which the value of the property was determined. This amount may be subject to adjustment due to month-to-month occupancy.

#### Other Fees and Considerations.

- Existing licensees will not be required to pay the fee of \$6,000 for license applications, processing fees, or any one-time fees when renewing or making minor revisions to their existing licenses.
- Licenses will be revised to reflect any rental rate change or when there is a need for updated language.
- Land values and rates will be reviewed at least every five (5) years, and more frequently if appropriate, but may not necessarily result in an increase of annual rates.
- Uses of Commission property that have significant liability or impact to the Commission's use of the property, such as spur tracks and billboards, are outside of the scope of this policy and will be valued separately.

8.8.4.6 Outdoor Advertising Signs. License agreements covering various existing signs have been assumed from previous property owners and allowed to remain in effect at fair market value rates. The following policies apply to such agreements, which have subsequently been put on the Commission's standard form.

Before an outdoor advertising sign is installed, the billboard company must obtain all necessary permits from the State, County, or local municipality in which the sign was installed. The license rates for advertising signs were, and will continue to be, based on the size of the sign, its exposure potential to nearby traveled roadways, and the appropriate market rate of return. The determination of the market rate of return may be based on an appraisal, which generally uses the gross license income of private billboard companies, as published by the State of California and the Outdoor Advertiser's Association.

Generally, the Commission will expect to receive a minimum of 25% of the annual gross revenue generated by the signboard. A "base license rate" is established annually based on market data appraisal information. This amount is then increased if the 25% figure exceeds the base license rate.

Existing signboards located on properties acquired by the Commission may be eligible for relocation and/or removal assistance upon termination of the license agreement.

#### **8.8.5.00 RCA Right of Entry Policy**

RCA's Reserve Management and Monitoring Manager shall determine whether right of entry agreements are allowed on lands owned by the RCA. On a case-by-case basis, right of entry agreements may be charged an application fee determined by the Right of Way Department until a formal policy has been established by RCA's Board of Directors.

#### **8.8.6.00 RCA License/Lease Agreements Policy**

RCA's Reserve Management and Monitoring Manager shall determine whether license agreements are allowed on lands owned by the RCA. Generally, RCA's costs involved in preparing and implementing a license agreement should be covered. Licensed/Leased facilities will be charged an application, license, and amendment fee determined by the Right of Way Department until a formal policy has been established by RCA's Board of Directors.

Long-Term Leases: According to a 2006 policy adopted by the RCA Board of Directors, communication facilities may be sited on a case by case basis subject to the provisions of the MSHCP, and in conformance with federal, state and local codes and regulations, and any rules established by the RCA Board of Directors. Two radio towers were allowed to "grandfather" into the MSHCP Conservation Area since accepting the towers were a condition of the purchase of the property.

### **8.9.00.00 RENT COLLECTION PROCEDURES**

The Right of Way Staff performs the following actions to assure the collection of rent:

- Assists in the collection of rent. All rents shall be collected in accordance with the terms and conditions of the rental agreement. Rental payment shall be mailed directly to the Accounts Receivables (A/R) Department for posting to the appropriate revenue account.
- Assists the accounting staff in the creation, organization, and maintenance of a rental collection system.
- All rental agreements shall be assigned an agreement identification number by A/R staff.
- Applies periodic rental adjustments per the agreement.
- Handles collection efforts for delinquent accounts and rental accounts where the current monthly is not received in total by the due date is considered delinquent.
- Assesses penalties to delinquent tenants based on provisions in the rental/license agreement.
- Ensures late charges will be carried in the A/R books and records if delinquent tenants do not pay.
- Pursues rent collections, including late charges and interest on past-due obligations, if applicable, pursuant to the terms and conditions of the agreement.

- If tenant payment has not been received within 15th calendar days of the date when due, mails a past due notice to tenant.
- If tenant payment has not been received by the last day of the month when due, mails a second past due notice to tenant.
- If tenant payment has not been received by the 15th calendar day of the following month due, mails a third and final past due notice to tenant.
- If tenant payment has not been received by the last day of the following month, coordinates the filing of an Unlawful Detainer Action and seeks a Judgment, if necessary, through General Counsel.

#### **8.9.1.00**      **Establishment of License Rental Amounts**

License for Carry-over Tenants. Generally, a carry-over tenant will be charged the same contract rent as was paid to the former owner. A comparison will be made between the contract rent and the economic rent, as contained in an appraisal or other market analysis to determine if the contract rent is reasonable. An upward adjustment may be made to the license amount if the contract rent is below the current economic rent for the property and the carry-over tenant will remain in occupancy of the property for more than one month.

All Other Licensed Properties. License amounts for all other Commission owned properties generally shall be 10% of the subject property's fair market value, as established by a current appraisal or survey of comparable licensed properties in the area.

#### **8.10.00.00**      **PROPERTY LIABILITY/LOSS PREVENTION**

##### **8.10.1.00**      **Insurance/Indemnity**

The Commission will maintain its own insurance coverage on all of its properties. Insurance coverage for acquired property shall take effect at the time of the title transfer to the Commission. All parties using the Commission property under license agreements or rights of entry will be required to maintain adequate liability and property insurance based on the Commission's insurance requirements.

All such insurance shall be primary to any insurance carried by the Commission.

Agreements to use the Commission's property shall include an indemnity provision approved legal counsel.

All users/tenants must accept the Commission's indemnity provisions in their entirety and provide evidence of the required insurance coverage prior to taking possession of the Commission's property.

The Commission will maintain liability insurance coverage on non-leased/licensed properties as determined by the Commission. Insurance coverage for acquired property shall take effect at the time of the title transfer to the Commission. All parties using Commission property under leasing, licensing, or other agreements will be required to maintain adequate liability and property

insurance based on the Commission's insurance requirements, unless modified or waived with the consent of the Commission. Commission staff shall review and approve the liability insurance and indemnification provisions prior to the completion of all property agreements. Upon receipt of insurance documents from new tenants, they shall forward the tenant's insurance documents to the appropriate staff for approval.

The Right of Way Staff monitors the uses permitted under property agreements and the potential risks and liabilities associated with the uses. The Commission determines the steps necessary to reduce risk and the type and amount of insurance required to protect the Commission. The Right of Way Staff will take the following steps to reduce risk:

- Notifies the Commission's Right of Way Manager, and if necessary, legal counsel, of any unsafe activities or unsafe conditions and provides recommendations for corrective action.
- Periodically reviews the leased/licensed sites to verify compliance with the environmental provisions of the agreement.
- Evaluates the compatibility of the use.
- Ensures that the property's use is legal.
- Insists on adherence to safety policies.
- Reviews the indemnification and hold harmless clauses.
- Researches the insurance requirements.
- Determines the types of insurance policies required, the evidence needed, and the coverage limitations.

#### **8.10.2.00 Ensure Risk Management, Hazard Protection and Liability Reduction**

The Right of Way Staff shall monitor the uses permitted under each right of entry or license agreement affecting the Commission property, as well as the potential risks and liabilities associated with such uses. After consulting with insurance personnel, the Right of Way Staff determines the steps necessary to reduce risk and the type and amount of insurance required to protect the Commission. The Commission staff takes the following steps to reduce risk:

- Conducts regular property inspections
- Evaluates the compatibility of use with adjoining properties
- Reviews the existing and proposed property use with the Commission, BNSF or SCRRA, as appropriate
- Ensures that the property's use is legal
- Insists on adherence to safety policies
- Reviews the indemnification and hold-harmless clauses in the agreement
- Determines the types of insurance policies required, the evidence needed (certificates), and the coverage limitations

If a use is identified as being in non-compliance of an agreement or poses a risk to the Commission, BNSF, or SCRRA and/or the public, the tenant can be given a Three-Day Notice to Cure Defect or Quit and or terminated similar to the procedures mentioned above.

**8.10.3.00 Security Measures**

The Commission is responsible for the following security procedures for Commission-owned property:

- Responds to safety and security inquiries
- Determines when security measures are needed
- Coordinates the proper administration of security with appropriate security providers
- Coordinates any police activities with the appropriate law enforcement agency

**8.10.4.00 Hazardous Waste and Materials**

All properties are to be periodically inspected for adverse environmental conditions. If any evidence of hazardous material or contamination is detected during routine management activities, the Right of Way Manager and Legal Counsel shall be contacted immediately. A plan of remediation will be developed by an approved environmental consultant.

**8.10.5.00 Property Security**

The Commission-owned land and improvements that are unoccupied will be protected against unauthorized use, vandalism, and damage under the direction of the Right of Way Staff and coordination with maintenance staff and/or local police agencies, as needed.

When a parcel has been assigned to a construction project, the security of the construction site, including all materials, equipment, supplies, and off-site area is the responsibility of the construction Contractor. The contractor's activities shall be monitored by the Project Manager and staff.

The security of equipment, facilities or other structures on Commission leased and licensed property shall be the sole responsibility of the lessee/licensee until the lease/license is terminated. The Right of Way Staff is responsible for conducting periodic property inspections to verify that the lessee/licensee is securing the property as required by agreement in a reasonable manner.

**9.00.00.00 DEMOLITION, CLEARANCE, AND RIGHT OF WAY CERTIFICATION****9.1.00.00 OVERVIEW**

The demolition and clearance of structures and other improvements on acquired property is included in the property management function. The Commission must manage real property acquired for a project until it is required for construction.

Improvements include building structures or any other obstructions within the proposed right of way including the following:

- Utilities
- Underground storage tanks
- Wells
- Signs
- Cell towers
- Outdoor advertising signs
- Concrete and asphalt
- Landscaping, including trees

The policies established by this Chapter 9 apply to Commission owned properties. All RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Director of Reserved Management/Monitoring Manager.

**9.1.1.00 Federal Funds**

Federal funds may be used to cover costs for the disposal and clearance of real property, pursuant to 23 CFR Subpart B, section 710.203(b)(4). Accounting documentation will be required in order to bill federal participating revenue and expenses accurately.

**9.1.2.00 Initial Clearance**

Factors that should be analyzed in determining clearance schedules include:

- Increased costs - for debris pick-up, weed abatement and dumping as improvements are removed
- Attractive nuisance - increased exposure to crime, vandalism or personal injury from individuals attracted to the property
- Rental income balanced against the cost of upkeep of rental units
- Ability to group multiple demolitions together, therefore reducing per unit demolition costs
- Environmental impact during nesting periods

**9.1.3.00 Emergency Clearance**

Prior to environmental clearance, improvements must not be removed except in cases of emergency. Emergency is defined in the Caltrans Environmental Regulations as "a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to

prevent or mitigate loss or impairment of life, health, property, or essential public services.” Emergencies may include, but are not limited to such occurrences as fire, flood, earthquakes, riots, accidents or sabotage. Notification to the Southern California Air Quality Management District (SCAQMD) is required if the existence of asbestos or lead paint is suspected.

#### **9.1.4.00 Historic Structures**

Historic structures will be identified and addressed during the environmental clearance process. If applicable, documentation that details the compliance with the mitigation and/or disposition of the historic structure will be necessary.

#### **9.1.5.00 Pre-Demolition Activities**

An inventory of improvements and personal property will be prepared and included in the appraisal report. The acquisition Project Manager will forward the inventory report to Right of Way Staff, along with anticipated vacation dates of the occupants. Right of Way Staff can then determine the best means of clearance based on the type of structure, the right of way requirements, the construction schedule and the personal property that may be included in the inventory.

Demolition of structures shall be scheduled as soon as possible when occupant vacation occurs. Close coordination with the acquisition Project Manager ensures that demolition activities begin on a timely basis. Weekly field inspections shall be performed by Right of Way Staff to ensure that properties are secured immediately upon vacation. Upon contract award, the demolition contractor becomes responsible for securing the property with boarding, fencing, etc.

#### **9.1.6.00 Personal Property**

If time allows, movable items that are purchased as a part of the acquisition may be sold by public auction. The property owner may elect to retain an improvement. If owner retention is offered during negotiations, the time frame for removal shall be included in the Purchase and Sale Agreement. Communication with the Relocation Agent should ensure that the owner was not paid to move items that are purchased. Fixtures included in the real estate are generally included for demolition, however the cost of demolition should reflect an offset for salvage value.

#### **9.1.7.00 Utility Service Disconnect**

Prior to the delivery of a parcel to the demolition contractor, it is the responsibility of the agent to ensure the disconnection of all utility services. Electrical and gas services should be removed at the property line so the improvements can be demolished or moved off-site safely. Water and other supply services should also be terminated, and facilities removed to provide safe access during removal of hazardous materials and demolition. Destruction of wells, storage tanks, and supply and drain lines should be in compliance with the clearance specifications.

The agent shall obtain a “Letter of Disconnect” or similarly named document from the utility provider formally documenting that utilities were terminated and facilities were removed.

#### **9.1.8.00 Asbestos and Lead Paint Abatement**



All improvements shall be inspected for the presence of Asbestos Containing Materials (ACMs), and lead paint when applicable, prior to demolition or removal. A qualified and licensed environmental consultant shall perform hazardous materials testing. A report will be prepared that will include testing results and recommendations, which will be forwarded to the abatement contractor. All activities must comply with the Environmental Protection Agency and all state and local government regulations. The Commission shall comply with the SCAQMD guidelines. Air clearance will be monitored by the abatement contractor prior to removal of hazardous materials. Removal of ACMs and lead paint will be performed through the demolition contract by a qualified and licensed abatement contractor and will comply with all applicable laws, regulations, ordinances and recommendations of the inspector.

#### **9.1.9.00 Demolition Contract**

Improvement clearance can be scheduled during the acquisition phase of the project using demolition contracts or it can be included as a work item in the construction contract. Certain circumstances, such as inaccessibility to the property improvements, may call for using the latter methodology. A field inspection of the property is necessary to verify that items included in the inventory report are still physically included on the property. The demolition contractor will bid the work based on the items included in the scope of work, the results in the asbestos and lead paint survey and a field review of the property.

The bid package shall be prepared and will include the following:

- Scope of work
- Location of the property
- Ancillary items that shall be included, i.e. trees, fencing, signs, underground storage tanks, etc.
- Contact numbers as applicable
- Anticipated length of time for the demolition

The Commission uses a scope of work for demolition tasks that includes the following:

- Asbestos abatement
- Securing of property
- Order of work
- Applicable standards
- Compliance with regulations and ordinances
- Any additional pertinent information

State of California prevailing wages, as determined by the Department of Industrial Relations, must be paid to all workers employed on public works projects when the public works project is over \$1,000.

Demolition contracts shall be advertised and awarded pursuant to State law and the Commission's Procurement Manual. For larger jobs Right of Way Staff may schedule a site-walk with all on call contractors. As the duration of demolition is generally for a short period, the bid

price shall generally be lump sum. The contractor's bid shall include all permits and fees, equipment rental, asbestos abatement, tank removal and subcontract work. Once bids are received and a contractor selected, the task order shall be completed and sent to the contractor for signature on an expedited basis. Once executed, a Notice to Proceed will be issued.

#### **9.1.10.00      Clearance**

Prior to commencing demolition Right of Ways Staff shall notify SCAQMD, which requires a ten (10) working day notification prior to asbestos abatement. If an improved property becomes a health and safety hazard, Right of Way Staff can request that the SCAQMD notification period be waived on an emergency basis. During the SCAQMD notification period, the contractor will notify Underground Service Alert for utility location, schedule equipment and secure the property. Prior to demolition, Right of Way Staff must notify utility companies in writing to discontinue service.

Once demolition activities commence, monitoring of the removal shall be documented in writing and maintained in the parcel file. When final clearance is achieved, a written notice shall be forwarded for inclusion in the construction documents.

### **9.2.00.00      RIGHT OF WAY CERTIFICATION**

#### **9.2.1.00      Elements and Definition**

The Right of Way Certification procedure identifies the acquisition status of necessary right of way for the purpose of advancing a project to construction. It also addresses the status of any required relocation activities necessary on the project. The key elements are as follows:

- Acquisition of right of way in accordance with laws and requirements
- Relocation of people, businesses or personal property, so that the contractor may enter upon the properties
- Identification of encroachments and acquired structures within the right of way and an explanation of who will remove them
- Identification of hazardous waste that may be present at the site with information on contractor's responsibility for safe disposal
- Identification of all utility conflicts

Definition of Right of Way Certification. Right of Way Certification is a written statement summarizing the status of all right of way related matters pertaining to a proposed construction project. The purpose of the certification is to document the construction project is ready for advertising and states the following:

- Real property interests have been or are being secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project.
- Right of way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

There are four levels of certification recognized by the Federal Highway Administration (FHWA), pursuant to 23 CFR 635.309, and by the State. The four certification levels 1, 2, 3 and 3W (Work Around). Under Federal rule, projects can be advertised, bid proposals opened and a construction contract awarded using certification levels 1, 2 and 3W. Certification level 3 allows for a project to be advertised only, bids may not be opened until the certification is upgraded.

#### **9.2.2.00 Requirements**

Prior to physical construction, the Right of Way Staff shall prepare a statement that includes the following:

- All right of way is clear, or if not, appropriate notification is given of any work concurrent with construction.
- All people have been relocated to decent, safe, and sanitary housing and one of the following applies:
  - All needed right of way has been acquired and all occupants have moved.
  - Not all needed right of way has been acquired, but a possession and use agreement has been obtained on all parcels and all occupants moved.
  - Acquisition of right of way is not complete and occupants are still on the project (this action requires a full explanation and special assurances about occupant protection).
  - All utilities have been relocated or protected in place.
- Right of way has been acquired in accordance with applicable federal, state and local laws.
- Federal and state relocation assistance and payment rules were followed.

#### **9.2.3.00 Partial Right of Way Certification**

On design/build projects or when required in order to advance the project schedule, right of way may be certified for construction on a partial basis or on parcel groups, provided all of the elements and requirements under Section 9.2.2.00, above, are satisfied.

## **10.00.00.00 ENVIRONMENTAL INSPECTION, INVESTIGATION, AND REMEDIATION**

### **10.1.00.00 GENERAL**

#### **10.1.1.00 General**

When acquiring properties for transportation (or transportation-related) projects, it is the Commission's policy to fully consider all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers and the community prior to, during and after construction, and if possible, to avoid all potential aspects of hazardous waste.

The Commission strives to identify, investigate and cleanup sites at the earliest opportunity during the project development process. The process is completed in accordance with applicable governmental hazardous waste requirements.

Every project that includes significant excavation, structure demolition or modification, or the purchase of new right of way, will require an Initial Site Assessment (ISA) to determine if known or potential hazardous waste is present within the project limits. Utility relocations, donations of property, and hardship and protection acquisitions must consider possible hazardous waste/material issues.

A material is hazardous if it poses a threat to human health or the environment. Hazardous substances are substances or combinations of substances as defined in Title 22, California Code of Regulations, Section 66680, Division 20, Health and Safety Code, Sections 25115 and 25117, or those substances defined in 49 CFR 171.8. Hazardous materials may be any of a large group of the products listed below:

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radio-active

The term hazardous waste applies to the storage, deposit, contamination, etc. of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

The RCA's policies for Environmental Inspection, Investigation and Remediation may be found in Chapter 13.6.2.0 and 13.6.3.0, below. The RCA may also use the policies in this Chapter 10 on a case-by-case basis.

#### **10.1.2.00 Technical Resources**

It is the Commission's policy to establish an approved list of on call professional consultants through the procurement process who can be available to assist in resolving hazardous waste problems. Early and continued involvement by this resource is essential in avoiding unnecessary

cost and delays from hazardous waste problems. Legal counsel is another resource that may be consulted regarding documentation for cost recovery.

### **10.1.3.00 Permit to Enter**

California Code of Civil Procedure (CCP) Section 1245.010 allows an entity authorized to use eminent domain to enter a property to produce photographs, studies, surveys, examinations, tests, soundings, borings, samplings or appraisals.

CCP Section 1245.020 provides that if the public entity's activities could damage or cause substantial interference with the property, then written consent or a court order is required.

Methods of obtaining entry to properties for testing include the following:

- Entry without permit. If there are non-physical, no "actual damage" surveys, investigations or testing, the Commission's legal counsel has advised that the Commission may choose to access property without written consent or court order. In this case, the Commission shall give reasonable advance notice to the property owners in the event of obstacles such as gated access, animals or problem occupants.
- Permit signed by the owner. For access that will involve physical intrusions such as drillings, borings and monitoring wells, the Commission should first attempt to obtain written consent from the property owner. The Commission should seek consent in all types of physical intrusion situations, even when the Commission and its consultants intend to re-fill/repair any holes or wells and not cause any permanent damage. "Owner" should be given a broad interpretation to include the holder of any interest likely to be affected by the testing, including, for example, a tenant in possession. All parties with an interest in the property should sign the entry form, when possible, however the written consent of one owner is sufficient. CCP Section 1245.060 provides that if the entry and activities upon property cause actual damage to or substantial interference with the possession or use of the property, the owner may recover for such damage or interference. In some cases, it may be appropriate to pay for a voluntary right of entry for environmental purposes. For properties that will incur damage or substantial interference for testing, legal counsel should be consulted.
- A Court order to enter the property. If property owners will not give written consent, it may be necessary to petition the court for a Permit to Enter. CCP Section 1245.030 allows a public entity to petition the court. Section 1245.030(b) provides that at the hearing, the court determines the term and the scope of the entry that will be allowed. The court also determines the probable amount of compensation to be paid for the actual damage to the property and interference with its possession and use.

If the court requires that a deposit of compensation be made in advance, the property owner can only make a claim against that deposit if the public entity's activities have caused actual damage or substantial interference. The request for entry must be for specific testing and must identify exact locations for borings. Any additional testing may necessitate further court orders which must also be obtained by legal counsel, and must be specific and exact.

Further Legal actions may be compromised if required entry is not specific as to the proposed activity and specific as to location.

**10.2.00.00 HAZARDOUS WASTE PROCESS****10.2.1.00 Discussion in Project Study Report.**

Hazardous waste problems, or potential problems, will generally be discussed in the Environmental Documents and must be discussed in the Project Study Report (PSR), along with a recommended action for avoiding or mitigating hazardous waste sites.

**10.2.2.00 Hazardous Waste Activities**

Activities during acquisition will include the following:

- Secure entry approvals from property owners as required for investigations.
- Identify and track all parcels requiring hazardous material inspections.
- Prepare and administer hazardous material investigation contracts.
- Monitor projects and parcels requiring investigations for completion status in accordance with schedule and lead-time requirements.
- Approve investigation reports on hazardous material and projected remedial actions and costs.
- Determine and communicate market value inspection needs when they are different from the remediation requirements for project construction.
- Coordinate with legal counsel as necessary.
- Identify potential hazardous waste problems for utility relocation easements to be acquired as early as possible so they may be cleared.

**10.2.3.00 Site Investigation**

A limited-scale site investigation is intended to identify any potential contamination issues across the project as a whole and to get a general idea of the magnitude of any problem. Site investigations shall include, but are not limited to the following:

- Characterization of subsurface geologic and hydrologic conditions
- Identification and extent of contamination
- Analysis of potential remedial actions

Permits to Enter to gain permission to enter onto the property, if necessary, for the site investigation, should be initiated as soon as possible.

Site investigations can vary in detail, depending on the number of sites to be investigated, the project schedule and the number of project alternatives. After a Preferred Alternative is selected, a more complete site investigation is conducted to fully characterize the site.

If, after completion of the ISA, a potential hazardous waste problem exists, a meeting will be scheduled to discuss alternatives, including avoidance. If avoidance is not prudent or justified by the site assessment information, then a site investigation will be conducted.

**10.2.4.00 Environmental Site Assessments**

Environmental Site Assessments are generally conducted shortly before acquisition on a parcel specific basis. There are three types of environmental site assessments – transaction screens, Phase 1's and Phase 2's.

10.2.4.1 Transaction Screen Assessment Reports. Transaction Screen Assessment reports adhere to the American Society of Testing & Materials (ASTM) Standard E-1528-06 for Limited Environmental Due Diligence. The transaction screens are used as an initial screen on low-risk properties. Transaction screen reports are limited in nature and no longer meet the regulations required for the "Landowner's Liability Protection."

10.2.4.2 Phase I Environmental Site Assessments. Phase I Environmental Site Assessments are required to complete the appraisal process to determine if the condition of the site will have an impact on the fair market value of the parcel. Phase I Environmental Site Assessment shall be in conformance with ASTM International (ASTM) Standard E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. For partial acquisitions the work will be limited to the acquisition areas only and not the entire parcel. The Environmental Site Assessments will be performed under the responsible charge of an environmental professional and will include the following components:

- Historical sources including building department records, historical aerial photographs, local street directories, fire insurance maps, and other credible sources of past uses or occupancies shall be reviewed.
- Regulatory Records including local, state, tribal and federal databases will be reviewed according to the current search distances within ASTM E1527-13.
- Review of Regulatory Files or Interview of state and local government officials conducted in person, by telephone, or in writing to obtain information on permits and compliance history associated with hazardous substances and petroleum products, and information indicating recognized environmental conditions in connection with the property.
- Owner/Occupant Interviews including past and present owners, occupants, neighbors, and/or other persons who are familiar with the property shall be attempted in person, by telephone, or in writing regarding the history, operations, management, waste management practices, and other environmental considerations for the property as those persons are available and open to an interview.
- Site Reconnaissance including a reasonable observation of the property and structures, the periphery of the property, the interior common areas of structures, and a representative sample of occupant spaces. Items such as current and past uses of the property and adjoining properties; obvious geologic, hydrogeologic, and topographic conditions; structures; roads;

potential hazardous substances and petroleum products; storage tanks; odors; pools of liquid; drums; containers; surface waters; suspected fill materials; stained soil or pavement; stressed vegetation; solid waste; waste water; wells; and septic systems shall be noted as reasonably and visibly observed.

- A report summarizing the results and recommendations.

10.2.4.3 Phase II Environmental Site Assessments. Based on the findings of the Phase I Environmental Site Assessment, a Phase II Investigation may be warranted. In general, this may include a number of the following:

- Prepare a site-specific health and safety plan.
- Notify Underground Service Alert (USA) a minimum of 48 hours prior to drilling activities to clear public utilities.
- Secure the necessary Boring Permit from the appropriate regulatory agency. Permit acquisition will involve submitting a completed application and site plan to the agency for review and approval and remitting the necessary fees.
- Notify the applicable regulatory agencies prior to drilling/backfilling activities.
- Perform a geophysical survey on the subject property to identify the location of former on-site tank holds and/or existing USTs, piping, and/or associated features and to additionally clear boring locations of utilities.
- Advance a number of borings based on the identified recognized environmental conditions for the collection of soil gas, soil, and/or groundwater samples.
- Field-screen each soil sample using a photoionization detector.
- Prepare soil gas samples, soil samples and groundwater samples for laboratory analysis for chemicals of concern as needed.

Sampling procedures will generally conform to the requirements of the appropriate regulatory agencies. A state-certified laboratory will analyze the samples and the project will be performed under the responsible charge of a qualified representative. Based on the results of the investigation, the contractor will compare the analytical results with the applicable requirements regarding regulatory notifications of a release and requirements for additional investigation and or cleanup.

#### **10.2.5.00 Notify Owner and Appropriate Regulatory Agencies**

When a site investigation has identified contamination at an actionable level, the property owner and appropriate regulatory agencies will be notified of the results in accordance with regulatory requirements. Notification shall be made to the owner and any other potentially responsible parties of their obligation under the law for mitigation of the contamination. Determination shall be made whether the owner is able to and intends to investigate and remediate the site such that the project schedule can be met. Thorough site investigation records should be maintained separately for potential use in cost recovery actions.



**10.2.6.00 Hazardous Waste Problems Discussed in Project Report**

Following completion of the site investigation and environmental studies, alternatives to avoid the identified hazardous waste must be identified and evaluated. These problems and the associated alternatives for avoidance or mitigation must be discussed in any project report and environmental document. The reports, as appropriate, must include a discussion of any anticipated site cleanup, including a cost and schedule estimate.

**10.2.7.00 Hazardous Waste Strategy**

If the property owner has agreed to accept responsibility for the hazardous waste remediation, and after investigation, the owner decides to accept responsibility for both the execution and expense of the cleanup, the Commission shall develop a plan of action that incorporates the owner's intent and specifies a program which shall be followed. It is also possible for the owner to request the Commission clean up the hazardous waste. In this case, a multiple of the cleanup costs (i.e., 200%), as well as any additional investigative work required for the cleanup, would be deducted from the appraised property value, or withheld in escrow.

If the property owner cannot or will not investigate and remediate the site, the Commission shall continue investigating the hazardous waste problem. It will be necessary to determine whether time allows for hazardous waste investigation and remediation prior to construction of the transportation project or whether it will be necessary to perform the clean up during construction. Legal counsel may be requested to oversee cost reimbursement from the owner and/or responsible parties.

**10.2.8.00 Cleanup by Owner and/or Responsible Party**

When the owner and/or responsible party has accepted cleanup responsibility, the Commission is responsible for monitoring their investigation and cleanup progress and to make appropriate schedule changes. If at any point during the process, the owner's progress is unsatisfactory, Right of Way Staff must determine if the schedule slippage is such that the Commission should take over the investigation and/or remediation process.

The Commission shall prepare an estimate of any cleanup costs incurred and provide a report to the appraiser for inclusion in the appraisal report.

**10.2.9.00 Remedial Investigation / Feasibility Study**

A comprehensive Remedial Investigation/Feasibility Study (RI/FS) will be required if substantial contamination is present, or if the site is a listed as a state or federal Superfund site. The RI/FS will be performed to develop sufficient information to make an informed remedial alternative selection that eliminates, reduces and/or controls the risks to human health and the environment.

The Remedial Investigation is a site investigation adequate to characterize the site's size and the types and quantities of contamination that are present. The Feasibility Study is an evaluation of the types of remediation that will clean up the site's contamination. Remediation strategies range from excavating the contamination for disposal at another site to complex vapor extraction systems or bioremediation techniques.

The RI/FS work will be coordinated with regulatory agencies and is subject to changes pursuant to the requirements of the agencies. Legal counsel must be contacted regarding appropriate hazardous waste investigation records to be retained for cost recovery actions.

**10.2.10.00    Hazardous Waste Management Plan**

The RI/FS for potential mitigation measures for the hazardous waste site constitutes the Hazardous Waste Management Plan (HWMP). The HWMP is a decision-making document that describes the management of a contaminated site schedule, including cleanup. It summarizes the results of the RI/FS. The RI/FS will include a list of remediation options for cleaning up the site. Typically, the HWMP is developed at the conclusion of the hazardous waste investigation. Involvement of potential responsible parties is advised, so that any cost recovery efforts cannot be challenged on the basis that the parties were excluded from the mitigation decision process.

**10.2.11.00    Community Involvement Plan**

It is advisable to provide the public with early notification of significant hazardous waste investigations and subsequent cleanup activities. This often defuses potential adverse public reaction that may otherwise occur when the cleanup work begins. The lead regulatory agency is responsible for coordinating the community relations in conjunction with the Commission's Public Affairs Department for all community involvement issues and activities.

**10.2.12.00    Remedial Action Plan**

Once a cleanup strategy has been selected, a Remedial Action Plan (RAP) needs to be developed to implement the remediation. The RAP specifies the details required to carry out the selected remediation strategy. The RAP will be prepared by an on-call consultant firm.

Depending on the type and extent of contamination, the RAP will require approval by appropriate regulatory agencies and necessary public notification. On-site treatments will need permits from various regulatory agencies.

**10.2.13.00    Recovery Actions**

Whether the contamination is encountered prior to construction or during the construction phase, legal counsel may assist pursuing appropriate cost recovery from potentially responsible parties. The Right of Way Department will provide information for such recovery action.

**10.2.14.00    Underground Storage Tanks**

Underground tanks should be removed as soon as possible. The contractor must obtain the required permits for operating or closing all existing tanks from the local permitting agency, and this information must be included in the removal contract. Also, any contract for tank removal must include provisions for barricades and cleanup.

Prior to any tank removal, an agreement must be made with the tenant in occupancy and the owner of the property. Non-leaking tanks may have a minor deposit of product under the tank that can be cleaned up during the tank removal.

The State Underground Storage Tank Law is contained in Division 20, Chapter 6.7, Health and Safety Code, and Underground Tank Regulations, Title 23, Chapter 3, Subchapter 16, California Administrative Code.

**10.2.15.00 Hazardous Materials in Property Improvements**

Asbestos containing materials (ACM) must be fully considered to ensure property with such hazardous material is not acquired without adequate prior investigation, and clearance abatement. Hazardous materials primarily include asbestos but can include Polychlorinated Biphenyls (PCBs) and lead based paint. Inspections will be performed by licensed, qualified persons. The property owner must give prior written permission before an inspection can be made. The inspection will include a determination of the following:

- The type, extent, location, and quantity of ACM (and any other suspected significant hazardous material), within the structure
- Condition of the ACM - friable, non-friable, stable or deteriorating
- Identification of and cost of appropriate remedial action(s) are removal, other acceptable steps (encapsulation) and cost of restoration

Every improved property will be inspected except those improvements constructed with materials which can be easily determined do not contain hazardous materials (example: all metal storage buildings).

**10.3.00.00 RESPONSIBILITY FOR CLEAN UP****10.3.1.00 During Acquisition**

If a contaminated site is encountered and unavoidable, the Commission should make every effort to have the owner and/or responsible party investigate and clean up the contamination prior to acquisition. In cases where the Commission must clean up contaminated property, cost reimbursement will be sought from the responsible party. Right of Way Staff will provide the primary source of contact with property owners and operators.

Regardless of who is responsible for performing the cleanup of a contaminated project site, such cleanup should be completed at the earliest opportunity. Only in exceptional cases, (e.g., contamination in areas that must be excavated during construction) will mitigation of the contaminated materials be allowed concurrently with project construction.

Once contamination is known, the property owners shall be advised of their responsibility under the law to clean up all identified hazardous waste. The preferred procedure is to not acquire property in its contaminated state, and all efforts possible should be extended to obtain cleanup prior to acquisition.

Right of Way Staff may elect to proceed with acquisition if it is determined that no significant problem exists, and further investigation is unnecessary. It may be in the best interest of the Commission to acquire property if potential hazardous waste contamination risks and costs are low or the problem can be handled with engineering methods during construction. The decision

to acquire must be fully documented in the parcel file and appropriate provisions must be included in the Purchase and Sale Agreement.

If further investigation is necessary, Right of Way Staff will continue contact with owner to advise of the process being pursued and to obtain necessary permits to enter. When testing is complete and cleanup costs are known, the appraisal will reflect the effect that the contamination and required cleanup has on market value.

Settlements, whenever possible, are to be based on cleanup prior to acquisition using the primary appraisal. Settlements made where cleanup occurs after acquisition are to be handled as follows:

- Offers made prior to obtaining a revised appraisal will be made contingent on cleanup and shall be confirmed in writing. When the appraisal has been revised to include an alternate, considering the effect on the market value, the current offer must be withdrawn and a new offer made.
- If settlement is reached based on the Commission or its consultant doing the cleanup based on the primary appraisal, an agreed upon multiple (200%) of the estimated cleanup shall be withheld and the appropriate provisions will be included in the Purchase and Sale Agreement. Appropriate documentation is required.
- If settlement is not reached where money is withheld, it may be necessary to acquire based on the alternate appraisal wherein the Commission is purchasing the property as is, after the consideration of cleanup is reflected in the acquisition offer. Appropriate documentation is required.
- Where settlement cannot be reached and the property owner will not clean up the property, it may be necessary to file a condemnation suit and obtain an Order of Immediate Possession. The appraisal must be revised to include an alternate that reflects the effect of the hazardous waste on market value. The current offer must be withdrawn and a new offer made prior to filing an action.

#### **10.3.2.00 Purchase and Sale Agreements for Contaminated Property**

Properties known or suspected to contain hazardous waste should be cleaned up by the owner, to the satisfaction of the Commission, prior to the close of escrow. When this is not feasible or practical, the appropriate provisions listed below with appropriate modification by legal counsel, depending on the situation, will then be included in the contract.

Tested - No Contamination Found. When a decision has been made to proceed with the acquisition and the property has been examined and/or tested and no contamination has been found, the following clause will be included in the Purchase and Sale Agreement:

“The acquisition price of the property being acquired in this transaction reflects the fair-market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which required mitigation under federal or state law, the Commission may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

Tested - Contamination Found. When contamination has been found, the amount of cleanup costs for which the owner is liable shall be deducted from the settlement, and where contamination is found, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement:

“It is understood that the property being acquired has been used for \_\_\_\_ and that there is contamination of the soil and/or groundwater. Therefore funds in the amount of \$\_\_\_\_ have been withheld from the owner by the Commission to be used for cleanup costs. If actual cleanup costs exceed the deducted amount, the owner will reimburse the Commission for the additional costs. If actual cleanup costs are less than the amount withheld from owner, the excess withheld will be refunded to owner.”

Not Tested - Current Owner’s Hazardous Material Use. When a decision has been made to proceed with the acquisition and when the nature of the owner’s current or past operations and hazardous material use is known to all of the parties, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement.

Not Tested - Known Past Hazardous Material Use. When a decision has been made to proceed with the acquisition, the current use/operation has not been contaminated and the owner says they have some knowledge that previous use/operations may have caused contamination, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement.

Not Tested - Unknown Hazardous Material Use. When a decision has been made to proceed with the acquisition and the possibility of hazardous waste is suspected, but the owner indicates no knowledge of present or past operations which could have resulted in contamination, the following clause will be included in the Purchase and Sale Agreement:

“The Grantor hereby represents and warrants that during the period of Grantor’s ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances on, from or under the property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances on, from, or under the property which may have occurred prior to Grantor taking title to the property. The acquisition price of the property being acquired in this transaction reflects the fair-market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under federal or state law, the Commission may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

#### **10.4.00.00    APPRAISAL OF CONTAMINATED PROPERTY**

##### **10.4.1.00    Hazardous Waste Identification during Appraisal Inspection**

The appraiser may obtain information to assist in identifying possible hazardous waste sites that may have been missed. This includes observing potential problems during the inspection of the subject property. It also includes questioning the owner and lessee about current and past

possible hazardous material and possible contamination on the site including underground storage tanks. When previously undiscovered tanks do exist, the appraiser must obtain as much information as possible regarding tank size, age, construction, location and contents.

The appraiser must document observations and discussions with the property owner, lessee or other occupants regarding possible waste problems in the parcel diary. As a general guide, some present and prior land uses where hazardous waste/hazardous material problems may exist are set forth below:

- Commercial and industrial sites such as service stations, muffler shops, bulk plants, paint manufacturing companies, machine shops, plating works, dry cleaning plants, chemical and fertilizer companies which may use or have used solvents, cleaning compounds, catalysts, cutting oils, plating solutions, dyes, paints or other chemicals
- Junk yards, auto wrecking yards, dumps or landfills
- Underground or above ground tanks for storage of liquid hydrocarbons, pesticides or other toxic materials
- Existing buildings with asbestos siding, roofing, ceiling material, floor tiles, fireproofed doors or insulation on water pipes, heaters, heating ducts, steel framing, etc.
- Disposal sumps or pits which may contain agricultural chemicals or industrial waste
- Utility substations or storage/maintenance facilities
- Sites where contamination may have resulted from an adjacent property owner's operation

#### **10.4.2.00      Valuation**

Regardless whether the right of way requirement is fee or easement, the real property will be appraised recognizing the effects of hazardous waste and hazardous material on its market value.

The valuation of property that involves an identified hazardous waste site will include the market value of the property as if it is free and clear of the hazardous waste and the market value of the property considering the effects of the hazardous waste. The opinion of market value of a property in its contaminated condition must consider the following:

- Local regulatory agency cleanup requirements
- Estimated cleanup cost furnished by others
- Market data involving sales, offers or listings of properties with comparable cleanup problems
- Marketability of parcels with known hazardous waste cleanup problems considering opinions of developers, brokers, lenders, insurers, investors or other informed persons
- Any other pertinent data and opinions

Adequate comparable data may not be available to directly conclude a fair market opinion of a property in its contaminated condition. In such cases, the alternate appraisal may consider deducting the estimated cleanup cost from the value of the property as if it is free and clear of the hazardous waste. The estimated cleanup cost should reflect what a market value buyer would

reasonably expect to pay in order to utilize the property at its highest and best use. This does not necessarily follow the remedial methods, costs or construction schedule associated with the project. Also, the property's highest and best use could change depending on the nature and extent of contamination and alternate remediation options and costs.

Analysis must consider the cleanup requirements, for highest and best use, of the local regulatory agency having jurisdiction. Full cleanup may not be required or can be delayed for a certain period of time. Thus, the cleanup estimate may need to be adjusted or discounted to reflect the market value situation.

Appraisals that result in a negative value (cost of hazardous waste cleanup exceeds market value of cleared property) will be shown as "\$0."

Where possible or confirmed hazardous waste problems do exist, a full discussion will be included in the body of the appraisal. This discussion will describe the nature of the problem or suspected problem, regulatory agency cleanup requirements, status of testing or cleanup plans and any other pertinent information, including the impact on market value, if any.

Appraisals of all improved properties to be acquired will reflect market adjustments for the presence of significant hazardous materials. Evaluation of improved comparable sales data will, at a minimum, include verification of the following:

- Was an inspection of the buildings for hazardous waste and/or hazardous materials made as a condition of sale? If yes, what were the results of the inspection?
- Did the transaction price or terms reflect the results and/or the cost of correction or other hazardous waste/hazardous material considerations?
- Was there an indemnification agreement provided by the owner affected the property's sale price by protecting the Commission from liability, risk or exposure associated with a known or possible hazardous waste/hazardous material condition?

Valuation will consider the impact of hazardous material on the property. The market may react to the presence of hazardous materials in an improvement on the subject by adjusting the price/terms of the Purchase and Sale Agreement. Dollar adjustments, if any, may be more, less or equal to the cost of the remedial action to remove, restore or otherwise mitigate the problem.

The effect of hazardous materials on value will vary depending on whether the existing improvements are the highest and best use of the land. Cost of remedial action may change the highest and best use. Further, any remodeling, renovation, repair or modernization which requires disturbance of otherwise dormant hazardous materials in order to achieve or maintain highest and best use must be analyzed. Economic life of improvements may be shortened as a result.

The fact that the Commission will incur cleanup costs as part of the right of way clearance process does not necessarily indicate that the market value of the property is affected. In appraisals where the estimated demolition cost of an improvement is being deducted from the market

value of a property as if vacant and ready for development, the estimated demolition cost should include the removal of any hazardous materials. Where hazardous materials are present, the appraisal discussion will include a description of the materials, their location and condition, any regulatory controls applicable, the effect on the property's current or future use, present and/or future remediation actions and costs and the estimated impact on market value.



**11.00.00.00 UTILITY RELOCATIONS****11.1.00.00 GENERAL PROVISIONS****11.1.1.00 Scope**

This section prescribes the policies and standards governing the utility relocation and reimbursement procedures and practices to be used by the Commission on federal, state, and locally funded projects. The section is organized based on the usual sequence of events from project planning to project completion. For projects on the State Highway System, strict adherence to Chapter 13 of the Caltrans Right of Way Manual is mandatory. For federally funded off-system highway projects, utility relocation procedures are contained in Chapter 14 of the Local Assistance Procedures Manual. All federally funded utility relocations must conform to 23 CFR 645.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service facilities and private utility facilities can be handled through acquisition or during construction. Storm drains and drainage channels are not considered utilities as they are not fee-based services. Drainage facilities are generally handled through construction of a replacement facility.

The policies established by this Chapter 11 apply to Commission owned properties. All the RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Reserve Management/ Monitoring Manager.

**11.1.2.00 Utility Coordinator Responsibilities**

The Commission is responsible for the acquisition, relocation or removal of utility facilities that are in physical conflict with a transportation project. This responsibility shall be delegated to the Commission's Right of Way Manager. A Utility Coordinator consultant may be selected through the Commission's procurement process. The designated Utility Coordinator will implement the Commission's policies, including the following:

- Establish files that document actions taken or recommended during the life of a project. Any discussion, meeting, or review of importance that does not generate a document for the file should be recorded in a diary or memorandum. A diary can become critical for maintaining current project status or for documenting past actions and, consequently, should be a part of each file. The Utility Coordinator should evaluate the needs of each project and initiate a procedure for a utility file diary. The author should date and sign or initial all diary entries and notations in the file.
- Prepare estimates for possible relocations on future projects. Update and revise the estimates, when necessary.
- Act as the Commission's primary point of contact with the owners for identifying and verifying all utility facilities lying within the existing and proposed rights of way of planned construction projects.

- Coordinate positive location requirements for all high priority utility facilities within the project limits.
- Coordinate preparation of and review necessary property right conveyances for owners.
- Obtain and analyze data to allocate cost between the owner and the Commission, for all required utility adjustment work and to clearly document, support, and set forth the basis of this finding in a Report of Investigation.
- Assist in preparing and/or reviewing high priority policy exceptions (deviations), as appropriate.
- Review utility consultant design agreements when required for utility relocation.
- Prepare and issue Report of Investigation, Notices to Owner and Utility Agreements in accordance with delegated authorities.
- Coordinate the utility information needed for the preparation of the Right of Way Certification
- Verify owner's relocation invoices and process for payment when acceptable.
- Coordinate invoicing and refunding funds relating to utility costs pursuant to utility agreement provisions.

#### **11.1.3.00**      **Definitions**

- 11.1.3.1      Betterment. The upgrading (e.g., increase in capacity) of a Utility that is not attributable to construction of a Project and is made solely for the benefit of and at the election of Owner (not including a technological improvement which is able to achieve such upgrade at costs equal to or less than the costs of a "like-for-like" replacement or Relocation). The use of new materials or compliance with Owner's Relocation Standards in the performance of Relocation is not considered a Betterment. (Betterments must be excluded from the utility agreement or contract that includes work eligible for Federal funds.)
- 11.1.3.2      California Public Utility Commission (CPUC or PUC). The California Public Utilities Commission (CPUC or PUC) is a regulatory agency that regulates privately owned public utilities in the state of California, including electric owner, telecommunications, natural gas and water companies. Some entities, like oil companies that are privately owned, are not a public utility under the PUC's purview. Proper construction for utility companies regulated by the CPUC is controlled by PUC issued General Orders.
- 11.1.3.3      Depreciation Value. The amount of credit to a Project required for the accrued depreciation of a Utility based upon the ratio between the period of actual length of service and total life expectancy applied to the original cost. For the purposes of Depreciation Value, "Utility" shall not be construed to include a segment of Owner's service, distribution and/or transmission lines.
- 11.1.3.4      Exempt Facilities. Facilities exempt from the requirements of this policy include the following:

- Natural gas service lines of two (2) inches or less nominal pipe diameter and with normal operating pressures of 60 p.s.i.g. or less
- Underground electrical service conductors with a potential to ground of 300 volts or less
- Any electrical facility with a potential to ground of 50 volts or less
- Service or private facilities
- Drainage facilities

11.1.3.5 Facility. Facility is synonymous with utility facility. A facility is any pole, pole line, pipe, pipeline, conduit, cable, aqueduct or other structure or appurtenance used for public or privately owned utility services or used by any mutual organization supplying water or telephone service to its members.

11.1.3.6 FHWA Specific Authorization. The authorization, received from FHWA or provided by the State on behalf of FHWA, to proceed with a specific utility facility rearrangement for FHWA funded relocations. This authorization also approves the relocation plans, estimate of cost and claim of liability.

11.1.3.7 High Priority Facilities. The Caltrans Policy on High Priority Underground Facilities Within Highway Rights of Way defines as high priority facilities conducting the following materials, whether encased or not:

- Petroleum products
- Oxygen
- Chlorine
- Toxic or flammable gases
- Natural gas in pipelines greater than six (6) inch nominal pipe diameter, or pipelines with normal operating pressures greater than sixty (60) p.s.i.g.
- Underground electric supply lines, conductors or cables that have potential to ground more than 300 volts, either directly buried or in duct or conduit, which do not have concentric grounded or other effectively grounded metal shields or sheaths
- Hazardous materials pipelines that are potentially harmful to workers or the public if damaged.

The above definition must be utilized for all projects on the State Highway System. It is strongly recommended, but not required, to follow the above definition for FHWA funded off-system projects. For projects with other funding sources, the above may be used as guidelines and/or adapted as appropriate.

11.1.3.8 Liability. A financial obligation, as used in this chapter to pay for relocation of utility facilities affected by the Commission's project.

- 11.1.3.9 Low Priority Facilities. The Caltrans Project Development Procedures Manual Chapter 17 defines as low risk any facilities conducting the following materials:
- Natural gas in pipelines six (6) inch or smaller (nominal pipe diameter) with normal operating pressures sixty (60) p.s.i.g. or less.
  - Underground electric supply lines, conductors or cables with a potential to ground more than 300 volts, either directly buried or in duct or conduit, which have concentric grounded or other effectively grounded metal shield or sheaths, for which the utility owner furnished location information in conformance with the requirements of Article 17.7 “Location Information” of General Order No. 128 of the California Public Utility Commission, or electrical underground conductors with a potential to ground of 300 volts or less.
- As noted in the definition of High Priority Facilities, the above definition is only required to be used for projects on the State Highway System.
- 11.1.3.10 Master Contract. S&H Code Section 707.5 authorized the State to enter into Freeway Master Contracts with utility owners. The Freeway Master Contracts govern apportionment of the cost of rearranging facilities and outline other terms of utility relocation for freeway projects. For projects on the State Highway System, the Master Contracts should be adhered to by the Commission and the utility owner. Master Contract terms should not be applied to any projects other than projects on the State Highway System.
- 11.1.3.11 Owner. Owner is synonymous with utility owner. An owner is any private entity or public body (including city, county, state, public corporation or public district) that owns and operates a utility facility.
- 11.1.3.12 Positive Location (Test Hole). Positively determining the existence and location of a utility facility to within 0.5 feet both horizontally and vertically through the use of vacuum excavation potholing, probing, electronic detection, certified as-built plans, or combination thereof as deemed acceptable by the Project Manager or assigned Engineer.
- 11.1.3.13 Private Utility. A private utility facility is one that provides a utility service for the exclusive use of a privately owned business, farm operation, corporation, etc., or provides an exclusive service to improvements and occupants of an individually owned property.
- 11.1.3.14 Public Utility. A public utility is defined as those utilities either publicly, cooperatively or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.
- 11.1.3.15 p.s.i.g. Pounds per square inch gauge pressure.

11.1.3.16 Salvage Value. The amount received from the sale of Utility material that has been removed or the amount at which the recovered material is charged to Owner's accounts if retained by Owner for reuse, in accordance with 23 CFR 645.

11.1.3.17 Service Facilities/Private Utility Facilities. The facility services installed and maintained on private property with customer permission, including:

- Service disconnects
- Removal of meters and meter set assemblies
- Utility facility located on a military base, school grounds, manufacturing complex, etc., owned and maintained by the property owner for their exclusive use
- Facility interconnecting individually owned but dispersed operating sites providing an exclusive and private service to the site owners

Separation of the private utility facility from the public utility facility occurs at the point where the privately owned and maintained facility connects to the public facility. Relocation of all private utility facilities shall be by the usual appraisal/acquisition process rather than by the public utility relocation process.

11.1.3.18 Utility Coordinator. The terms Utility Coordinator and Utility Consultant are synonymous when a consultant is obtained and authorized for such work. The Utility Coordinator/Consultant is the Commission representative responsible for coordinating the relocation and removal of facilities that are in physical conflict of a Commission's transportation project.

## **11.2.00.00 UTILITY RELOCATION POLICIES**

### **11.2.1.00 Applicable Utilities Policy**

The following is a selected list of policies that originate from law, state and local directives that shall be uniformly applied in all applicable utility relocation situations.

### **11.2.2.00 Utilities on Commission Property**

All utilities within the Commission's rights of way and/or project limits shall be relocated so as to minimize traffic disruption and other hazards to transportation facility users. Facilities shall be relocated as close to the edge of the right of way line as reasonably practicable. Facilities shall be installed to minimize interference with right of way maintenance and operation, and to prevent impairment of the stability of the rights of way or its appurtenances to the maximum extent practicable.

### **11.2.3.00 Hazardous Waste Affected by Facility Relocations**

Utility relocation work structured within the project limits is a necessary part of project construction. Any hazardous waste encountered within the project limits as a result of the Commission structured utility work is handled in the same manner as hazardous waste encountered by any other part of the project construction. Project Engineering shall be informed

of all potential utility adjustments that may affect identified hazardous waste sites so the work is identified as part of project remediation.

Hazardous waste encountered outside the project limits, such as on the grantor's remaining property, other private property, or on local streets and roads beyond the limits of the project, is not the Commission's remediation responsibility. Any extraordinary costs associated with remediation or unusual work requirements due to hazardous waste encountered outside the project right of way are considered part of the owner's necessary relocation effort. The Commission may pay its proportionate share of these costs as part of normal relocation reimbursement in accordance with the usual liability determination process.

All exceptions to this policy shall be processed through the Commission's Right of Way Manager for approval.

#### **11.2.4.00**      **Verification of Utility Facilities**

Pursuant to Government Code Section 4215, the Commission shall make every reasonable effort to locate all existing utility facilities within the right of way of a proposed construction project and to identify the facilities on construction contract plans.

Government Code Section 4216 states that the Commission's contractor is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the Commission's contractor has done so, but still damages a facility not shown on the plans, the Commission may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

The facility owner is responsible for Underground Service Alert (USA)/Digalert notification prior to any construction.

#### **11.2.5.00**      **Safety**

The Commission is responsible to provide a safe environment for its employees and contractors, as well as the traveling public. An important element of the safe environment is providing a clear and safe right of way through the proper placement, protection, relocation, or removal of utility facilities that may pose a safety risk to the transportation worker or user when the utility is excavated, cut, or penetrated. Toward this end, the Commission shall establish and enforce mandatory standards and procedures for the placement and protection of underground utility facilities within the project rights of way and for the safety of transportation workers involved in maintenance or construction operations in proximity of underground utility facilities.

#### **11.2.6.00**      **Advancing Cost of Relocation to Owner**

Funds shall be advanced only after it has been conclusively shown that the owner is financially unable to bear the cost of relocation and is unable to secure other financing for the work. Funds may also be advanced if there is dispute over liability and the resolution of the dispute will jeopardize the timing of the project. When an advancement is made, interest shall be charged in accordance with the terms of an agreement. Funds shall not be advanced to cover any

betterment to the facility requested by the owner. All advances requires approval of the Right of Way Manager.

#### **11.2.7.00      Communication with Owner**

The Utility Coordinator shall communicate all coordination of utility work, including modification of the scope of work, or the need to have utility work performed on premium or overtime, to the owner in writing. An amended Notice to Owner and Utility Agreement shall cover significant changes.

#### **11.2.8.00      Policy on High and Low Priority Underground Facilities**

All projects on the State Highway System must conform to the Policy on High and Low Priority Underground Facilities within Highway Rights of Way contained in the Caltrans Policy on High Priority Underground Facilities Within Highway Rights of Way . Conformance with that policy is strongly recommended, but not required, for FHWA funded off-system projects. For projects with other funding sources, the policy may be used as guidelines and/or adapted as appropriate.

### **11.3.00.00      PLANNING PHASE**

#### **11.3.1.00      Initial Activities**

Duties relating to this phase of the project are normally performed prior to Environmental Clearance and Project Report approval. Activities generally consist of the following:

- Corridor/route preservation
- Route estimating
- Right of way data sheet preparation
- Draft Project Report review
- Draft Environmental Document review

#### **11.3.2.00      Utility Relocation Work in Prior to Environmental Approval**

Federal and State law dictates that environmental clearance must be received prior to commencement of any project. This does not preclude owner performance work critical for inclusion in the environmental document. This work is generally referred to as preliminary engineering and includes such items as follows:

- Updating data sheet, as necessary, after review of the Project Report.
- Coordinating identification and verification of existing utilities
- Assisting in identification of utility facilities in physical conflict
- Assisting in identification of all utility facilities and coordinate the positive location of identified facilities, as required
- Owner effort required to determine and identify new utility facility rights of way and resultant environmental impacts.
- If FHWA funded, preparing a Federal Authorization to Proceed (E-76) covering all utility facilities when identified

- Preparing the Notice to Owner, Utility Agreement, and Report of Investigation for owner-conducted positive location
- Preparing the Task Order and Notice to Owner for the Commission's positive location
- Requesting and reviewing owner's relocation plans, claim of liability and estimate of cost
- Preparing the Report of Investigation, Notice to Owner, and Utility Agreement for preliminary engineering
- Preparation of plans in support of the Environmental Document

#### **11.3.3.00 Early Project Coordination**

Utility owners require lead-time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, and schedule work during non-peak demand periods when utility facilities may be removed from service and to comply with PUC General Orders and comply with Buy America requirements.

It is critical that the Utility Coordinator establish early and continuing coordination with all owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with owners within their jurisdictions to discuss planned public works projects in general. The Utility Coordinator is encouraged to discuss the Commission's projects at these meetings or to conduct their own liaison meetings.

#### **11.3.4.00 Corridor/ Route Preservation**

On occasion and in an area of development, owners may plan extensions or additions to their utility facilities within the Commission's right of way and/or project area. These new utility facility installations may be affected by planned construction or development. The Utility Coordinator is responsible for notifying the owner of all planned improvement projects within the Commission's project limits to enable the owner to make an informed decision about placement of utility facilities within the project right of way.

If an owner decides to go ahead with new facility construction, the additional cost incurred to install their facilities clear of the Commission's future construction shall be paid by the owner.

Although there is no requirement for the owner to install their facilities to clear Commission's future construction, it will eliminate the possible relocation, at owner's expense, of these new facilities in the near future, providing less disruption to their services, less cost to their ratepayers and more efficient project delivery for the Commission.

If the owner decides to go ahead with the new facility construction and the installation is in a location where the owner has a right that is superior to the Commission's, the additional cost incurred to install their facilities clear of the Commission's future construction shall be paid by the Commission. A special utility agreement may be entered into with the owner to cover the extra cost of the installation.

#### **11.3.5.00 Environmental Document Review**



The draft environmental document must be reviewed to ensure that utility relocation conflicts are addressed, for example, where an underground facility will be relocated across an environmentally sensitive area such as a wetland.

Potential hazardous waste encountered during construction projects are usually addressed in the environmental document. If hazardous waste is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Chapter 10 of the Commission's Right of Way Manual are addressed.

It is also critical to ensure the environmental document does not propose mitigation commitments that may be in conflict with existing laws or current Commission policies. Conflicting commitments must have the Commission's prior approval.

If utility facility relocations are addressed in the environmental document, then the wording below can be used. However, the utility relocation commitments should not be placed in the Mitigation Section of the environmental document.

"All public utility facilities affected by the proposed transportation project will be relocated and/or accommodated in accordance with state law and regulations and the Commission's policies concerning utilities within transportation rights of way."

#### **11.3.6.00      Design Phase**

Activities generally performed in the design phase of a project (as well as those above) include the following:

- Coordinating planned placement of utility facilities on structures
- Identifying and submitting utility-related "Special Provisions" to Design Engineer
- Bill the local agency pursuant to a Cooperative Agreement if applicable
- Coordinating with the Engineer of Record to review exception requests to Commission policies
- Preparing the Report of Investigation, Notice to Owner and Utility Agreement for relocations

#### **11.3.7.00      Commencement of Design**

The approved Project Report (and Environmental Clearance) is the final document that authorizes a transportation project to proceed to design. Upon receiving this report, the Utility Coordinator and Engineer of Record commence the detailed utility verification and relocation design process.

To commence, the Utility Coordinator shall arrange a meeting with all affected owners and the Engineer of Record to perform the following:

- Discuss the general project
- Identify utility conflicts
- Discuss alternative solutions to transportation/utility conflicts

- Identify need for owner-provided utility consultants
- Identify potentially required new utility right of way
- Determine a schedule for future coordination meetings

The Utility Coordinator is responsible to take a proactive role to help ensure that all projects are proceeding in a timely manner and that verifications are requested for all projects.

#### **11.3.8.00 Utility Estimates**

Right of way estimating usually includes the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Accuracy of any estimate, however, is subject to the quality of plans received and the lead time given. If the plans or lead time are inadequate, the Utility Coordinator shall inform the Commission of such when submitting the estimate. Significant cost contingencies should be specifically identified in the estimate, for example, a potential conflict with a major facility where the project's affect cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

#### **11.3.9.00 Special Environmental Reviews for 50KV Electrical Facilities**

Major electric facilities involving power lines and substations operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with the PUC regulated electric utility owner to determine General Order applicability. If an environmental review is necessary, then describing the utility relocation within the environmental document may substantially reduce lead-time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the owner and the PUC.

#### **11.3.10.00 Utility Facility Avoidance**

The Engineer of Record should design transportation projects to avoid utility facilities whenever possible and be cost effective. A design-to-miss approach will assist in faster project delivery, particularly where affected utility facilities require complex relocations or special ordered material. As Engineer of Records strive to simplify their projects, one of the most effective ways to prevent project failure is to design around existing utilities at every possible opportunity. Just as Design Engineers avoid environmentally sensitive areas, e.g., biological, archeological or water quality sites.

#### **11.3.11.00 Design of Utility Facility Relocations**

The facility owner shall be responsible for design of all utility facility relocations. The only exception is when the owner has requested the Commission to perform the design and

construction to be done as part of the transportation project. The design and construction of the relocation shall be included in a Utility Agreement, and the Utility Coordinator shall remain the primary point of contact for liability and coordination of work activities between the owner and the Commission. Liability is determined using the same methodology as if the owner were conducting the relocation.

#### **11.3.12.00 Utility Consultant Design Requirements**

Relocation design is normally done by the owner's employees. If the owner is unable to perform their own design or elects to have design work done by a consultant, and the design costs are to be reimbursed by the Commission, the Utility Coordinator must discuss with the owner the Commission's need to review the owner's consultant costs. If the Commission's Engineer of Record disapproves the owner's consultant cost, the Commission then reserves the right to have the work done by others.

#### **11.3.13.00 Utility Verifications**

The Engineer of Record is responsible for determining the identification and location of all existing or abandoned utility facilities that lie within the right of way boundaries of the planned construction project by performing the following:

- Check R/W record maps
- Review old utility file(s) in the project area
- Check the County Recorder's Office
- Check with other agents in the office
- Check with members of the PDT, Is it a Caltrans facility?
- USA or Dig Alert
- Pothole
- UEW electronic database for Utilities within the R/W
- Check with other Federal, State and Local Agencies
- Check with the Local City Engineer or Public Work Departments Engineer
- A joint field review of the project area by the Engineer of Record and the Utility Coordinator
- Reviewing Departmental as-built permit records and geographic information systems
- Asking the Utility Coordinator to verify facilities from each owner that may have facilities within the project area

- Requesting field surveys to verify utility facilities
- Utilities that remain unidentified will require additional work for the PE or Utility Engineering Workgroup (UEW) in conjunction with the Utility Coordinator

The need for this identification and verification is to identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation and to meet the requirements of California Government Code Section 4215.

#### **11.3.14.00      Geometric Base Maps Changed to “Preparation of Verification Maps”**

The Engineer of Record develops geometric base maps that are used as the base for identifying all known existing facilities within the project limits. Identification is a necessity even if proposed construction is entirely within existing rights of way. The Engineer of Record will obtain the initial utility information from the following sources and delineate it on the base maps:

- State’s as-built construction drawings for prior construction projects
- Ground and aerial surveys
- Encroachment Permit files
- Field review of the project

The base maps will also show existing and proposed right of way lines, as well as existing and proposed access control lines, where applicable.

#### **11.3.15.00      Utility Verification Request to Owner**

The Utility Coordinator sends the base maps to each owner with known, existing, or potentially existing facilities within the project area. Normally, the owner is allowed thirty (30) days to respond. The Utility Coordinator is responsible for follow-up to ensure timely completion of verification. (See also CPUC General Order 128, Rule 17.7 for legal requirements for regulated owners to provide facility location information.)

#### **11.3.16.00      Positive Location of Underground Facilities**

To accurately determine the type and location of all potentially affected utility facilities, it is frequently in the Commission’s and owner’s mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation hole be made to expose the facility and allow the precise location to be surveyed. The excavation to expose the facility is frequently referred to as “potholing.”

The Engineer of Record is responsible to determine when positive location is required, usually whenever facilities are known to exist within the project construction area but cannot be precisely located, particularly as to depth. Without precise location information, physical conflicts within the project cannot be determined nor safe construction assured.

The Utility Coordinator shall provide reasonable notice to the owner to accomplish positive location of underground utility facilities and is responsible for determining liability for costs in accordance with usual liability requirements. The Utility Coordinator shall provide the

documentation of the owner's rights or prepare a Notice to owner to request the owner to provide it.

#### **11.3.17.00 Utility Coordinator Responsibilities for Positive Location**

The Utility Coordinator is responsible to coordinate all positive location requirements specified in the Notice to Owner and in the positive location request to the contractor. Duties performed generally consist of the following:

- Prepare positive location request and Notice to Owner based on maps prepared by the Engineer of Record.
- Follow up to ensure the positive location work will be done by the date specified in the Notice to Owner.
- Confirm necessary inspections.
- Coordinate with surveys to obtain required horizontal and vertical location data for utility facilities.
- Ensure that survey information is transmitted to the Engineer of Record for inclusion in the contract plans.

When positive location is ordered for an owner, the Utility Coordinator sends either a Notice to Owner or a notification letter advising the owner of the scheduled positive location of their facilities so they may have an inspector present.

Although the responsibility for positive location may be that of the owner, the Commission may determine that the benefit of paying for and performing positive location in an expedited manner may outweigh the expense of the positive location. The Right of Way Manager and Engineer of Record should be consulted to determine whether or not the Commission should perform positive relocation utilizing its own funds and resources.

#### **11.3.18.00 Positive Location Agreements on State Highway and Freeway Projects (On-System)**

The State has created and executed a Positive Location Agreement (PLA) with numerous utility owners throughout the state for projects on the State Highway System. The Commission, in partnership with the State, may be able to utilize such agreements for the positive location effort. The Utility Coordinator should determine if the State PLA's apply to the Commission's project and, if so, what the liability provisions are for payment of positive relocation.

#### **11.3.19.00 Positive Location Requirements for High Priority Facilities**

All underground high-priority facilities lying within the construction area of a transportation project shall be positively located. The Engineer of record is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the (i.e. Plans, Specifications, and Estimates "PS&E").

The Engineer of Record will make a written request to the Utility Coordinator to obtain positive location information for all utility owned high priority facilities that may be in physical conflict

with planned construction or that may be exposed to risk of damage during construction. The request must identify the location where the high priority facilities are to be positively located.

#### **11.3.20.00 Utility Conflicts Identified**

The Engineer of Record is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a request to the Utility Coordinator to obtain affected owner's relocation plans. The Engineer of Record will provide the Utility Coordinator with conflict maps for the owner to use to prepare relocation plans. The Utility Coordinator sends conflict maps to the owner and requests relocation plans, their claim of liability, and estimate of cost.

Some conflicts may not be immediately evident on the plans, such as stage construction requirements, detours, pile-driving operations, signal and lighting facilities, longitudinal encroachments, and encasement exception requirements. The Utility Coordinator shall review all plans with the Engineer of Record for possible conflicts with all facilities within the project.

If after reviewing all utility information, including positive location data, it is determined there are no conflicts with the Commission's proposed transportation project, the Utility Coordinator must notify the owner of such.

#### **11.3.21.00 Conflict Maps**

Utility conflict maps are essentially the Commission's preliminary layout sheet for the utility relocation schedule and estimate. They should show any construction feature that may affect the owner's facilities including, but not limited to, the following:

- Utility location
- Right of way lines
- Cross sections
- Profile
- Retaining and sound walls
- Drainage
- Traffic signals and appurtenances
- Stage construction
- Bridge structure
- Replacement easement areas

#### **11.3.22.00 Request for Relocation Plans, Claim of Liability and Estimate of Cost**

Prior to issuing the Notice to Owner and Utility Agreement, the Utility Coordinator must obtain the owner's claim of liability, estimate of cost, and relocation plan. An exception can be made for expedited positive location.

The letter to the owner normally allows the owner sixty (60) to one-hundred and twenty (120) days to respond. Since this is a crucial element in the utility relocation process, the Utility Coordinator must actively follow up with the owner to ensure they maintain a schedule that will allow successful project delivery.

**11.3.23.00      Receipt of Relocation Plans, Claim of Liability, and Estimate of Cost**

Upon receiving the owner's relocation plans, the Utility Coordinator routes the plans to the Engineer of Record for review and approval and comparison with other owner's plans to assure compatibility (e.g. no conflicts with other relocation plans).

The Utility Coordinator has basic responsibility for reviewing all relocation plans to determine that they provide a cost-effective functional restoration of the utility facility. Betterments should be identified and all elements of the planned relocation must be necessary and appropriate. The Utility Coordinator may solicit technical engineering support but cannot shift this responsibility to the Engineer of Record – The Coordinator shall make the final call.

Where any portion of the utility work claimed by the owner is to be at the Commission's expense, the Utility Coordinator must review the owner's claim letter that sets forth the basis for the Commission's liability and the estimated cost of relocation.

**11.3.24.00      Special Provisions**

All utility facilities to be relocated, abandoned, or protected in place during construction, whether done by the Commission's contractor or owner, are to be addressed in the construction contract's "Special Provisions." The Utility Coordinator is responsible to provide the Engineer of Record with the information necessary to prepare these clauses for inclusion in the "Special Provisions." Failure to do so may result in claims by the Commission's contractor for right of way delays.

**11.4.00.00      ACQUISITION****11.4.1.00      Acquisition of a Utility Facility**

The distinction between public utility facilities and service facilities/private utility facilities is frequently confusing. The distinction between the two may be based on whether severance of the particular improvement directly affects utility service to one customer or several customers.

Public utility facilities affected by transportation projects normally have a functional replacement constructed and are seldom acquired.

An improvement that is determined to be private can be appraised and acquired in accordance with Chapter 6, if known at the time, otherwise it is relocated during construction.

**11.4.2.00      Acquisition from the Utility Owner**

When the Commission's transportation projects affect properties owned by utilities, in easement or fee, the Commission must acquire the necessary rights from the utility in accordance with Chapter 6. The Utility Coordinator should consult with Right of Way Staff to reach a full understanding about what the property is and how it may be used, now and in the future. Generally, the acquisition agent will handle the acquisition of the property, and the utility coordinator will be responsible for overseeing relocation of utility facilities to connect to the replacement site/facilities. Scenarios include:

Vacant Site owned in Fee. The owner may be holding the site for future use in conjunction with an existing facility, such as for a substation expansion. These properties should be purchased in fee unless obtaining a lesser right proves best for the Commission. There might be opportunities to exchange property rights. Any future liability or unfunded obligations need to be approved by the Commission.

Utility Facility Improved Site Owned in Fee. Generally, most fee-owned property is for substations or pumping plants. Replacement of the site by the utility is usually necessary. Relocation or rearrangement of utility facilities shall be handled by a Utility Agreement. This type of site may also fall into the category of a Functional Replacement. Determination should be made between the Right of Way Manager and the Engineer of Record.

Utility Facility Improved Corridor/Utility Occupied Easement. Occupied easements are usually for transmission or distribution of the owner's product. Replacement right of way is required; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered. Usually the owner's existing easement is quitclaimed to the Commission in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation agreement.

Private Utility /Service Facilities. Acquire via appraisal/acquisition procedures as noted in Chapter 6, if known at the time, otherwise it is relocated during construction.

Utility Non-Occupied Easement. Right of Way Staff is responsible for clearance of vacant easements.

Franchise/Permit Rights. Except as noted, the Commission is not obligated to provide a replacement right of way for utility facilities installed under a franchise or permit.

Most utility facilities within local streets and roads are located under a franchise agreement. As a result, there are limited utility relocation costs to be reimbursed. The primary concern (especially when there is federal funding) lies with ensuring that required utility adjustments are properly planned and coordinated with construction. This requires timely issuance of a Notice that clearly states how the utilities will be adjusted to allow conflict-free construction.

#### **11.4.3.00 Acquisition for the Utility Owner (Replacement Right of Way)**

If the utility owner has superior occupancy rights, the Commission can acquire the needed replacement right of way in accordance with Chapter 6. The owner selects the necessary and functional replacement right of way location. Either the Commission or the owner may accomplish the acquisition. If the replacement location crosses a parcel where the Commission is to make a highway acquisition, the preferred acquisition method is to include it in the Commission's acquisition program. The Commission may acquire the replacement right of way by one of the following methods (in order of preference):

- Acquire in the name of the owner, preferably on the owner's own deed form.



- Acquire in the name of the Commission by deed and subsequently convey to the owner by deed.
- Allow the utility to use Commission land if not in conflict with the project. Care must be exercised in making any commitments regarding utility use of Commission land in a project area by using a Right of Entry or License Agreement.

If the utility facility being displaced is not in a superior right status, the Commission may acquire the replacement utility easement as a convenience to and at the expense of the owner, but cannot condemn for it without consent as described below. Where the facility was in an encroachment permit status only (non-prior rights), replacement utility easements must never be acquired at the Commission's expense as this would constitute a gift of public funds.

When a utility acquires their own replacement right of way, the requirements of Chapter 6 do not apply.

#### **11.4.4.00**      **Consent to Condemnation for Exchange Purposes from the Owner**

Condemnation may be necessary if the Commission is unable to acquire the replacement right of way through normal negotiations. A "Consent of Owner to Condemnation for Exchange Purposes" must be obtained from the owner pursuant to Code of Civil Procedure Section 1240.320 to support a "Resolution of Necessity" from the Commission.

### **11.5.00.00**      **LIABILITY DETERMINATION**

#### **11.5.1.00**      **Process**

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities versus the Commission's rights. Who has the prior or superior right in the area of the affected facility is the basis for the determining responsibility for payment of relocation costs. The burden of establishing prior rights rests with the owner. The Utility Coordinator is responsible for accumulating the data, providing a complete and accurate report, and for confirming and approving the liability. Until the Right of Way Manager approves the liability, the Utility Coordinator is not to provide any determination to the owner.

The owner is responsible for preparing, documenting and submitting a claim for their declared right of occupancy. If the Utility Coordinator investigation confirms the owner has rights prior and superior to those of the Commission, the owner is paid for all or a portion of the relocation work.

#### **11.5.2.00**      **Liability Calculation**

Liability determination is generally based on occupancy rights. Liability for the relocation cost is determined on the basis of who has the subservient right in the area of the existing facility that is affected. If all of the affected facility is within an area of a single type of occupancy right, the party with the lesser right is liable for the entire cost, unless it is a State Highway System freeway project subject to a State Master Contract. If the facility area consists of more than one type of occupancy right, such as utility easement and a permit, then a proration between owner and the

Commission of the total cost must be calculated using one of the three methods described under “Methods of Calculating Proration of Costs” below.

It is important to remember that only the affected portion of the existing utility facility that lies within the Commission-owned or controlled project limits is counted or measured, as applicable, for use in the proration formula. The total to be prorated, however, includes the cost of relocated facilities both within and outside the right of way. This total cost must not include any betterment or other non-reimbursable items of cost.

Property rights are the primary factors in determining who has the superior right of occupancy and will be based on one of the following:

- Fee Ownership
- Expressed Easement (typically recorded)
- Implied Easement (easement by necessity and unrecorded)
- Prescriptive Easement (unrecorded)
- Joint Use Agreement / Consent to Common Use Agreement
- Master Contracts
- Lease
- License
- Franchise
- Encroachment Permit
- Trespass

Typically, the first six (6) bullets above establish prior or superior rights. The Commission may be liable for these relocation costs unless the documents involved contain clauses that reserve the owner’s right to order one or more relocations at the project owner’s expense.

Occupancy under bullets seven (7) through ten (10) are usually considered inferior rights and require that relocations be at the owner’s expense, unless the documents contain clauses providing otherwise. For further clarification of term and policy, please refer to “Methods of Calculating Proration of Costs” below.

### **11.5.3.00**      **Property Rights**

The owner may submit one or more superior or prior right claims for a facility. Each prior right claim the owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation. The types of property rights in the following sections generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the owner’s claim.

When reviewing a superior rights claim on a State Highway System freeway project, the Utility Coordinator must determine if there is a Master Contract with the owner that modifies or supersedes normal occupancy rights or statutes and establish the basis of the owner’s claim.

11.5.3.1 Fee Ownership. The Commission is liable for relocation costs any time the facility is on property where the owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify ownership. All fee-owned property must be acquired through the Right of Way Manager. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Right of Way Manager. The Utility Coordinator must ensure the Utility Agreement covering relocation does not include a double payment for property rights.

11.5.3.2 Expressed Easement. An expressed easement is recorded. Therefore, the easement document can be obtained and reviewed to determine whether the owner has a valid superior right.

In most cases, when the facility is located within a recorded easement, the Commission is liable for relocation costs. The Utility Coordinator, however, must verify that the easement is valid and does hold a prior or superior right to the Commission's rights. The Utility Coordinator must also verify the location of the easement.

Any owner's relocation obligation or other limitation clauses within the easement document may be passed to the Commission upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the owner's claim. The Commission's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are consistent with the terms of the easement.

11.5.3.3 Implied Secondary Easement. All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to becoming part of the Commission's transportation project are considered to be installed in the owner's implied easement reservation. All facilities as described above are relocated at Commission expense except when crossing the Commission's railroad right of way. The Utility Coordinator should check permits, "as-built" drawings, and the owner's records to confirm the facilities were installed prior to the date of the project.

After the project, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual licensing process.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

11.5.3.4 Joint Use Agreement (JUA) and Consent to Common Use Agreements (CCUA). In most cases, the Commission will bear relocation costs for facilities installed within a JUA/CCUA area if the facility is located within the State Highway System. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the facility owner's rights such as the following:

- A JUA/CCUA that has an expiration date for the owner's rights.
- JUA/CCUA shall be used only on the State Highway System.
- Local Public Agencies shall use an easement on their local streets or roads to replace prior rights.

An owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of the easement deed. This right extends to a JUA/CCUA granted in recognition of existing easement deeds, but does not extend to prescriptive right claims.

11.5.3.5 Prescriptive Rights. Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the Commission's liability if the occupancy condition meets the following statutory requirements:

- Established by the open, continuous, hostile and notorious adverse use of another's property.
- Installed on private property with the knowledge or acquiescence of the property owner, or was so open, unequivocal and obvious that the owner must have known about it, but without an expressed grant of right, permit, lease, or other license.
- Continuously maintained in the same location for the prescriptive period of at least five (5) years.

Prescriptive rights cannot be established on publicly owned property.

The extent of the prescriptive easement is measured by the owner's use during the preceding five (5) years. Accordingly, the precise extent of the prescriptive easement, for example, a single line of poles with one cross-arm and eight telephone wires, should be set out in any instrument in which the Commission recognizes the superiority of such rights over those of the Commission.

The owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license or other permissive use should be explored. The owner must submit a claim letter containing the above-mentioned statutory requirements.

11.5.3.6 Lease. A lease is a right to possess for a specific time period. The term or duration of possession is typically stated in the lease. The Utility Coordinator should investigate the validity of the lease to confirm the lease hasn't expired, review the termination clauses, the parties to the lease, the utility facilities described within the lease, and the location. Any utility owner's relocation obligations or other limitation clauses contained in the lease may be passed to the Commission upon acquisition of the underlying fee and must be investigated to determine if they conflict with the utility owner's claim. Determination of whether the owner or the Commission is liable for relocation costs will depend on the types of termination and relocation clauses contained in the lease.

11.5.3.7 License. A license is permission from a property owner for another party to use land. A license is not recorded and is revocable upon notice. A license differs from a lease in that it is only between two parties and cannot be transferred unless it is specifically written into the license. When an owner has a license and the Commission acquires the property on which the facility exists, the license is no longer valid and the Commission can require the owner to relocate at owner's expense.

The Utility Coordinator must read the license to determine if the above requirements such as successors or assigns are mentioned in the license. Also notification and revocation requirements, if any, should be reviewed.

When evaluating a license, the Utility Coordinator must take into account the level of title the Commission has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

11.5.3.8 Franchise. Utility facilities that are placed in public rights of way pursuant to a franchise privilege from a city or county, or pursuant to state law do not convey any property rights and utility owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose by state or local authorities. Requirements of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed. The Utility Coordinator may need to obtain a letter from the City or County confirming the termination rights if a utility is claiming that a franchise right is a superior right.

11.5.3.9 Encroachment Permit. An Encroachment Permit is a form of license that provides permission to the owner to install a facility, but does not convey any property rights. The permit also imposes certain restrictions on the owner. The permit contains a relocation clause that states the owner must relocate their facilities upon request at the owner's own expense.

11.5.3.10 Joint-Pole Agreement. The California Public Utilities Commission has authorized the joint sharing of poles by different utility owners, through a Joint Pole

Agreement (JPA) as a means of providing more cost effective service and to reduce “utility pole blight.” The JPA rarely, if ever, will convey property rights to the joint pole user. The lead pole owner’s (owner of the pole) rights must be reviewed to determine the joint pole user’s rights. As with any claim of property right, the owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license or permit with the lead pole owner.

If the utility owner on a State Highway System project has a Freeway Master Contract, liability for the JPA will be determined pursuant to the Freeway Master Contract.

#### **11.5.4.00 Subsequent Relocations**

For projects on the State Highway System, Streets and Highway Code Section 704 provides that if an owner is required to relocate any of their facilities more than once within a period of ten (10) years, the agency shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. For projects that are not on the highway system, the Commission may consider paying the cost of a second relocation in ten (10) years, but it requires the approval of the Right of Way Manager and any funding sources contributing to the cost of utility relocations. This only applies to freeways and expressways, not conventional highways. Master Freeway Contracts include a four-year limit.

#### **11.5.5.00 Methods of Calculating Proration of Costs**

If it is determined that more than one type of liability occurs on a project (for example, a utility facility is partially in easement and partially in franchise), the costs should be pro-rated between the Commission and the owner based on the following methodologies:

- 11.5.5.1 **Pole Count.** Pole count is a normal method used for aerial facilities. The calculation is based exclusively on the number affected poles located within the project limits where the owner has the superior right, divided by the total number of affected poles within the project limits. This calculation produces the Commission’s share of the total relocation cost. Equal weight is normally given to each affected pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The affected poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If affected poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See “Dollar Weighted” method below.

- 11.5.5.2 Facility Length Measurement. Linear length of the affected facilities is normally used for underground facilities such as gas, sewer and water, or for cables either directly buried or within conduits and the facilities on the surface such as ditches or conduits.

The calculation to prorate liability is similar to the pole count method above and is based on the owner's superior right length of the affected facility lying within the project limits divided by the total affected length within the project limits. The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches and transformers.

- 11.5.5.3 Dollar Weighted. This method is used where mixed facilities are to be prorated. This approach requires considerably more effort and documentation as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the owner has the superior right, divided by the total of the installed replacement cost new for all the affected existing facilities within the project limits. This calculation produces the Commission's share of the total relocation cost.

#### **11.5.6.00 Abandonment or Removal Costs**

Cost for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is prescribed by the transportation project, required for aesthetic or safety reasons or contains hazardous material that cannot safely remain. In most cases it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed transportation project. Underground facilities containing hazardous material, i.e., asbestos or lead, should remain where possible. If required to be removed, the Commission will reimburse owner for normal (non-hazardous) pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the owner requests for project to proceed with the removal, the Commission shall not contribute any more than the salvage value of recovered materials credited to the project.

#### **11.5.7.00 Disruption of Service Facilities**

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The Commission in acquiring the property being served may, as the new property owner, revoke the owner's permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the Commission is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by a separate notice and agreement, all

other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel if known when the property is appraised, or relocated or reconnected during construction.

#### **11.5.8.00 Relocation for Non-Transportation Project Use**

California case law supports the premise that a utility facility under a franchise must be relocated at the owner's expense when required by any proper governmental purpose. Required relocations for construction of maintenance stations, drainage, inspection facilities, functional replacement acquisition sites, for example, are covered under "proper governmental purpose."

#### **11.5.9.00 Liability Undetermined**

Ideally, liability is determined prior to issuance of a Notice to Owner. This cannot always be accomplished, however, as sometimes the owner is unable to provide timely documentation that will allow the Commission to verify the information necessary to determine liability in a reasonable time. In these cases and when time is of the essence, a Notice can be issued without liability being determined to ensure project delivery.

The owner must agree to accept the Notice with liability undetermined and perform the relocation. Preferably this agreement should be in writing. If the owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy.

#### **11.5.10.00 Liability in Dispute**

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations. Utility liability issues are largely based on a factual determination of what is required to produce a functional replacement for the affected utility facility and who has the superior position of a prior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the resultant liability should be. When a resolution cannot be agreed upon, the Utility Coordinator should draft a "liability in dispute" agreement. With the Owner's concurrence, the Notice may be issued using "liability in dispute" as the liability statement.

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on legal counsel's input as well as right of way functional needs.

#### **11.5.11.00 Agreement to Disagree**

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with the owner. With the owner's concurrence, the Notice may be issued using "liability in dispute" as the liability states in the Notice. If the owner does not concur with the issuance of a Notice on this basis, a special agreement is required for the advancement of funds, to cover the funds to a separate interest-bearing account.

### **11.6.00.00 REPORT OF INVESTIGATION**



**11.6.1.00**      **General**

The Report of Investigation documents facts and circumstances that support the liability determination. All information, documentation, and analysis supporting the liability determination for the required relocation must be included in the Report. The Report of Investigation must be prepared and approved before the Commission is obligated for the cost of relocation. A Report of Investigation is not required for a relocation that is 100% owner liability if the Utility Coordinator has a claim letter from the owner acknowledging 100% liability. The Report of Investigation package (sometimes referred to as the “Liability Package”) includes the following mandatory item:

- Original, signed Report of Investigation
- Owner’s estimate of cost of work to be done
- Color-coded Report of Investigation plan showing work to be done, or a copy of the Approved Relocation Plan
- Copy of the owner’s claim letter
- Copy of the owner’s documents that support their prior and/or superior rights claim.
- Copy of the proposed Notice to Owner
- Copy of the proposed Utility Agreement
- Copy of the Federal Authorization to Proceed (E-76), if FHWA reimbursement will be utilized
- The Request for FHWA Specific Authorization, if FHWA reimbursement will be used for the utility relocations
- Proposed special provisions, if applicable

Additional supporting documentation may be included as deemed necessary by the Utility Reviewer to support the determination.

**11.6.2.00**      **Report of Investigation Plan**

The Report of Investigation plan is crucial to determining liability. Like an appraisal map, it shows ownership and depicts the before and after location of improvements and property rights. The plan also provides a visual picture of what the estimate is based on, thus allowing a quick check of the reasonableness of various measurements and quantities listed in the estimate. Since relocation liability is generally based on property rights, accurate plotting of the Commission’s and owners’ rights of way is essential to an accurate liability determination.

**11.6.3.00**      **Report of Investigation Plan Requirements**

A color-coded plan or an Approved Relocation Plan shall be included with every liability package. The plan must accurately and clearly plot the following elements:

- Existing and proposed right of way lines
- Existing and proposed access control lines (if applicable)
- Existing and proposed highway centerline
- Existing, abandoned and proposed utility facility features: location, type, size, and length, access points, and easement

- Owner's easements or other claimed prior right areas
- Proposed property rights the Commission is to supply, if applicable
- Highway geometric features, if the relocation is related to them
- Legend and title block

#### **11.6.4.00**      **Owner's Estimate of Cost**

The owner's estimate of cost serves the following purposes:

- It provides estimate details, the proposed utility relocation plan and allows a preconstruction determination of reasonableness of the planned functional replacement for the affected utility facility.
- It provides support for FHWA Specific Authorization.
- It provides an amount to be used for encumbering capital dollars for utility work.
- It becomes a contract pay amount for lump-sum agreements.

#### **11.6.5.00**      **Standard Estimate Format**

The standard estimate format must contain the following elements:

- Cost of labor
- Cost of materials (include a list of major items)
- Cost of transportation and equipment
- Cost of contracted out work
- Cost of overhead (include a list of major components)
- Cost of new right of way (if required)
- Credits due the Commission shown separately for betterment, depreciation and salvage
- Percentage and dollar amount of the Commission's liability

Each item above must be shown on the estimate. If an item does not apply, it still must be listed with a zero in the cost column. The same format is used for lump-sum estimates, except all costs must be itemized and detailed by category, e.g., labor by number of hours and dollars, materials by quantity and dollars, etc.

The cost estimate for work to be performed or paid for by the owner must come from the owner. If the owner uses broad-gauge units in their estimates, e.g., a per-pole or per-meter cost factor, the broad-gauge units may be substituted for the cost of labor, material, and transportation and equipment (listed above). The owner must provide a statement about the methodology used in arriving at the broad-gauge unit cost, e.g., "based on costs incurred at a recently completed similarly scoped project." Right of way costs, credits and the Commission's liability must still be listed separately.

If for timing reasons it is not possible to obtain an adequate estimate from the owner, the Utility Coordinator may prepare an estimate based on the owner's plan using the owner's current cost data from similar utility relocation work. Justification for estimates prepared by the Commission must be in the file. The Commission's estimates shall not be used as a basis for lump-sum

agreements. The Utility Coordinator should ensure an owner's prepared estimate is received as soon as possible, normally within thirty to forty-five (30-45) days of issuing the request for an estimate.

### **11.7.00.00 NOTICE TO OWNER**

#### **11.7.1.00 Notice to Owner to Relocate General**

Owners must be given formal notice to relocate, remove, abandon, protect, or pothole, their utility facilities to accommodate proposed transportation project. The Notice to Owner also sets forth a schedule for performing proposed utility relocation work and a statement of liability for the cost of relocation.

It is essential that the Notice reflects a true "meeting of the minds" between the Commission and the owner regarding the location and type of facility, the work that is being ordered, the schedule to accomplish it, and the liability for the cost of work. A "meeting of the minds" is necessary to prevent subsequent disagreements about the need for the work, scheduling, liability, etc., that may arise and delay the project. Since issuance of the Notice may obligate the Commission to pay for all or a portion of the cost of relocation, there must be a specific understanding of the required work to which the Commission is obligating itself.

A Notice is required when the Commission's contractor is doing facility adjustment and an executed Utility Agreement with the Owner has been obtained prior to right of way certification.

#### **11.7.2.00 Joint Facility Relocations**

When two or more utility owners occupy or are relocating to joint poles or joint trenches, the relocation work normally cannot be performed concurrently. It must instead be performed sequentially. If, after the first owner's work is completed, the last owner to move does not have sufficient remaining time to perform work as ordered by the Notice, it would be very difficult to hold them responsible for right of way delays if the Commission did not adequately coordinate the work of all owners.

To be fair to all owners involved and to ensure timely utility clearance of the project, the Utility Coordinator must establish the overall relocation time frame and the sequence of operations for each owner involved in the joint relocation. The completion dates set out in each Notice must be specific to each owner and be based on the overall coordinated schedules necessary to complete all work within the project clearance schedule.

#### **11.7.3.00 Preparation**

The Utility Coordinator is responsible for preparing the Notice to Owner in accordance with the following guidelines:

- The Notice will be prepared only after the Utility Coordinator has received relocation plans, the owner's estimate of cost and determined liability. Exceptions to this policy are outlined in section 11.05.

The Notice will be prepared and issued to the owner with sufficient lead time to allow a reasonable relocation schedule. Failure to provide reasonable notice may jeopardize timely project certification or result in the Commission becoming liable for contractor delay caused by unresolved utility conflicts.

- The Notice from the Utility Coordinator should never state how the owner is to perform the relocation work, such as: “Owner shall underground the relocated facility” or “Owner shall temporarily relocate their facilities.” The details of the method and conduct of the relocation must be left to the owner’s discretion including requirements of this type in the Notice may obligate the Commission to reimburse the owner for any additional costs associated with the work.

A single Notice should be used covering each owner involvement on each project to the extent possible. Multiple Notices are issued when an owner operates multiple utility types, e.g., if a project has relocations for SCE-Electric Transmission, SCE-Electric Distribution and SCE-Communication on a single project, it would require three (3) Notices to Owner.

#### **11.7.4.00**      **Processing**

All Notices to Owner must be supported with the Report of Investigation package. Upon approval by the Right of Way Manager, the Notice can be transmitted to the owner.

When a Utility Agreement is needed for the required relocation work, it may be transmitted to the owner along with the Notice.

If the replacement location is within Commission right of way, the owner must have a revised license prior to beginning the relocation work.

#### **11.7.5.00**      **Utility Coordinator Responsibilities**

The Utility Coordinator is responsible to coordinate all activities required to support the Notice to Owner. Duties performed generally consist of the following:

- Ensures Right of Entries, Licenses or Permits have been obtained at the new location, if needed, to work on others property.
- Follow up to ensure relocation is done by the date specified in the Notice.
- Coordinate with construction management team for inspection of the owner’s relocation work.
- Coordinate preconstruction meetings with the Project Manager or construction manager, the owner’s representative, and the construction management team on utility adjustments planned to take place after award of the contract.
- Resolve conflicts with newly discovered facilities in coordination with the project engineer of record.
- Obtain approval for all change-in-scope relocation work resulting from project changes and issue Revised Notices to Owner, when necessary.

#### **11.7.6.00**      **Owner Responsibilities**

The owner is responsible for completing all work as specified in the Notice to Owner, License, and Utility Agreement (if required). Upon receipt of Notice to Owner, the owner shall have a minimum of sixty (60) days to complete owner's facilities rearrangement, unless the owner agrees to a shorter time frame. If the owner agrees to a shorter time frame, this agreement must be documented in the utility file/diary. Failure to comply with terms of the Notice may potentially subject the owner to payments for resulting construction delays.

#### **11.7.7.00 Relocation Monitoring**

The Project Manager or their designee is responsible for monitoring the owner's relocation of their facilities to ensure compliance with approved relocation plans and documents the relocation activities and issues. The monitoring ensures that all utility facility conflicts within the project limits are resolved and confirms labor, equipment, and materials used to accomplish Commission reimbursed work. The estimate of the amount of materials removed for salvage should also be validated. This information is necessary to provide reasonable verification of the owner's bills.

Under no circumstances is there to be field authorization to deviate from the approved plan of work as ordered in the Notice. A revised Notice is necessary for any changes to the work to be performed.

#### **11.7.8.00 Revised Notices**

The Notice to Owner is a legally binding order on the receiving owner to adjust their facilities in a prescribed manner and time. As such, the issued Notice must always agree with the latest plan for adjustment and ordered completion time. The standard Utility Agreement clauses provide that a revised Notice to Owner shall be issued whenever there is a deviation from the agreed plan for adjustment of the facility or whenever the completion date is changed. It may also be necessary to issue a revised or addendum to the Utility Agreement. These changes are comparable to construction change orders and are crucial to establishing a legally binding understanding with the owner.

If the utility relocation is FHWA funded, a supplemental FHWA Specific Authorization will be required and the Federal Authorization to Proceed (E-76) estimate of cost may have to be increased.

### **11.8.00.00 UTILITY AGREEMENTS**

#### **11.8.1.00 Utility Agreements General**

In a Utility Agreement, the Commission agrees to comply with all federal and state laws, regulations policies and procedures relative to the design, right of way, acquisition, construction and maintenance of the relocation of facilities necessitated by the transportation project. It is normally processed once per project for every relocation of facilities affected.

#### **11.8.2.00 Circumstances Requiring a Utility Agreement**

The Commission and the utility owner must enter into a Utility Agreement whenever the Commission is paying or receiving payment for all or a portion of the cost of relocation of a utility

facility, regardless of who performs the work. The number assigned to each Utility Agreement shall be the same number assigned to the corresponding Notice to Owner covering the same facilities. Each Utility Agreement must be submitted with the Report of Investigation package.

A single agreement is used for each owner's involvement on a single construction project to the extent possible. Separate agreements may be necessary for individual purposes such as design, advance of funds, or physical relocation(s). The Utility Coordinator is responsible for preparing the Utility Agreement.

#### **11.8.3.00**      **Standard Clauses**

For highway projects, the Utility Agreement clauses contained in Chapter 13 of the Caltrans Right of Way Manual shall be used whenever possible. For non-highway projects, the State utility agreement can be used as a reference for agreement with the owner at the utility coordinator's discretion. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major utility owners, Caltrans' Headquarters Legal Division as well as the Commission. The standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

FTA does not have specific provisions for utility agreements, but does require the Commission to execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the project. FTA Circular 5010.1E indicates that only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments or enhancements to the existing utility system, except for meeting current State and local codes. Prior FTA approval is not required in reaching a utility relocation agreement.

#### **11.8.4.00**      **Processing**

All Utility Agreements must be submitted for approval, along with the Report of Investigation, to the Right of Way Manager for approval.

After the Right of Way Manager has approved, the Utility Coordinator will need to perform the following:

- Obtain a contract number from the contracts group for the Utility Agreement.
- Send the Utility Agreement to RCTC's legal counsel for review and approval. The Commission's legal counsel shall "wet-ink" sign four original Utility Agreements.
- Obtains approval from the Board of Commissioners.
- Forward the Utility Agreements to the utility owners for execution.
- Obtain the executed Utility Agreements from the owners and facilitate execution by the Executive Director.

- Send original Utility Agreements to the owner, Commission legal counsel, Commission contracts department and place one in the utility relocation file.

#### **11.8.5.00 Amendments to Utility Agreements**

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an “Amendment to Utility Agreement.” In most cases, Amended Utility Agreements are processed the same as Utility Agreements.

#### **11.8.6.00 Amendments for Payments in Excess of Original Utility Agreement**

Although all efforts should be made to minimize any costs in excess of the estimate contained in the Utility Agreement, the Commission will consider final payment requests for reasonable reimbursement of utility relocation costs not exceeding 125% of the estimated amount as stated in the original Utility Agreement.

The basis for this exception is the Commission has obligated itself to participate in the actual and necessary cost of Commission-ordered relocation of the utility owner’s facilities at an estimated cost to the Commission. Since the cost amount shown in the Utility Agreement is an estimate and not a fixed contractual amount, the Commission allows for reasonable adjustments to the estimate.

Amounts in excess of 125% of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested and also requires approval from the Board of Commissioners. In addition, before an Amended Utility Agreement or a bill exceeding 125% of the estimated amount in the original Utility Agreement can be processed, the Utility Coordinator must receive and approve written documentation of the reasons and identification of the basis for the increase.

Amended Utility Agreements are not required when the total billing is less than the original Utility Agreement amount.

#### **11.8.7.00 Amendments for Change in Scope of Work**

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner and a Supplemental FHWA Specific Authorization (if FHWA funding is involved) before work on the proposed changes commences.

Preparing an Amended Utility Agreement and Revised Notice for a change in scope is necessary to:

- Comply with federal requirements for preapproval of relocation plans.
- Provide for any needed change in the proration of liability.
- Provide for necessary modification to the previously ordered plan of relocation, if necessary.

#### **11.8.8.00 Special Utility Agreements**

Occasionally, a special utility agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled or delayed, or where a Utility Agreement does not exist. The special agreement should recite the circumstances (liabilities, incurred costs, etc.) and the agreed course of action and estimated additional costs.

#### **11.8.9.00**      **Utility Agreement to Cover Advance Engineering Effort**

Occasionally, an owner will expend considerable engineering effort on a planned relocation before the Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the owner's costs. The usual Report of Investigation is required to support the Commission's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

### **11.9.00.00**      **CERTIFICATION PHASE**

Certification is required for all FHWA and State funded projects, as well as projects on the State Highway System. Although a formal certification is not required for other funding agencies or locally funded projects, it is necessary to have formal documentation of utility status prior to putting the project out to bid. The Project Engineer's Certification is required as part of the Right of Way Certification.

#### **11.9.1.00**      **Right of Way Utilities Certification**

The Right of Way Utilities Certification is a written statement summarizing the status of all utility facilities located within the limits of the proposed construction project. The certification identifies all utility facilities found to be within the project area and documents if they are affected and, if so, whether they have been or will be relocated, removed, or protected as required for the construction, operation, and maintenance of the proposed project. The Commission shall certify all projects where a (i.e. Plans, Specifications, and Estimates "PS&E") is prepared or federal funds are involved, prior to the Commission advertising and awarding a construction contract.

In accordance with 23 CFR 635.309(b), utility work should be accomplished during construction only when it is not feasible or practical to complete the work prior to construction due to economic or special coordination features. Utility work that cannot be completed in advance of construction contract award shall have special provisions in the standard specifications portion of the (i.e. Plans, Specifications, and Estimates "PS&E") identifying the utility work and details of the coordination involved. All facilities not cleared from the project limits before construction commences shall be shown in the project plans to provide the necessary coordination.

In order for the project to be certified, all Utility Agreements must be signed and executed by the appropriate utility owners, and Notice to Owners must also be issued.

#### **11.9.2.00**      **Utility Certification for Design/Build Projects**



Until project design is completed, it is difficult to determine the ultimate effect on utility facilities. A Utility Certification may be delayed, therefore, until design is completed, but before construction commences.

### **11.10.00.00 CONSTRUCTION PHASE**

#### **11.10.1.00 General**

Utility Coordinator activities performed during the construction phase of the project generally consist of the following:

- Coordinating with construction manager and/or construction contractor and owner on compliance with Notice to Owner requirements.
- Handling utility relocations discovered during construction.
- Resolving utility relocation work that becomes wasted work.
- Monitoring construction and document activities for Commission reimbursable utility relocation work.

By the time a project reaches the construction phase, the Utility Coordinator should already have sent copies of all Notices to Owner, approved relocation plans to construction and have executed Utility Agreements, if required. Ideally, most utility relocation work will be finished before project construction commences. However, since this is not always possible, coordinated utility work may be necessary. Coordinated work must be addressed in the “Special Provisions/Obstructions” portion of the Commission’s (i.e. Plans, Specifications, and Estimates “PS&E”) package.

#### **11.10.2.00 Pre-Construction Notification/Meeting**

Each owner of affected facilities remaining within the project construction limits shall be provided the contact information for the construction manager and the selected contractor. Arrangements should also be made for a joint field meeting with the owner’s representatives, the Project Manager, the utility coordinator, the construction manager and the construction contractor to work out construction schedules. Early coordination with local jurisdiction regarding street closures, traffic handling plans, night work, etc. is important.

#### **11.10.3.00 Positive Location Work During Construction**

Standard special provisions require the contractor to contact a regional notification center (Government Code Section 4216.2) before conducting any excavation on the project, as well as exercise due diligence in working in areas with possible underground facilities. If the utility verification and positive location processes were properly completed during design, any additional positive location demands the Commission’s contractor places upon the owner should be at the contractor’s sole expense. If additional positive location work was planned by the Utility Coordinator to be done during construction, this work should be included in the original Notice.

#### **11.10.4.00 Inspection of Utility Relocation Work**

The Utility Coordinator is responsible for ensuring that relocation work is inspected as required and that adequate records are maintained for Commission reimbursed work. The Utility Coordinator is responsible to notify the construction manager of planned relocation work

requiring inspection. The Project Manager is responsible for inspection of such work and maintaining written diaries of the work. Inspection has three major objectives:

- Ensure owner's work complies with design, construction, and traffic requirements.
- Ensure proper placement of utilities to clear project construction in accordance with the Notice to Owner, Encroachment Permit, and Utility Agreement.
- Observe and record the labor, equipment, and materials used to accomplish the work, as well as materials removed for salvage when any work is to be performed at Commission expense by reviewing the inspector's diaries, the Utility Coordinator can make a reasonable verification of the owner's bills.

Proper construction for utility companies may be regulated by the California Public Utilities Commission (CPUC), FERC and/or FCC. Utility construction may be controlled by PUC issued General Orders. Under no circumstances is the Commission to review the engineering adequacy of utility facilities except for those features that may adversely affect project integrity or safety.

#### **11.10.5.00      Discovered Work and Emergencies**

Discovered work includes additional unanticipated utility facility adjustments that are required as a result of newly identified facilities, incomplete or inaccurate verification of known facilities, or the discovery of previously unidentified utility conflicts. Emergencies can be a result of storm damage.

The Project Manager or Construction Manager should immediately notify the Utility Coordinator who will notify the owner, when determined, of the newly discovered conflict or emergency requirement. The Project Manager or Construction Manager should provide the location and type of the existing facility and immediately follow up in writing with a suggested plan for conflict resolution. Although the Project Manager or Construction Manager is typically already aware of this responsibility, the Utility Coordinator should request an investigation of other work that the Commission's contractor can do to avoid potential contractor delays.

The Utility Coordinator must expedite liability determination and preparation of a new or revised Notice to Owner and Utility Agreement along with any new license required for the new work. In addition, the Utility Coordinator must ensure that any additional or unanticipated utility work takes place within the original environmental "footprint" described in the environmental document. If environmental reevaluation in the new area is necessary, no work other than studies or positive location should proceed.

#### **11.10.6.00      Changes to Planned Relocation Work**

The Utility Coordinator must issue a Revised Notice to Owner under the terms of the Utility Agreement when it is discovered that a planned relocation needs to be changed. The owner must agree to and acknowledge the change as provided on the Revised Notice Form. Work on the change may not be started until the Revised Notice has been agreed to or acknowledged by the owner. Changes in the scope of the work will also require an amendment to the Utility Agreement.

**11.10.7.00 Wasted Work**

Wasted work occurs when the owner has relocated their facilities in accordance with a Notice to Owner and the Commission subsequently determines that all or a portion of the newly relocated facility must be adjusted again to avoid conflict with planned construction. If the project is a State Highway System freeway project, the Utility Coordinator should consult the Master Contract to determine if wasted work relocations and payments is addressed.

The procedures for handling wasted work are similar to discovered work except that the Commission is liable for the cost of all completed relocation work deemed to be wasted as a result of a change in construction plans. The Project Manager must verify the wasted work resulted from plan changes rather than improper contractor work procedures.

The Revised Notice to Owner shall identify what work in the original Notice was wasted and what new work is to be done. The Revised Notice must also state that liability for wasted work is the Commission's responsibility. Cost of all new work is based on liability as set forth in the current Agreement or as determined by usual liability procedures.

Note: The Commission's costs for wasted work are not federal aid reimbursable.

**11.11.00.00 PAYMENT PHASE****11.11.1.00 General**

Activities performed during this phase generally consist of the following:

- Obtaining bills from owners
- Checking and verifying bills
- Processing bills for payment
- Verifying transactions entered
- Billing or refunding local agencies pursuant to Utility Agreements
- Tracking progress payments

**11.11.2.00 Processing Bills from Owners**

Generally, the Utility Agreement will provide that owners bill the Commission at least quarterly, but not more than monthly, during relocation of their facilities. Immediately after completion of the owner's work, the Utility Coordinator should make a written request to the owner requesting submittal of the final bill within ninety (90) days of the date of the letter.

The Utility Coordinator should follow up with a letter to the owner every sixty (60) days if the bill has not been received. The Utility Coordinator must give the owner a thirty (30) day notice before closing the file. Owners may operate under PUC, FERC or FCC rules and payment should be reviewed according to such rules.

**11.11.3.00 Review of Owner's Bill**

When the bill is received, the Utility Coordinator shall check to see if it is a partial or final bill. Since consistent format will facilitate review, the bill should be in a format similar to that used

for the original estimate of cost. The Utility Coordinator is responsible to check the bill for consistency with the Utility Agreement and the owner's previously submitted and approved relocation plan and estimate of cost and to ensure credit for previously identified betterments has been received. The bill must be on the owner's letterhead with the vendor's full address and contain the date of service, the invoice date, and an itemized description of the services. If the bill is not the original invoice, it must be signed by the appropriate owner representative. All bills must be addressed to the Commission, or the Commission will not pay the bill, and must contain the Utility Agreement number. If the owner's invoice does not contain the Utility Agreement number, the Coordinator must imprint the Utility Agreement number on the invoice or bill.

#### **11.11.4.00 Bill Discrepancies**

If discrepancies are discovered in the owner's bill, the Utility Coordinator must return the bill to the owner with a request for correction. The Utility Coordinator must keep a copy of the bill and the form in the utility file for documentation.

#### **11.11.5.00 Partial Billings**

Partial bills are usually paid routinely, if the total of the partial bills does not exceed the amount under the Utility Agreement. All partial bills must show an itemization of the charges. A review of partial bills is essential where the Commission is due an unusually large credit (large betterments) or where billing exceeds work actually completed. The procedure for payment is the same as for final bills.

#### **11.11.6.00 Final Bills**

Final bills must contain detailed charges in a format similar to that in the original estimate and be fully itemized. They must also contain any depreciation and salvage credits due to the Commission. The final bill must also contain the "start date" of the physical relocation work. The Utility Coordinator must check the start date against the FHWA Specific Authorization date, if applicable, to ensure proper federal reimbursement. Payment of a final bill may be made up to 125% of the Utility Agreement amount without an amendment.

### **11.12.00.00 PROPERTY RIGHTS CONVEYANCES**

#### **11.12.1.00 Requirements for JUA/CCUA**

JUA and CCUA are documents that perpetuate the owner's rights of way that are within the right of way. Both documents place limiting restrictions on the owner's use to ensure the owner's utility use is compatible with the Commission's use. The documents may be entered into only where the owner's original easement possessed prior rights in the right of way acquired by the Commission and did not contain termination or relocation clauses that were enforceable by the Commission.

These documents are used only for the portion of the owner's utility easement that is within the right of way. If the Commission owns the right of way in fee, a JUA or CCUA may be used. If the Commission owns the right of way in easement only a CCUA may be used.

In the case of an easement, the owner's prior rights must be carefully checked for unusual conditions. For example:

- The owner may have an easement that requires relocation at the owner's expense but obligates the landowner (Commission) to issue a new easement, JUA or CCUA, for the newly relocated facilities.
- The owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on that same specified date. Following termination, the utility facility is considered as being under a license, which terms should be described.

A JUA cannot be used where the Commission only possesses an easement right of way. The Commission, as an easement holder, has no legal right to grant a utility easement in a new location.

#### **11.12.2.00 Joint Use Agreements**

A JUA is used when the owner's facility will remain on lands owned by the State but will be relocated to a position outside, or partly outside, the owner's existing right of way where the owner had prior rights. It is also used where the owner's right of way is not occupied by any existing utility facilities but the owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the right of way and outside the right of way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the right of way. The easement area outside the right of way is covered by acquisition on the owner's easement form or conveyed by the Commission if acquired in the Commission's name.

#### **11.12.3.00 Consent to Common Use Agreements**

A CCUA is used when all of the owner's facilities, whether rearranged or not, will remain within the right of way area covered by the owner's existing easement area.

#### **11.12.4.00 Prescriptive Rights**

A Prescriptive right allows someone other than the property owner to gain the rights to use the land. It is done so under adverse possession laws generally by demonstrating that the use has been:

- Open and Notorious: It is obvious that the possession is taking place. This should have given the owner notice that their land is being used.
- Under Claim of Right: The person must possess some claim of right. The claim must be recognized by California Law.
- Hostile to the True Owner: This doesn't mean adversarial. Instead, a trespasser must possess the land in a manner that is hostile to the owner's legal rights.

- For the Statutory Period of Five Years: The elements described above must be for the statutory period of 5 years. Continuous and Uninterrupted: The trespasser has used the land on a continuous and uninterrupted basis.

If a Utility Owner meets these criteria it is said to have a “claim of prescriptive right or easement.”

A prescriptive right cannot be established over land owned by any governmental entity. Although rare, the Commission may have acquired land not knowing a prescriptive easement existed prior to the Commission's fee ownership.

#### **11.12.5.00 Easement Conveyance Processing**

Conveyance of easements to owners is by deed. To initiate this procedure, the Utility Coordinator may include a clause(s) in the Utility Agreement for property rights to be conveyed and the form of conveyance. The clause(s) should also include credit to the Commission for the owner's share of the cost or market value of easements conveyed, as applicable. The cost of Commission acquired utility easements is part of the cost of relocation and must be apportioned between the Commission and the owner in accordance with the Utility Agreement.

Easements to be conveyed across excess lands must be located so as to minimize possible adverse conflicts to site development. Requests for easements across excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess land procedures.

### **11.13.00.00 BUY AMERICA**

#### **11.13.1.00 General**

Implementation of Moving Ahead for Progress in the 21st Century (MAP-21) has broadened how Buy America is applied to federally funded construction projects. MAP-21, section 1518, amended 23 U.S.C. 313, is to apply to all contracts eligible for federal assistance carried out under a NEPA document regardless of funding, if at least one contract has federal funds.

#### **11.13.2.00 Buy America Requirements**

For federally funded projects, the Buy America requirements stated in 23 U.S.C. 313 and 23 CFR 635.410 apply to all iron and steel materials, 90% by weight that is permanently incorporated in a project. The provision requires that all manufacturing processes be done domestically. Manufacturing begins with mixing and melting and continues through the coating stages. “Coatings” include epoxy coatings, galvanizing, painting or any other coating that protects or enhances the value of the material.

#### **11.13.3.00 Buy America Certification**

The Commission requires that the utility owners provide reasonable assurance that utility materials subject to the Buy America requirements are compliant prior to permanent installation. The Commission will accept either the utility owner's self-certification or the vendor/manufacturer's certification.

**11.13.4.00**     **Waivers to the Buy America Provisions**

For federally funded projects, the Commission may request a waiver if the Buy America provisions are inconsistent with the public interest or iron and steel are not produced domestically in sufficient quantities and at a satisfactory quality.

Waivers are allowed for specific materials on a project-by-project basis. There are nationwide waivers, but these are extremely rare and not advisable.

**12.00.00.00 PROJECT CLOSE OUT****12.1.00.00 PURPOSE**

The purpose of this chapter is to outline the Commission's and RCA's policies and procedures for closing out Commission and the RCA projects. It is critical to the success of the project that all of the necessary right of way activities to complete the project are fully performed.

**12.2.00.00 FILE REVIEW AND QUALITY CONTROL**

Upon completion of the right of way aspects of the project, the file should be reviewed for quality control purposes and to ensure preparedness for any potential audits.

**12.2.1.00 General**

Files should be organized and presentable. There should be no post-it notes or loose-leaf papers. All duplicates in the file should be removed. However, if documents have been revised as part of the right of way process, each version should be kept in the file to show the history of the changes. Return receipts should be attached to the documents to which they pertain.

**12.2.2.00 Parcel Diaries**

Prior to closing out files, the parcel diaries should be reviewed to ensure they include the following:

- An entry for each meeting, phone call, or written correspondence
- The agent's initials for each entry
- The method of delivering each correspondence (overnight, certified mail, regular mail, etc.)
- Names of individuals involved in each meeting
- Clear conclusions to any questions or concerns raised by the property owner/displacee/utility owner
- A logical thought process that an oversight agency, an attorney, a judge or a jury could understand
- Completed checklist and signature of agent and Right of Way Manager on file close out form
- The final disposition of the file

**12.2.3.00 Acquisition File Documentation**

All acquisition files should include the following documents:

- Parcel Diary with entries initialed
- Preliminary Title Report
- Realty Appraisal(s)
- Review Appraisal - if applicable
- Fixture and Equipment Appraisal - if applicable
- Goodwill Appraisal - if applicable



- Offer letter(s) with supporting documentation
- Counteroffers and responses (letters or emails) - if applicable
- Administrative settlement memo if final agreed amount differs from offer amount
- Title Policy

Files for voluntary settlements should include the following:

- Possession and Use Agreement - if applicable
- Executed Purchase and Sale Agreement
- Escrow Final Closing Statement
- Recorded Deeds

Files for court ordered settlements should include the following:

- Order of Prejudgment Possession
- Final Order of Condemnation or Stipulated Settlement Judgment

#### **12.2.4.00 Relocation File Documentation**

All relocation files should include the following documents:

- Parcel Diary with entries initialed
- Notice of Eligibility (NOE)
- General Information Notice (GIN)
- Signed claim forms for all applicable areas
- Explanation memo to the file if displacee did not make a claim for a payment they were eligible for
- Copies of payment checks for payment
- Assignment of payment forms - if applicable

#### **12.2.5.00 Utility Relocation File Documentation**

All utility relocation files should include the following documents:

- Parcel Diary with entries initialed
- Specific Authorization issued prior to the commencement of physical relocation work
- Report of Investigation package with determination of liability
- Notice(s) to owners
- Utility Agreements - if applicable
- Copies of any JUA/CCUA's
- Utility owner's relocation plans
- Easements - if applicable
- Copies of invoices and checks for payment

#### **12.2.6.00 File Retention**

All files should be scanned and entered into RCTC's records retention system.

**12.3.00.00 POST RIGHT OF WAY ACTIVITIES****12.3.1.00 Parcel Inventory**

Upon completion of the right of way activities, a complete inventory of properties acquired for the project should be updated and verified. Potential disposition of the properties post-construction should be identified at this stage. Possible future dispositions include:

- Commission or the RCA to hold and maintain
- To be conveyed to another agency (City, County, State) or utility owner
- Mitigation/conservation land
- Excess land

**12.3.2.00 Right of Way Terms and Special Provisions**

Upon completion of the right of way activities, a summary of right of way terms and any special provisions should be detailed in a list (construction obligations) to be provided to the construction contractor. At a minimum, the list should include the following:

- Beginning and ending dates of temporary construction easements
- Provisions for advance notice of construction start
- Negotiated terms of construction timing, such as agreed upon times of day, week or year
- Special conditions granted to the owner such as securing the property perimeter or the safety of pets
- Agreements as to restoration of a property in the after condition (landscaping, tree relocation driveway modifications, etc.)
- Construction contract items

**12.3.3.00 Co-Operative Agreements**

In addition to reviewing prior to commencing right of way activities, upon completion of the right of way portion of a project, all co-operative agreements should be reviewed to determine if the right of way provisions have been met and to determine any further Commission or the RCA obligations upon completion of construction. Co-operative agreements may identify responsibilities for disposal of excess land, as-built maps, record maps, vacations, relinquishments, etc. A list of outstanding action items should be identified for post-project completion.

**12.4.00.00 POST-PROJECT ACTIVITIES**

Upon completion of construction, additional close-out is required to successfully ensure all acquired rights are owned by the appropriate parties. A closure statement or notice of completion should be obtained from the Engineer of Record and kept in the project master file.

**12.4.1.00 Confirmation of Right of Way Terms and Special Provisions**

To ensure the Commission's and RCA's obligations have been met and protect the Commission and the RCA from risk of potential litigation, the Right of Way Department should confirm the right of way terms and special provisions were satisfied. Any notices sent to the property owner

by the construction contractor should be obtained for the file. Any deviations from the right of way agreements should be documented and agreed to in writing by the owner. Depending on the terms of the acquisitions, it may be necessary to quitclaim or file a temporary construction easement termination with the County in order to clear title.

#### **12.4.2.00      Land to be Retained by Commission and RCA**

Land that will continue to be owned and maintained by the Commission and the RCA shall be incorporated into the Commission's and RCA's property database. If there has been a change in the Assessor Parcel Number (APN), care should be taken to utilize current APN's for the ownership record while still maintaining a reference to the original APN that was acquired.

#### **12.4.3.00      Land Conveyances to Other Agencies**

For some projects, it is intended that the land will be owned and maintained by other agencies after project completion. Examples include highways that will be owned and maintained by the State, local streets that will be owned and maintained by a City or the County, and utility easements/parcels that will be owned and maintained by the utility owners.

12.4.3.1      Conveyance Documents. Language for the conveyance documents will need to be coordinated with the receiving agency, however, in no circumstance can the Commission convey rights it has not acquired. The Right of Way Department must review the acquisition documents prior to conveyance to any other agency to ensure that the rights being conveyed have been acquired. Easements acquired by the Commission must be assigned or quitclaimed as only the underlying fee owner can grant an easement.

12.4.3.2      Legals and Plats. Generally, updated legals and plats are required for conveyances to other agencies. If the full property that was acquired is being conveyed, an updated legal and plat is still generally necessary to update APN's and obtain a current surveyor stamp. For properties where a portion of the property is being conveyed, a surveyor will need to utilize the right of way maps to identify the portion that is to be conveyed. The surveyor should also prepare a legal and plat for the remainder property for future excess land disposal.

12.4.3.3      Reservations. The right of way maps and Engineer of Record should be consulted to determine if any rights need to be retained from the portions being conveyed for future Commission access, drainage or other uses.

#### **12.5.00.00      EXCESS LANDS**

Upon completion of the project construction, lands identified as excess land should be disposed of in accordance with Commission and the RCA policies and procedures as outlined in Chapter 8.

**12.6.00.00 STREET VACATIONS**

As part of a transportation project, the Commission may eliminate all or a portion of a street. The Commission's Right of Way Department should follow the local City or County procedure required for street vacations.

**12.7.00.00 RELINQUISHMENTS**

As part of a transportation project, the Commission may eliminate all or a portion of a state highway. The Commission's Right of Way Department should coordinate with the State to relinquish the former highway section to a local agency, or vacate the highway in accordance with the State's policies and procedures.

**12.8.00.00 RECORD MAPS AND AS-BUILTS**

Record maps should be updated and filed with the County and as-built maps should be generated upon completion of the project.

**12.9.00.00 UTILITY RELOCATION FILE CLOSE-OUTS**

For utility relocations occurring during construction, the Utility Coordinator must close the files upon completion of the utility relocation which may coincide with the completion of the project construction.

**13.00.00.00 MSHCP LAND ACQUISITION POLICIES****13.1.00.00 GENERAL**

**13.1.1.00** Land acquisition is one of the most important activities of the RCA to reach the reserve goals of the Multiple Species Habitat Conservation Plan (Plan). It is important to maintain policies that are fair and reflect the highest level of integrity.

**13.1.2.00** Land to be acquired to meet the Plan's goals generally will be secured from willing sellers, donations, or by other means. The acquisition process is further described in Section 13.03 below.

**13.1.3.00** Property proposed for acquisition will be evaluated for conservation value under the tenets of the Plan.

**13.1.4.00** Each prospective acquisition will be reviewed for its relationship to existing reserve land, and its value to reserve habitat cores and linkages. The acquisition will also be evaluated for possible conflicts with planned infrastructure or land acquisitions which might be required for other public purposes. The RCA will make all reasonable efforts to work with the appropriate agency or special district which could be affected to insure the goals of the Plan can be attained.

**13.1.5.00** Opening of all negotiations and offers or agreements to purchase land will be authorized by the Right of Way Manager.

**13.1.6.00** All Land acquisition files will be retained and managed by the Right of Way Manager.

**13.1.7.00** The RCA Board will approve all purchases.

**13.1.8.00** For future acquisitions, the RCA will generally not acquire property that includes residential or commercial structure(s) in the absence of compelling circumstances as determined by the Board of Directors; provided, however that the RCA may acquire the property if the structure(s) have been either (1) physically removed, or (2) the property that contains the structure(s) is not part of the acquisition and not counted as additional reserve land.

**13.1.9.00** The RCA prefers to accept land in fee title.

**13.2.00.00 AUTHORITY TO SIGN DOCUMENTS**

Only the Executive Director or Chairman of the RCA Board may sign purchase and conveyance documents. The Vice Chairman of the RCA Board may sign in the absence of the Executive Director or Chairman of the Board. The RCA Board may, from time to time, authorize additional signatories or designees by resolution.

**13.3.00.00 ADMINISTRATIVE SETTLEMENTS**

Administrative settlements, when allowed, are made for the purpose of concluding negotiations for amounts considered reasonable, prudent and in the public interest after reasonable efforts to negotiate agreements for fair market value as defined in section 6.1.1 of the MSHCP, have failed. A written justification shall be prepared which indicates what available information (e.g. appraisals, recent acquisitions, development permit fees or valuation problems) support such a settlement.

Administrative settlements are not to be used for the purpose of correcting errors or omissions in an appraisal. Such errors or omissions should be addressed by correcting the appraisal and making a revised offer.

Administrative settlements are not valid when using federal and state grant as the funding source.

**13.4.00.00 ACQUISITION PROCESS**

The RCA will comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (42 U.S.C. § 4600 et seq. and 49 C.F.R. part 24.), as applicable as further detailed in Chapter 6, above, in this Manual. Specifically, the following will apply to the acquisition process:

**13.4.1.00** The RCA will order an independent appraisal of the property under consideration for purchase.

**13.4.2.00** The RCA will use the appraised value to develop an offer to purchase the property under consideration.

**13.4.3.00** At seller's expense, seller may provide a separate appraisal for consideration.

**13.4.4.00** When the HANS/JPR review process identifies a property for "100% acquisition," land value differences between a seller's appraisal and the RCA appraisal will be resolved in accordance with Section 6 of the MSHCP.

**13.4.5.00** An appraisal summary statement shall be prepared for all appraisals. The summary statement shall include the following information: the appraised value of the property, the date of value, the zoning and general plan designations of the property, the comparable sales used by the appraiser in determining the value of the property and any other information requested by staff.

**13.4.6.00** Policy of appraisal releases:

13.4.6.1 Full appraisals will not be released to the seller, except in cases where the cost is shared with RCA; provided, however, that the Executive Director may release a full appraisal to a seller when (1) the seller is a public agency that currently owns

the property in fee title working with the RCA to purchase land for the MSHCP Conservation Area, or (2) grant funds are being sought and releasing the full appraisal would facilitate the process to apply for and obtain the grant funds.

- 13.4.6.2 A copy of the appraisal summary statement will be provided to the seller for acquisitions.

### **13.5.00.00 CONFIDENTIALITY**

To ensure integrity throughout the process, it is important to maintain confidentiality when the RCA considers land purchases.

**13.5.1.00** Any agreement for real property services with agencies, organizations or individuals who may provide real property services will contain the following provisions to insure confidentiality of prospective acquisitions:

- 13.5.1.1 Assigned staff will pursue only those acquisitions authorized by the RCA.
- 13.5.1.2 Investigations, arrangements and transactions will be conducted by assigned staff only.
- 13.5.1.3 Property information and transactions shall be maintained under the control of the assigned staff.
- 13.5.1.4 No RCA property information shall be placed in any general electronic or manual data inventory outside of the RCA except as necessary during the acquisition process of a property. All records will be delivered to the RCA at the close of escrow.

### **13.6.00.00 INDEMNIFICATION**

**13.6.1.00** It is the policy of the RCA to secure the appropriate indemnification from future liability resulting from pre-existing conditions on an acquired property. However, the RCA recognizes that circumstances for each acquisition vary, and the indemnification provision may be modified to reflect the level of risk, the ownership history of the property, the result of the environmental hazards assessment, along with any subsequent testing or other factors.

**13.6.2.00** A Phase 1 Environmental Hazards Assessment (EHA), in compliance with general real estate practices, will be conducted on each prospective land acquisition, or land donation, not more than six (6) months prior to the close of escrow.

**13.6.3.00** In the event that a Phase I EHA or visual inspection by the RCA of a prospective property indicates any potential hazard(s) the Executive Director may require a Phase II Environmental Hazard Assessment or additional information relating to the property history of use.

**13.6.4.00** No conservation easement will be accepted unless the underlying fee title holder fully indemnifies the RCA.

### **13.7.00.00 POLICIES AND PROCEDURES FOR EXECUTION OF IRS FORM 8283 FOR BARGAIN SALES AND DONATIONS**

The Regional Conservation (RCA) recognizes that it is appropriate to execute an IRS Form 8283 where the property owner has offered to either provide a bargain sale or to donate land to the RCA. The following policies and procedures are intended to establish basic guidelines for the execution and processing of a Form 8283.

**13.7.1.00** A Bargain Sale shall be defined to be the sale of property to the RCA for less than the appraisal that has been reviewed and approved by the RCA or an independent, qualified appraiser contracted by the RCA.

**13.7.2.00** If a property owner elects to accept less than the RCA approved appraisal price, the transaction shall be eligible to be considered a Bargain Sale. The Bargain Sale and the execution of the Form 8283 must be documented in the Purchase and Sale Agreement.

**13.7.3.00** If a property owner elects to donate land to the RCA, the execution of the Form 8283 must be documented in the donation agreement, prior to execution of the form.

**13.7.4.00** All requests for execution of a Form 8283 shall be reviewed and approved by Legal Counsel prior to execution and may be submitted for either a Bargain Sale as defined in Section 13.7.1.00 above or for a donation of land.

**13.7.5.00** Only the Chairman of the Board of Directors or the Executive Director, or designee, shall be authorized to execute a Form 8283, provided that the form has been processed consistent with these policies and procedures.

**13.7.6.00** Staff should notify the property owner of this policy, in writing, at the time of presenting an offer to the property owner, and request a written acknowledgement from the property owner that they have been notified of the policy.

### **13.8.00.00 POLICIES AND PROCEDURES FOR NEGOTIATION OF DEVELOPMENT HANS AND NON-DEVELOPMENT HANS ACQUISITIONS**

The purpose of these policies and procedures is to establish general guidelines for the negotiation of Habitat Evaluation and Acquisition Negotiation Strategy (HANS) acquisitions, consistent with Section 6.1.1(B)(2)(b) and 6.1.1(C)(2) of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). This Policy incorporates by reference the Clerical Changes made to page 6-6 of the MSHCP approved by the RCA Board on May 14, 2007. The following policy shall



apply to properties where the County/City and the RCA have concurred with including all or a portion of the property into the MSHCP Conservation Area.

**13.8.1.00**      **Initiation of the 120-Day Negotiation Period**

The 120-day negotiation period provided under Section 6.1.1(B)(2) and 6.1.1(C)(2) of the MSHCP shall commence:

- 13.8.1.1      Upon completion of the HANS/JPR process, and
- 13.8.1.2      Concurrence by the RCA that all or a portion of the property is needed for inclusion within the MSHCP Conservation Area.

**13.8.2.00**      **During the 120-Day Negotiation Period**

- 13.8.2.1      The RCA will conduct an appraisal of the property.
- 13.8.2.2      The RCA and Property Owner, or its designee, will negotiate a purchase and sale agreement.
- 13.8.2.3      Access to the property for appraisal purposes will be extended to the RCA through the HANS application, or other equivalent application.
- 13.8.2.4      During this period, appraisal instructions shall be jointly prepared and agreed upon by the RCA and the Property Owner, or its designee. If such joint appraisal instructions are not agreed to by the parties within the first 20 days of the 120-day period, the RCA may proceed to have an appraisal conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice" pursuant to 6.1.1 of the MSHCP.
- 13.8.2.5      The Property Owner, or its designee, may suspend the negotiating time period, provided that they have submitted a letter to the RCA and the County/city requesting that the negotiations be suspended. In such event, the negotiating time period will only resume upon receipt of a letter to the RCA and the County/city from the Property Owner, or its designee, requesting that the negotiations resume.

**13.8.3.00**      **After the 120-Day Negotiation Period**

If at the end of this 120-day period, agreement between the parties is not achieved, each party shall submit in writing the party's proposed resolution of terms. Further, the Property Owner, or its designee, along with the RCA and County/city, may agree to extend negotiations for an appropriate period of time if necessary. If either the Property Owner, or its designee, or the RCA and the County/city do not agree to extend negotiations, the Property Owner, or its designee, may (a) elect to withdraw selling the property to the RCA, or (b) commence the Conflict Resolution Process as described in Section 6.1.1 of the MSHCP.

**13.9.00.00 CLERICAL CHANGES TO THE MSHCP**

Pursuant to Section 20.1 of the MSHCP Implementing Agreement, the RCA hereby makes the following clerical change to the first full paragraph of Page 6-6 of the MSHCP:

**13.9.1.00 (B)(2)(b) Full Inclusion of Property.**

In those instances where all of the property is needed for inclusion in the MSHCP Conservation Area, negotiations will focus on the acquisition of the property including establishing a purchase price and the application of other non-monetary incentives which may compensate the property owner and assist with the acquisition. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee title of property to be conveyed may not be required. The type of ownership to be conveyed will be taken into consideration when conducting the appraisal. Appraisal instructions shall be jointly prepared and agreed upon by the RCA, on behalf of the County or Cities, and the property owner, or if joint appraisal instructions are not agreed upon within the first 20 days of the 120-day negotiation period, the RCA shall proceed to order an appraisal. Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

**13.9.2.00 (C)(2)**

Negotiations will focus on establishing a purchase price and other incentives that may be available to assist with the acquisition and compensate the property owner. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee title of property may not be required. The type of ownership to be conveyed will be taken into consideration when appraising the property. Appraisal instructions shall be jointly prepared and agreed upon by the RCA, on behalf of the County or Cities and the property owner, or if joint appraisal instructions are not agreed upon within the first 20 days of the 120-day negotiation period, the RCA shall

proceed to order an appraisal. Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

*NOTE:* There are no changes to the 1<sup>st</sup> and 3<sup>rd</sup> paragraphs to (C)(2), only the 2<sup>nd</sup> paragraph as noted above.

**SUPPORTING DOCUMENTATION: The proposed modification clarifies two aspects of the HANS process:**

The existing text indicates that the County and Cities are responsible for preparing joint appraisal instructions. As indicated in the joint exercise of powers agreement, the RCA was created to assume the responsibilities of acquiring property on behalf of the County and Cities, whereas here, all of the property is needed for inclusion in the MSHCP Conservation Area. This clerical modification simply confirms that action for purposes of this section.

The RCA, Local Permittees or other stakeholder groups never intended to delay the 120-day negotiation process due to lack of agreement on joint appraisal instructions. Therefore, this clarifying instruction allows the RCA to proceed to conduct its own appraisal should the RCA and the property owner, or its designee, fail to achieve agreement on joint appraisal instructions.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.

- 13.9.2.1 Further, the RCA hereby makes the following clerical change to the first full paragraph on Page 6-10 of the MSHCP:

Should a party opt to commence the Conflict Resolution Process as a result of the parties' inability to resolve differences concerning the valuation of property, a second appraisal shall be conducted, at the expense of the **opting party**, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee ownership of property to be conveyed may not be required. The type of ownership to be conveyed shall be taken into consideration when conducting the second appraisal.

**SUPPORTING DOCUMENTATION:** In most cases, a property owner will probably be the opting party who seeks to commence the Conflict Resolution Process. In a situation where the RCA opts to commence the Conflict Resolution Process,

however, the intent of the MSHCP is to have the RCA pay for the second appraisal. Accordingly, this revision to the plan requires the opting party, whether the property owner or the RCA, to pay for the expense of a second appraisal.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.

#### **13.10.00.00 POLICIES AND PROCEDURES REGARDING PROPERTIES ENCUMBERED BY PROPERTY ASSESSMENTS FOR WILLING SELLER, AND FULL AND PARTIAL HANS/JPR ACQUISITIONS.**

To assemble the Additional Reserve Lands, the RCA may acquire land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. These properties may be offered by “willing sellers” or as a HANS/JPR full or partial acquisition. The following policies and procedures are intended to establish basic guidelines for the acquisition of property encumbered by existing property assessments:

**13.10.1.00** Staff will order a preliminary title report, with Schedule “B” exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

**13.10.2.00** Staff will contact the Assessor’s office and obtain a list of all known property assessments that may affect the property.

**13.10.3.00** Staff will identify the purpose and annual cost of any property assessments and estimate the cost to “buy out” the assessments.

**13.10.4.00** Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.

**13.10.5.00** The following options should be considered when dealing with property assessments in the order of preference stated below:

- 13.10.5.1 Research if the RCA is exempt from payment of the property assessments.
- 13.10.5.2 Negotiate with the Seller to eliminate encumbrances from title before close of escrow.
- 13.10.5.3 Pursue a buyout of the property assessments by the RCA prior to close of escrow.

13.10.5.4      Defer the buyout of the property assessments by the RCA until after the close of escrow.

13.10.5.5      The RCA to pay the annual fee for the property assessments.

**13.10.6.00**      Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board's consideration.

**13.10.7.00**      The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

**13.11.00.00    POLICIES AND PROCEDURES REGARDING PROPERTIES ENCUMBERED BY PROPERTY ASSESSMENTS FOR CONVEYANCES MADE PURSUANT TO REGULATORY PERMITS SUCH AS 404 PERMITS.**

The RCA may be requested to accept land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. the request will generally come from a property owner that has been required to convey property to the RCA as part of a regulatory permit condition, such as a 404 permit issued by the U.S. Army Corp of Engineers or a 1602 Streambed Alteration Permit issued by the California Department of Fish and Game or State Water Resources Control Board Under Section 401 of the Clean Water Act. The following policies and procedures are intended to establish basic guidelines for the acceptance of property encumbered by property assessments:

**13.11.1.00**      Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

**13.11.2.00**      Staff will contact the Assessor's office and obtain a list of all known property assessments that may affect the property.

**13.11.3.00**      Staff will identify the purpose and annual cost of any property assessments and estimate the cost to buy out the assessments.

**13.11.4.00**      Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.

**13.11.5.00**      The following options should be considered when dealing with property assessments in the order of preference stated below:

13.11.5.1      Research if the RCA is exempt from payment of the property assessments.

- 13.11.5.2 The RCA staff expects that in the majority of cases, the Donor will be required to buy out the property assessments prior to close of escrow.
- 13.11.5.3 Although unusual, the RCA staff may recommend to the Board that the RCA should defer the buyout of the property assessments by the RCA until after the close of escrow.
- 13.11.5.4 Likewise, as a last resort, there may be situations where RCA staff may recommend to the Board that RCA should pay the annual fee for the property assessments.

**13.11.6.00** Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board's consideration.

**13.11.7.00** The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

#### **13.12.00.00 POLICIES AND PROCEDURES REGARDING PROPERTY ENCUMBERED BY COVENANTS, CONDITIONS, AND RESTRICTIONS.**

The RCA may acquire land that is affected by existing Covenants, Conditions and Restrictions (CCRs). The following policies and procedures are intended to establish basic guidelines for the acquisition of property affected by existing CCRs:

**13.12.1.00** Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

**13.12.2.00** Staff will review the nature of the CCRs.

**13.12.3.00** Staff will identify if the CCRs potentially affect the use or maintenance of the property.

**13.12.4.00** If staff has determined that the CCRs may potentially affect the use or maintenance of the property, staff will contact the legal entity responsible for the enforcement of the CCRs, to inquire as to whether or not the CCRs may be modified.

**13.12.5.00** The following options should be considered when dealing with CCRs in the order of preference stated below:

- 13.12.5.1 Research if the RCA is exempt from the CCRs.
- 13.12.5.2 Pursue a modification of the CCRs prior to close of escrow.
- 13.12.5.3 Defer the modification of the CCRs until after the close of escrow.

13.12.5.4 Comply with the terms and obligations of the CCRs (In many cases the CCR's will apply to property improvements only, and will have a negligible impact on the RCA).

13.12.5.5 If the CCR's provide for an assessment, staff will follow either policy section 1.09 or 1.10, as appropriate.

**13.12.6.00** Staff reports should identify if the property for proposed acquisition is affected by existing CCRs and if the CCRs affect the use or maintenance of the property.

### **13.13.00.00 POLICY REGARDING NON-MSHCP LAND DONATIONS.**

The RCA may agree to accept land donations outside of the Conservation Area or Criteria Area provided that:

**13.13.1.00** Acceptance does not commit the RCA to a management or monitoring program that is different from that embodied in the MSHCP.

**13.13.2.00** An endowment is provided that fully covers the costs of long-term management and monitoring of the land and habitat.

### **13.14.00.00 POLICY REGARDING GRANT FUNDED PROPERTIES**

The process for these properties includes staff soliciting a letter from the property owner stating interest in selling the property to the RCA. Once the letter is received, staff orders and appraisal report for the property. An offer is made based on the appraised value and once accepted by the owner, it is forwarded to the granting agency, who then forwards the appraisal to the appropriate reviewing agency to conduct a formal review. Unlike other property acquisitions, grant funded properties cannot be acquired for more than appraised value. If the property owner and/or its representatives do not agree with the appraised value, and if time allows, staff may order a new appraisal report or decide to end the acquisition efforts.

### **13.15.00.00 POLICY FOR ACQUISITIONS OF PROPERTY FOR WHICH A DEVELOPMENT APPLICATION IS NOT INTENDED TO BE FILED (NON-DEVELOPMENT HANS)**

Funding for the acquisition of properties on the priority list will be provided through a separate designated fund. The funding level from Multiple Species Habitat Conservation Plan Local Development Mitigation Fees shall be reviewed annually and established by the RCA Board of Directors.

### **13.16.00.00 POLICY FOR AUTHORITY OF EXECUTIVE DIRECTOR FOR LAND ACQUISITIONS**

#### **13.16.1.00 Board Approval Required for Land Acquisition**

Subject to section 13.1.7.00, the acquisition of any interest in real property shall require a majority affirmative vote of the members of the RCA's Board of Directors. The Executive

Director shall be authorized to execute documents on behalf of the Board including, but not limited to, Purchase and Sale Agreements and Deeds, which have been approved by the Board.

#### **13.16.2.00 Broader Authority to Accept Gifts, Bequests and Devises**

Notwithstanding the limitations which would otherwise be imposed under Section 13.14.01.00 of this Manual, the RCA authorizes its Executive Director to perform any or all acts necessary, including the execution of a donation agreement and a certificate of acceptance on behalf of the RCA, to approve and accept for the RCA the acquisition of any interest in real property consistent with the MSHCP obtained through gift, bequest, or devise made to or in favor of the RCA for any public purpose without regard to the value of the property so obtained.

#### **13.16.3.00 Form of Acquisition Documents**

Standard documents, approved as to form by the RCA's counsel, shall be used to ensure consistency in the RCA's land acquisition process. Counsel must approve any deviation from the standard documents.

### **13.17.00.00 POLICY ON TRIBAL COOPERATION**

The Executive Director, or his or her designee, subject to review and approval by legal counsel, is authorized to enter into cooperative agreements, memorandum of agreements, memorandum of understandings, or other agreements with tribal partners to pursue a common interest in sustaining the integrity of regional biological and natural systems, including historic properties, tribal heritage resources and the historic human and economic values commonly supported by the parties within Western Riverside County. Specifically, the agreement may allow for the cooperation between RCA and its tribal partners to ensure that the historic properties and heritage resources located within MSHCP Conservation Area lands remain protected and preserved in accordance with both the Tribe's customs and traditions, as well as comply with the requirements of the MSHCP and state and federal law; provided, however, that the agreement shall include, without limitation, the following conditions:

- Prohibit the use of any landscaping within the preserved area;
- Prohibit fuel modification areas consistent with Section 6.4 of the MSHCP;
- Management of the preserved area shall be conducted pursuant to Section 5 of the MSHCP;
- No trails will be created nor allowed within the preserved area;
- Financially, RCA will continue to pay for any management expenses it would normally be required to conduct under Section 5 of the MSHCP while any tribal partners shall agree to undertake the preservation and maintenance of its historic properties and heritage resources pursuant to the tribe's customs and traditions.
- Required compliance with applicable State and federal laws and regulations, including, without limitation, those related to confidentiality.



## **CLOSING STATEMENT**

The Right of Way Manual set forth herein are for guidance only, and deviations there from by the Commission or the RCA shall not provide a Seller, Property Owner, or its designee, with any damage rights or remedies against the Commission or the RCA. If there is a conflict between the Right of Way Manual set forth herein and State or federal law, the conflicting State or federal law will control.

## **POLICY SECTION REVISIONS**

No revisions at this time

(Added)



# **RCTC**

# **RIGHT OF WAY**

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# AND RCA MSHCP LAND ACQUISITION

## **POLICIES AND** ~~**PROCEDURE**~~**PROCEDU** **RES**

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**1.00.00.00 ~~1.00.00.00~~ GENERAL INFORMATION****1.1.00.00 ~~1.01.00.00~~ INTRODUCTION****1.1.1.00 ~~1.01.01.00~~ Reason**

~~Right of way~~Land acquisition by public agencies is a complex function. It is therefore imperative that policies be written and procedures established to enable each employee of the Riverside County Transportation Commission (Commission) Right of Way Department to be completely informed and able to perform their duties in a skillful manner. ~~Each right of way employee when acquiring land for the Commission or the Western Riverside County Regional Conservation Authority (RCA). A Right of Way Department employee, working on either Commission or the RCA projects,~~ should perform his or her assigned duties in a professional manner.

**1.1.2.00 ~~1.01.02.00~~ Scope**

This manual contains the regulations, requirements and procedural directives governing the operations of the Right of Way Department. It will be updated and amended as needed.

**1.1.3.00 ~~1.01.03.00~~ Purpose**

This manual is to be used as the policy and procedures guide for Commission right of way projects, and land acquisition activities. ~~It related to the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). As used herein, the phrase "right of way" refers to the acquisition of property and rights for Commission public projects (such as highway, commuter rail lines, rail stations, and park-and-ride lots). The phrase "MSHCP land acquisitions" refers to the land acquisition activities in support of the MSHCP. This manual~~ establishes a uniform method for completing each phase of the right of way ~~operation~~acquisition. Any deviation from the prescribed policy should be approved by the Executive Director or designee. Any deviation or failure to comply with the provisions of this manual shall not, by itself, invalidate any action of the Commission, the RCA, or create any liability to any third party.

**1.1.4.00 ~~1.01.04.00~~ Federal Regulations**

Federal regulations governing right of way acquisition are found in 49 CFR Part 24. Compliance with these regulations is required if federal funds are to be used in any part of a right of way project, but not MSHCP land acquisitions. The policy and procedures outlined in the following chapters of this manual are written to include all of the federal requirements.

**1.1.5.00 ~~1.01.05.00~~ State Regulations**

All laws, policies and regulations passed by the State of California governing right of way acquisition shall be complied with, if applicable. Eminent domain procedures shall be governed by the California Code of Civil Procedure and the California Government Code.

**1.1.6.00 ~~1.01.06.00~~ FHWA, FTA and State - The Commission Relationship**

The Federal Highway Administration (FHWA), Federal Transit Administration (FTA), State of California Department of Transportation (State/Caltrans) and the Commission Right of Way Staff may work cooperatively to assure all federal and state requirements for right of way acquisition and relocation are met. FHWA, FTA and the State will periodically inspect the Commission right

of way records to assure that federal and state requirements are being complied with. The Commission Right of Way Staff will cooperate by providing required records and documents for inspection. All discrepancies and deficiencies discovered by the inspecting agency will be reported in writing to the Executive Director or designee. The Executive Director or designee will examine the contents of the written reports and determine if those deficiencies or discrepancies are not in compliance with approved Commission policies and will notify the Right of Way Department of any adjustments in operating procedures that need to be improved or revised.

**1.1.7.00      ~~1.01.07.00~~      Communications and Letter Writing**

Good communication, whether inter-department correspondence or outside correspondence is essential. Copies of correspondence should be directed to all interested parties and placed in pertinent files. Instructions provided during telephone conversations should be confirmed by letter or memorandum and copies must be placed in pertinent files explaining actions taken in response to telephone instructions.

**1.1.8.00      ~~1.01.08.00~~      Public Relations**

Right of Way Staff are public relations agents of the Commission and the RCA as they have direct contact with the public. The appearance, attitude and reliability of the individual right of way employee creates an image of the Commission and the RCA in the eyes of those with whom they come in contact ~~with~~. Every effort must be made to reflect an image that is a credit to each employee ~~and to~~ the Commission and the RCA.

**1.1.9.00      ~~1.01.09.00~~      Revisions to Manual**

Revisions to the manual may be approved by the Executive Director with the concurrence of Legal Counsel.

**1.2.00.00      ~~1.02.00.00~~      SUBDIVISION OF MANUAL**

**1.2.1.00      ~~1.02.01.00~~      Explanation of Table of Contents**

This manual is divided into chapters as set out in the table of contents. Each chapter is indexed individually to allow additions, deletions, and changes to be made without affecting the continuity of the overall manual.

Chapters are divided into sections and numbered ~~numerically~~. Each section is divided into subjects, which are also numbered ~~numerically~~.

**1.2.2.00      ~~1.02.02.00~~      Issue and Revision Dates**

Each page is dated in the lower right-hand corner and each revision issued in the future will show the revised date.

**1.2.3.00      ~~1.02.03.00~~      Retention of Revised Material**

When revised material is issued, the revisions should immediately be placed in the manual upon receiving approval from the Board of Commissioners and/or Board of Directors. The Right of Way Department will keep a permanent record of all revised sheets.

**1.3.00.00     ~~1.03.00.00~~     DISCRIMINATORY PRACTICES****1.3.1.00     ~~1.03.01.00~~     General Policy Concerning Discrimination**

Under no circumstances shall any form of discrimination be practiced by any employee or any party under contract with the Commission or the RCA, or ~~on the part of~~ by any other party carrying out any phase of the Commission's right of way ~~program~~ or MSHCP land acquisition programs.

~~Supervisors~~ Managers, supervisors and all others responsible for carrying out the right of way ~~program~~ and MSHCP land acquisition programs must be aware of the necessity for identifying, reporting, eliminating and/or correcting any discriminatory practice which may occur. Any practice suspected of being discriminatory must be reported to the Executive Director or designee.

Policies and procedures designed to ~~assure~~ ensure that discriminatory practices will not occur can be separated into five (5) general categories. These categories are:

- Employment Practices – the Commission is an Equal Opportunity Employer
- Right of Way and MSHCP Acquisition
- Property Management
- Relocation Assistance
- Procurement Policy – the Commission and RCA Procurement Policy Manual adopted by the Commission and the RCA Procurement Policy includes the following policy regarding non-discrimination in procurement (Chapter 2.10.0): all formal contracts entered into by the Commission and the RCA should contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

**1.3.2.00     ~~1.03.02.00~~     Employment Practices**

Employment Practices for all Commission Staff, including Right of Way Staff, are set out in the Commission Personnel Manual.

**1.3.3.00     ~~1.03.03.00~~     Contract Procedures**

Consultant Contracts originating in the Right of Way Department should contain clauses prohibiting discriminatory practices by contractors and subcontractors. Contractors shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances relative to nondiscrimination.

If the contractor fails to comply with the non-discrimination provisions of the contract, the Commission shall impose such contract sanctions as it or the FHWA, FTA or the State may determine to be appropriate, including but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies
- Cancellation, termination, or suspension of the contract, in whole or in part



**1.3.4.00      ~~1.03.04.00~~      Right of Way Acquisition**

All right of way and MSHCP land acquisition policies and procedures, including those applicable to title search, appraisal, negotiations, payments, closings, condemnation, possession, clearing and all other related right of way activities shall be applied equally and without regard to the owner's race, color, religion, national origin, sex, age, ancestry, or physical ability.

The Right of Way Staff who ~~comes~~come in contact with property owners shall take appropriate steps to assure that such owners, including representatives of Disadvantage Business Enterprises who may have language or other communication problems, understand the right of way or MSHCP land acquisition program as it relates to them.

**1.3.5.00      ~~1.03.05.00~~      Property Management**

Every parcel of excess or surplus land and/or right of way and all improvements disposed of by the Commission and the RCA will be sold through negotiated sale without discrimination on the grounds of race, color, religion, creed, national origin, sex, age, ancestry, or physical ability.

Commission and the RCA owned land and property that is available for ~~rent, lease~~license, joint development, or incidental use shall be ~~rented~~licensed, ~~leased~~ or jointly developed to interested persons or firms by negotiations, without discrimination on the grounds of race, color, religion, creed, national origin, sex, age, ancestry, or physical ability.

**1.3.6.00      ~~1.03.06.00~~      Relocation Assistance**

Under no circumstances shall any form of discriminatory practice be tolerated on the part of any employee of the Commission or the RCA or on the part of any persons, firms, or corporations under contract with the Commission or the RCA in carrying out any phase of the Relocation Assistance Program.

~~Supervisors~~Managers and all others responsible for carrying out the relocation program shall be aware of the necessity of identifying, reporting, eliminating and/or correcting any discriminatory practice which may occur. Any clearly defined discriminatory practice discovered by Commission staff, or any practice seriously suspected of being discriminatory, must be reported to the Executive Director or designee.

**1.3.7.00      ~~1.03.07.00~~      Records and Reports**

The Right of Way Department must maintain a separate file for each of the above three (3) categories (Acquisition, Property Management, and Relocation Assistance). The files shall contain each discriminatory practice case reported or discovered by the Commission, source of such information, all letters, transmittals, and reports related to the subject case, ~~resume~~resolution of the specific discriminatory action and an explanation of corrective measures taken by the Commission.

~~It is the specific duty of the Right of Way Department to maintain the discriminatory practices files even though they may be empty due to justifiable lack of information and/or activity and make the records available to federal and state authorities.~~

**2.00.00.00 ~~2.00.00.00~~ ROW MANAGEMENT PLAN****2.1.00.00 ~~2.01.00.00~~ INTRODUCTION****2.1.1.00 ~~2.01.01.00~~ Purpose**

The right of way function encompasses several disciplines. The purpose of the Right of Way Management Plan ("RAMP") is to provide an overview of the right of way activities and involvement in the total project. This RAMP is presented in general terms and will be amended or modified pursuant to the nature of the project and funding source requirements. A project specific RAMP may be developed depending on the complexity of a [Commission](#) capital project.

Detailed right of way policies and procedures will be presented and discussed in succeeding chapters.

**2.1.2.00 ~~2.01.02.00~~ Scope**

Included in the right of way function are right of way acquisition, relocation of displaced individuals and businesses, right of way engineering and surveying, appraisal and review, property management, utilities relocation ~~and~~ environmental inspection and remediation and condemnation support.

**2.1.3.00 ~~2.01.03.00~~ Title VI, Civil Rights Act**

All services and benefits are administered to all eligible individuals without regard to race, color, national origin, or sex in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, et seq.)

2.1.3.1 Title VI Federal Mandate and Caltrans Directive. Caltrans and local agencies are required to incorporate the following two clauses into all right of way contracts on all projects receiving federal funds. These clauses are to be standalone separate clauses. These clauses are also required to be in all other Right of Way documents or agreements used to obtain property rights such as Rights of Entries, Possession and Use Agreements, Permits to Enters, Permits to Enter and Construct, etc.

The parties to the contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Section 50.3.

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is subject of this contract.

The statute requiring Title VI clauses also requires additional Title VI language in all deeds.

## 2.2.00.00     ~~2.02.00.00~~     **RIGHT OF WAY ACQUISITION**

### 2.2.1.00     ~~2.02.01.00~~     **Authority of the Commission to Acquire**

Public Utilities Code Section 130220.5 authorizes the Commission to take any property necessary, incidental or convenient to the exercise of its powers of eminent domain proceedings or otherwise.

### 2.2.2.00     ~~2.02.02.00~~     **State Laws**

With respect to initiation of condemnation proceedings, the following California Codes apply:

- California Code of Civil Procedure Section 1245.010-1245.270
- California Government Code Sections 7260-7277

### 2.2.3.00     ~~2.02.03.00~~     **Federal Laws and Regulations**

The following federal regulations and policies apply to the right of way program:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) 49 Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17; and the Final Rule dated January 4, 2005
- 23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712 and 713 – The Federal Highway Administration, Right of Way Program Administration
- Federal Highway Administration, Office of Real Estate, Project Development Guide
- Federal Transit Administration Circular 5010.1D dated November 1, 2008, as amended, titled Federal Transit Administration Grant Management Requirements
- Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21)

### 2.2.4.00     ~~2.02.04.00~~     **Overview**

The right of way acquisition program is designed to ensure the timely availability of those parcels necessary for construction and ensure the fair, uniform and equitable treatment of those displaced from their homes and businesses as a result of the project. The acquisition process is divided into the following categories: identification of right of way requirements, appraisal of required interest, negotiation and acquisition either through settlement or condemnation and relocation as required. These activities are scheduled by the Right of Way Manager against established construction deadlines.

### 2.2.5.00     ~~2.02.05.00~~     **Interest to be Acquired**

Long-term real estate interests typically fall under three categories:

- A fee simple estate
- A leasehold estate
- Permanent easements

Accordingly, the Commission must have direct and sustaining control and unrestricted use of the properties in accordance with the terms and conditions of the project.

Temporary construction easements, temporary access easements, temporary use permits, licenses and right of entry agreements are examples of temporary property rights generally obtained to perform various types of work incidental to construction. The type of work to be performed determines which type of agreement is to be used.

Temporary construction and access easements are acquired for such things as access during construction, work areas, establishment of detour roads, construction staging and storage areas where the specified use is essential to completion of construction.

Temporary use permits and right of entry agreements are typically used when obtaining permission to complete soil borings, archeological testing, hazardous materials testing, sloping of lawns or reconstruction of driveways, where a nominal amount of money may be involved and the effect of termination would not jeopardize completion of the project.

#### 2.2.6.00      ~~2.02.06.00~~      **Title Insurance**

In case of temporary property rights, preliminary ownership information is obtained. Title insurance is secured for the long-term property interests, insuring title effectively free and clear of any liens and encumbrances other than current year's taxes and assessments and easements, covenants and restrictions which do not materially or adversely affect the use of the property for the project. Any senior encumbrance (such as a mortgage, deed of trust or judgment) that might, through foreclosure, cause the ~~long-term~~long-term property interest to be lost, ~~most~~must be subordinated.

Title insurance is always accompanied by a thorough title examination, which seeks to discover if any defects exist. The title insurance policies are issued shortly after closing (the date the Commission takes ownership of the property, ~~i.e.~~, the date when the deed to the Commission is recorded). Under the policy, the title company agrees to defend the title of the Commission, as the insured.

#### 2.2.7.00      ~~2.02.07.00~~      **Identification of Right of Way**

For typical design-bid-build or Construction Manager General Contractor (CMGC) Commission projects, identification of the parcels required for a project begins in preliminary engineering and is concluded by the Engineer of Record during final design. This includes the ~~long-term~~long-term property rights required to accommodate the project alignment, rail projects, stations, station entrances and permanent parking facilities, and the temporary property rights required for construction access and storage yards.

For design-build projects, the design phase and construction phase overlap. The parcel requirements, both long term and temporary, are acquired at various intervals throughout the design process until final design is reached.

Detailed right of way requirements are identified and recommended by the Engineer of Record that conform to the greatest public good and least private injury. To support a recommendation, a licensed land surveyor is required to prepare an acquisition package to include a right of way plat showing the location, size and shape of the parcel to be acquired; a legal description of the area to be acquired and the name(s) of property owners and computations of the areas to be acquired, and an appraisal map.

#### 2.2.8.00      ~~2.02.08.00~~      **Scheduling**

The Engineer of Record develops the priorities, by project segment, for right of way acquisition activities. However, the Right of Way Manager identifies within each project segment, the priorities for right of way acquisition by parcel in order to meet the construction schedule. The schedule identifies projected dates for the various stages of the right of way acquisition process and is updated regularly.

The Commission, through its Right of Way Manager, evaluates the right of way acquisition date to ensure there are no conflicts and ensure integration of information into the Master Project Schedule.

#### 2.3.00.00      ~~2.03.00.00~~      **APPRAISAL**

##### 2.3.1.00      ~~2.03.01.00~~      **Purpose**

~~Appraisals~~Commission appraisals are used to establish a basis for determining Just Compensation. The Uniform Relocation Act, as implemented by 49 CFR Part 24, allows the Commission to waive an appraisal if, based on a review of available data, if the Commission determines that the valuation problem is uncomplicated and that fair market value is estimated at \$10,000 or less, or if the property owner is donating the property and has released the Commission from ~~the~~its obligation to appraise the property. Appraisal waivers are also allowed above the \$10,000 threshold, up to a maximum of \$25,000, if the Commission offers the property owner the option of having the Commission appraise the property and the property owner declines the appraisal. If negotiations are unsuccessful, a standard appraisal must be performed prior to proceeding with condemnation for Commission projects. Moreover, when FTA funds are involved, FTA Circular ~~5010.1D~~5010.1E requires prior FTA concurrence when the recommended offer of Just Compensation exceeds ~~\$500,000~~1,000,000, or when a property appraised at ~~\$500,000~~1,000,000 or more must be condemned.

The Uniform Relocation Act, as well as FTA policy and procedures, requires that an appraisal and a reviewer's analysis be obtained on all parcels proposed for acquisition (other than those determined above).

##### 2.3.2.00      ~~2.03.02.00~~      **Basic Appraisal Process**

The selection of independent fee appraisers is based on qualifications and experience for the property being appraised in accordance with criteria for appraisals contained in 49 CFR Part 24. ~~Appraisers~~Commission appraisers may be requested to give expert testimony in support of their

value estimates in the event of condemnation and must have experience in eminent domain valuations.

The property owner is notified in writing of the Commission's interest in acquiring property rights and basic protections provided to the owner by law. The owner or the owner's designated representative is given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

The compensation amount is recommended by the appraiser and confirmed by the review appraiser, and the Executive Director or designee has final approval of Just Compensation.

Adherence to FTA, FHWA and State concurrence thresholds (depending on the funding source), appraisal and settlement guidelines is required.

#### 2.4.00.00      ~~2.04.00.00~~      ENVIRONMENTAL INSPECTION

##### 2.4.1.00      ~~2.04.01.00~~      Purpose

Right of way ~~acquisition for~~ projects ~~carries with it~~ carry certain responsibilities to the community. This policy addresses environmental concerns involving residential, commercial and industrial properties, which may be wholly owned by the Commission or in the process of being acquired for a project.

Where there is contamination or hazardous ~~substance/waste~~ materials affecting the property, the estimated cost to remediate the contaminated property should be forwarded to the Commission's appraiser for consideration and possible inclusion in establishing fair market value.

Typically, the Commission will retain the services of consulting firms to supervise remediation of hazardous ~~waste, asbestos and lead paint abatement~~ materials. The Commission ~~directs~~ oversees the investigation, identification, control and disposal of hazardous waste, contaminated soil or other material in accordance with the Environmental Protection Agency and other applicable federal, state and local regulations.

##### 2.4.2.00      ~~2.04.02.00~~      Procedure

The procedure requires the Commission to hire a consultant to test for possible contamination and if necessary, perform remediation of hazardous ~~waste and asbestos abatement. The Commission directs~~ material. Staff oversees the investigation, identification, control and disposal of hazardous waste, contaminated soil or other materials in accordance with the Environmental Protection Agency and other applicable governmental regulations and oversight agencies.

Depending upon the nature of the hazardous material (usually waste products), its origin and the intensity of the product generation, decisions as to the extent of hazard protection are made on a case-by-case basis, as outlined below:

- ~~Residences~~ are usually not a major generator, but are examined for asbestos, floor tile, certain pipe (steam) or boiler wrappings, lead paint and other conditions.

- Commercial properties may generate hazardous materials due to waste products used, abandoned transformers containing Polychlorinated Biphenyl (PCB) type immersion fluids, and asbestos and other products.
- Industrial properties may generate hazardous materials such as by-products and other non-useful products, buried waste, insulation products (asbestos), PCB products or similar materials, underground storage tanks and other waste.
- Vacant land may accumulate hazardous materials as a result of spills, indiscriminate storage and/or dumping, irresponsible management of hazardous materials, and accidents or past pesticide, herbicide or fertilizer use on agricultural properties.
- Each type of property is handled in the following manner:
  - Identification of hazardous waste materials as officially (federally) defined
  - Examination of potentially hazardous site to determine the risk of hazard, if any via field examination by Commission representatives
  - Preparation of a list of areas and the degree of concern
  - Preparation of a schedule to address the issue
  - Evaluation of the hazard, to determine responsibility for cleanup and their use of the property
  - Obtain legal opinion where appropriate
  - Identification of funding source
  - Coordination with the applicable regulatory agency

#### 2.4.3.00      ~~2.04.03.00~~      Documentation

The following steps may be utilized to prepare the documentation for identification of potential hazards and their ultimate disposal and mitigation:

- Prepare ~~a~~an RFP to obtain proposals for hazardous materials removal
- Review proposals received for removal
- Request an estimate for hazardous materials removal
- Perform an environmental analysis, utilizing appropriate procurement procedures in accordance with the Procurement Policy
- Review work schedule
- Provide adequate oversight to ensure hazardous materials are thoroughly and properly removed and disposed of
- Ensure all governmental (federal and state) approvals and clearances are obtained
- Provide approval of contractor and consultant requests for payment
- Obtain site closure and No Further Action letter

#### 2.5.00.00      NEGOTIATIONS FOR RIGHT OF WAY ACQUISITIONS

#### ~~2.05.00.00~~      ~~NEGOTIATIONS~~

#### 2.5.1.00      ~~2.05.01.00~~      Acquisition Agents

Right of way consulting firms may be retained to assist with negotiations for land acquisitions.



2.5.2.00      2.05.02.00      Procedure

Every reasonable effort is made to acquire all interests in real property by voluntary conveyance through negotiations. The general procedures utilized during the negotiation process are as follows:

- A Right of Way Department staff person or a right of way consultant contacts each property owner to deliver a written offer of the approved amount of Just Compensation and to discuss the Commission's acquisition policies and procedures. Whenever practical, negotiations are conducted by direct, personal contact with the property owner or his/her representative.  
The written offer is accompanied by an appraisal, except ~~in~~ when waiver valuations are used, indicating the basis for the amount established as Just Compensation. As per California Government Code, the appraisal shall contain detail sufficient to ~~indicate~~ clearly indicate the basis for the offer, including, but not limited to: (1) The date of valuation, highest and best use and applicable zoning of property; (2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value. (3) The Just Compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.
- Any business owner on the property is notified in writing by the Right of Way Manager (or designee) of their eligibility for applicable relocation assistance and provided a written description of the Commission's relocation program and their rights under the Uniform Relocation Act.
- A reasonable amount of time (to be determined on a case-by-case basis) is given to the owner to consider the offer and to present information, ~~which~~ which may not have been considered during the appraisal process. The Commission provides a full copy of the appraisal and appraisal review reports with each offer. The Commission will consider the owner's presentation. Once agreement is reached and the proper forms executed, an escrow is opened in most cases and the transfer of ownership is completed.
- In cases where the owner rejects the original offer, but a purchase can be negotiated ~~for a higher price~~ on different terms rather than utilizing condemnation proceedings, an administrative settlement is negotiated. Decisions on administrative settlements are coordinated by the Right of Way Manager and are based on items, ~~such as~~ such as the appraiser's opinion of value and recent court awards for similar types of properties involved in the condemnation process. For FTA funded projects, FTA Circular 5010. ~~DE~~ DE requires prior FTA concurrence for administrative settlements in excess of \$50,000 more than the current fair market value.
- In the opinion of the Right of Way Manager, when the possibility of reaching an agreement by negotiation has been exhausted, a request to utilize condemnation proceedings is directed to legal counsel. Condemnation is the least desirable acquisition method and is only used when ~~all~~ other methods have failed. When the Commission



project is FTA funded, FTA prior concurrence is required when a property appraised at ~~\$500,000~~ 1,000,000 or more must be condemned.

- Negotiations shall continue with the owner's attorney or representative through the Commission's legal counsel during any condemnation action in an effort to reach settlement.

## 2.6.00.00      RELOCATION FOR RIGHT OF WAY ACQUISITIONS

### ~~2.06.00.00~~      ~~RELOCATION~~

#### 2.6.1.00      ~~2.06.01.00~~      Relocation Agents

Relocation consultants may be retained to develop a relocation plan and administer relocation assistance and benefits as required, pursuant to the Uniform Relocation Act if it has been clearly shown that such procedure is in the best public interest.

#### 2.6.2.00      ~~2.06.02.00~~      Relocation Program

The Uniform Relocation Act provides for certain relocation advisory services and benefits in addition to the amount a person receives as Just Compensation for property. The Commission relocation program is designed to conform to the requirements of the Uniform Relocation Act and to provide the maximum assistance allowed to the displaced owners and tenants.

A relocation advisory program is established to provide the maximum assistance allowed to all persons required to relocate. The relocation consultant implements the program under the supervision of the Right of Way Manager (or designee). Relocation brochures are available to describe the relocation benefits available to residential and commercial displacees.

#### 2.6.3.00      ~~2.06.03.00~~      Appeal Process

Any person aggrieved or otherwise dissatisfied by a determination regarding their eligibility for a relocation benefit or by the amount of any such payment may file an appeal requesting review of their case by the Commission Appeals Board within sixty (60) days after receipt of the Commission's determination of the person's claims. (See Chapter 7)

## 2.7.00.00      ~~2.07.00.00~~      RIGHT OF WAY PROPERTY MANAGEMENT

### 2.7.1.00      ~~2.07.01.00~~      Scope

Property management involves the control and management of land and improvements from the time title is vested with the Commission until the property is used for the purpose it was acquired. ~~It is the function~~ More specifically, Property Management is concerned with the interim management of all newly acquired right of way and any improvements thereon, including demolition and disposition of excess property remnants or property rights. In cases where there are existing contracts, such as leases or licenses, involved in the right of way acquired, ~~#~~ Property Management also will encompass management of those contracts.

### 2.7.2.00      ~~2.07.02.00~~      Right of Way Inventory

An important property management tool is the right of way inventory. An electronic indexing system for all the Commission right of way is overseen by the Right of Way Manager. Individual property sheets include information such as type and description of asset, title policy, parcel ID numbers, legal description, type of interest, term of rental, instrument of conveyance and effective date, liens and encumbrances, appraisal value, acquisition cost and (federal or state) share of acquisition cost expressed in dollars and dollars per square foot.

#### 2.7.3.00     ~~2.07.03.00~~     **Aging and Receivables Report**

In cases where there are existing contracts involved in the right of way acquired, an Aging/Receivables Report will be developed. This report will include the name of the tenant/licensee, location of the subject property, monthly/annual rent, date rent is due, term, renewal options, date rent will be increased and the basis for rent increase and payment status. All future ~~leases,~~ licenses and right of entry agreements should include ~~"boiler plate"~~ standard provisions such as:

- ~~•~~ The Commission's right to terminate by providing 30 days written notice to the lessee
- ~~•~~ The Commission's right to enter and inspect the property at any time
- ~~•~~ Indemnification and hold harmless clauses
- ~~•~~ Insurance provisions to protect the Commission against liability

~~The report should be generated on a quarterly basis. The Right of Way Department will coordinate accurate and timely reporting with the Finance Department.~~

#### 2.8.00.00     ~~2.08.00.00~~     **UTILITY RELOCATION**

##### 2.8.1.00     ~~2.08.01.00~~     **Identification**

During the design and engineering process, utilities affected by the proposed construction will be identified. Typically, the affected utilities may need to be relocated, protected in place, or possibly abandoned. Early identification of utility conflicts and early coordination with the utility company is highly recommended as timely design and completion of all utility relocations affect the Commission's ability to commence construction. All potential utility conflicts and their replacement locations will be identified in consultation with the Commission's engineering consultant.

##### 2.8.2.00     ~~2.08.02.00~~     **Critical Path**

In preparing the Right of Way Acquisition Schedule, the Right of Way Department will give priority to acquiring properties or property interests necessary for utility relocation.

Right of Way Staff, in conjunction with the project utility coordinator, will be responsible for the negotiation, preparation and execution of utility relocation agreements and it will monitor utility relocation costs and schedule.

**3.00.00.00 ~~3.00.00.00~~ TITLE REPORT, ESCROW SERVICES, AND DEEDS****3.1.00.00 ~~3.01.00.00~~ TITLE REPORTS****3.1.1.00 ~~3.01.01.00~~ General**

For the purpose of this manual the terms “Title Reports”, “Preliminary Title Reports” and PTR” are interchangeable.

**3.1.2.00 ~~3.01.02.00~~ Purpose**

Preliminary Title Reports (PTRs) are used to establish ownership and identify liens and encumbrances on real property. PTRs are used in the preparation of surveys, legal descriptions, offer letters, right of way contracts and utility relocation plans.

A PTR is an offer to insure and issue a title policy with the listed exceptions. Most PTRs contain a disclaimer stating that a PTR is not a written representation as to the condition of title to real property, and may not list all liens, defects, and encumbrances affecting title to the land.

California Insurance Code Section 12340.11 states that “Preliminary report”, “commitment”, or “binder” are reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein. No contract or liability exists until the title insurance policy is issued.

**3.1.3.00 ~~3.01.03.00~~ Commission and RCA Policy**

It is the policy of the Commission and the RCA to obtain a PTR on all fee simple and less than fee simple property rights acquisitions. However, for Rights of Entry, ownership information can be obtained from the County assessor or an on-line provider of ownership information. Upon identification of the property to be acquired, the Project Engineer, Commission Right of Way Staff or its consultant may order the PTR from an approved title company by providing an assessor’s parcel number, property address or assessor’s map. The title company shall be selected in accordance with the Procurement Policies procedure for procurement of professional services under the micro-purchase limits.

**3.1.4.00 ~~3.01.04.00~~ Title Information**

The following title information is typically included in a PTR:

- Owner name and parcel size
- Special assessments
- Trust deeds and mortgages
- Liens and encumbrances such as taxes, easements and judgments
- Covenants and restrictions
- Easements

An updated PTR should be ordered prior to closing escrow on the purchase of properties and property interests in accordance with the Procurement Policy procedure for procurement of professional services under the micro-purchase limits.

#### 3.1.5.00      ~~3.01.05.00~~      **Title Companies**

~~An approved list of "on call" title companies may be established through the Commission Procurement Process.~~

Staff will determine the title company it contracts with for each project in accordance with the Procurement Policy procedure for procurement of professional services under the micro-purchase limits.

### 3.2.00.00      ~~3.02.00.00~~      **LITIGATION GUARANTEES**

#### 3.2.1.00      ~~3.02.01.00~~      **Purpose**

A Litigation Guarantee ensures the accuracy of interests in the property for purposes of a legal proceeding. It sets forth the current record of title and encumbrances on the real property at issue and identifies the parties who should be named in the lawsuit. The Litigation Guarantee insures against claims of lienholders, if any, who should have been but were not made parties to the action because they were not named in the Litigation Guarantee.

#### 3.2.2.00      ~~3.02.02.00~~      **Commission Policy**

If a PTR is obtained during the acquisition process, it must be upgraded to a Litigation Guarantee prior to condemnation. If a Litigation Guarantee is obtained during the acquisition process, it must be updated when condemnation proceedings are initiated. Presently, RCA does not utilize eminent domain.

### 3.3.00.00      ~~3.03.00.00~~      **ESCROW SERVICES**

#### 3.3.1.00      ~~3.03.01.00~~      **Purpose**

The purpose of using escrow services is to ensure that the title and ownership of properties and property interests acquired by the Commission and the RCA are free and clear of liens and encumbrances that will adversely affect the use of the property for the project. Escrow is a neutral depository for funds and documents deposited by the Commission, the RCA, and other parties.

#### 3.3.2.00      ~~3.03.02.00~~      **Commission and RCA Policy**

It is the policy of the Commission and the RCA to secure the services of an escrow company in all of its transactions involving the acquisition of properties and property interests. Exceptions for internal escrows may be allowed with approval.

Exceptions include transactions under \$10,000 and where only temporary interests are being obtained.

#### 3.3.3.00      ~~3.03.03.00~~      **Escrow Instructions**

Upon submission of the ~~right of way contract~~ purchase and sale agreement to escrow, the escrow company will issue escrow instructions to all parties to the transaction. Documents that may need to be deposited into escrow in order to complete the transaction include:

- Grant deed, quitclaim deed, ~~lease~~ license, grant of easement, etc.
- Instructions to escrow agent to issue a policy of title insurance in the amount specified in the escrow instruction, vesting title to the Commission or the RCA, free and clear of encumbrances, except those otherwise stated
- Statement indicating which title exceptions, listed in the PTR are acceptable to the Commission or the RCA and may be shown on the title policy
- Instruction as to disposition of taxes
- Authorization to pay the proper demands from lien holders, in accordance with the right of way contract and pay the balance to the grantor(s)

#### 3.3.4.00      ~~3.03.04.00~~      **Covenants, Conditions and Restrictions**

Title may be acquired subject to the conventional, general or individual type of tract restrictions, provided the nature and effect are known and considered. Unusual covenants or conditions which restrict land for a specific use, such as park purposes, school purposes, or railroads, shall be considered particularly as to a possible forfeiture of title upon breach or violation. Releases to clear such reversionary interests should be secured, as necessary. See Section 13.12.00.00 for additional RCA procedures related to Covenants, Conditions and Restrictions.

#### 3.3.5.00      ~~3.03.05.00~~      **Title Clearance**

It is incumbent on the surveyor, appraiser and the Acquisition Agent to examine the preliminary title report to determine the condition of title. This would include vesting information, liens, encumbrances, easements, covenants, conditions and restrictions, leases, reservations, taxes, assessments, bonds, trust deeds, mortgages and contracts of sale and bonds. Every effort to secure clear title for the Commission or the RCA must be made. Any objectionable title exceptions that cannot be deleted (and as to which the property must be acquired "subject to" ~~those exceptions~~) will require Caltrans pre-approval for later acceptance into the State Highway System.

The PTR must be analyzed to determine which exceptions will be cleared and which will remain on title to be acquired subject to the encumbrance. Encumbrances involving the public record should include the appropriate book and page or date and instrument number. Liens and encumbrances not listed must be cleared before payment is made. The Acquisition Agent should assist the property owner in clearing title of such liens and encumbrances.

If an encumbrance affects a portion of the grantor's land other than that being acquired by the Commission or the RCA, it does not need to be eliminated. All encumbrances adverse to Commission or the RCA title must be cleared unless adequate reason clearly justifies taking title subject to such encumbrances. The actual and potential effect of each exception on title should be considered. The RCA encumbrances must be viewed with the MSHCP in mind.

**3.3.6.00      ~~3.03.06.00~~      Payment and Closing Procedure**

The escrow company shall, prior to payment and escrow closing, obtain from the grantor(s) their tax identification number or social security number or federal employer identification number.

The Right of Way Department shall request the Accounting Department to wire the funds necessary to close after receiving the estimated closing statement and wiring instructions from escrow. Payments to escrow companies may be delivered in person or ~~by certified mail with return receipt requested~~. Submission of payment to escrow companies shall include the escrow number, assessor's parcel number, name of property owner, and check number/check or wiring instructions. Owners are to be notified of the date the payment is delivered to the escrow company.

Delivery of payment for the acquisition of minor property rights, such as rights of entry, permits and temporary licenses, may be delivered by Right of Way Staff or its consultant. Right of Way Staff or its consultant will obtain the signature of the recipient acknowledging receipt of the payment. Payments mailed to owners shall be accompanied by a letter and sent by ~~certified mail with return receipt requested~~.

It will be the responsibility of the Acquisition Agent to ensure that all documents and payment required for escrow closing be delivered as scheduled. The closing instructions will be reviewed to determine whether all necessary instruments to clear title have been executed and recorded. Taxes shall be pro-rated or in cases of partial acquisitions, properly segregated upon recordation of the deed conveying the property to the Commission. For the RCA acquisitions, escrow requires the Seller to pay all property taxes owed on the property at the close of escrow because the RCA is tax-exempt. The RCA will work with the Seller and the County Tax Assessor's office to refund the property tax assessed for the time period that the Seller no longer owned the property.

**3.3.7.00      ~~3.03.07.00~~      Recording of Documents**

All documents conveying land, easements, realty rights, trust deed, mortgage releases and restrictive easements to the Commission or the RCA, regardless of consideration recited therein, shall be recorded in the appropriate Recorder's Office.

**3.3.8.00      ~~3.03.08.00~~      Escrow Companies**

~~An approved list of "on call" title companies may be established through the Commission Procurement Process.~~

Staff will determine the escrow company it contracts with for each project in accordance with the Procurement Policy procedure for the procurement of professional services under the micro-purchase limits.

**3.4.00.00      ~~3.04.00.00~~      TITLE INSURANCE****3.4.1.00      ~~3.04.01.00~~      Purpose**

An owner's policy of title insurance is secured to insure title effectively free and clear of any liens and encumbrances other than current year's taxes and assessments, easements, covenants and restrictions which do not materially or adversely affect the use of the property for the project.

#### 3.4.2.00      ~~3.04.02.00~~      Commission and RCA Policy

It is the policy of the Commission and the RCA to secure title insurance for all ~~long-term~~long-term property interests. Staff will order a title insurance policy in accordance with the Procurement Policy procedure for the procurement policies of professional services under the micro-purchase limits.

#### 3.5.00.00      ~~3.05.00.00~~      ALTA SURVEY

##### 3.5.1.00      ~~3.05.01.00~~      Purpose

An ALTA Land Survey is the most comprehensive of all surveys. It provides the same monetary coverage as a standard policy, but it covers the property owner against additional risks. An ALTA survey is used to determine property lines, locate improvements, identify easements, utilities, and many other conditions affecting the property.

##### 3.5.2.00      ~~3.05.02.00~~      Commission and RCA Policy

It is the policy of the Commission and the RCA to secure an ALTA survey for any acquisition where there may be a dispute over the property boundary.

#### 3.6.00.00      ~~3.06.00.00~~      DEEDS

##### 3.6.1.00      ~~3.06.01.00~~      Fee Simple Title

An unencumbered fee simple title to real property gives its owner the right to use and enjoy the property in any manner, provided its uses are in compliance with prevailing laws and ordinances. Fee simple title represents the whole bundle of rights over real property from which many pieces or segments may be conveyed or ~~leased~~licensed.

##### 3.6.2.00      ~~3.06.02.00~~      Conveyances

- Grant Deed. The transfer of all rights and control over real property. It is used to acquire fee simple title to real property. Includes statutory warranties.
- Grant of Easement. The transfer of a possessory interest less than fee simple title to real property. Easements may be permanent or temporary depending on project requirements and may include temporary construction easements, aerial easements and public utility easement, and conservation easements.
- Quitclaim Deed. The transfer of any right held by the grantor over real property. Includes no statutory warranties. This is the least desirable means of acquiring property rights.
- Final Order of Condemnation. The transfer of any right sought through the eminent domain process.

##### 3.6.3.00      ~~3.06.03.00~~      Forms

All forms of legal instruments used to acquire property and property rights on behalf of the Commission [and the RCA](#) shall be “approved as to form” by legal counsel.



**4.00.00.00 ~~4.00.00.00~~ SURVEYS AND LEGAL DESCRIPTION****4.1.00.00 ~~4.01.00.00~~ SURVEYS****4.1.1.00 ~~4.01.01.00~~ Purpose**

The purpose of a survey is to establish and calculate property ownership boundaries, right of way requirements and excess land. It is used as a basis for all right of way and in a case by case basis for MSHCP land acquisitions and legal descriptions.

**4.1.2.00 ~~4.01.02.00~~ Commission and RCA Policy**

It is the Commission's and RCA's policy to establish property boundaries for the following acquisitions:

- ~~•~~ Total parcels
- ~~•~~ Partial parcels
- ~~•~~ Permanent easement rights
- ~~•~~ Temporary construction and access easements
- ~~•~~ Excess land

All surveys shall be signed and sealed by a licensed surveyor or engineer.

**4.1.3.00 ~~4.01.03.00~~ Survey and Right of Way Engineering Companies**

It is the Commission's ~~policy~~ and RCA's practice to establish an approved list of "on call" survey companies through ~~the~~ an open and competitive procurement process.

**4.2.00.00 ~~4.02.00.00~~ LEGAL DESCRIPTION****4.2.1.00 ~~4.02.01.00~~ Purpose**

The purpose of a legal description is to accurately define, from legally established monuments and survey data, land areas or rights to be conveyed.

**4.2.2.00 ~~4.02.02.00~~ Methods of Legally Describing the Fee or Portion Thereof**

- ~~•~~ Metes and Bounds Description. This method defines the perimeter of the area by directions and/or bearings and distances. This type of description must commence at a known established monument, such as section corner or be "tied" to a subdivision or portion thereof that has been previously filed at a Recorder's office.
- ~~•~~ Centerline or Baseline Description. The centerline method is sometimes used for highway purposes and identifies the right of way as being a strip of land offset on either side by a specified width oriented to a center line. The baseline method is employed in the same manner as the centerline except right of way is dimensioned from the baseline rather than centerline. When the baseline is used it should reference the center median of the highway whenever possible. The centerline or baseline for right of way descriptions must be "tied" to section corners or lot corners of properly filed subdivisions.

- ~~Government Land Survey Description~~. This method describes land in relation to the government land survey system under which land is broken down into areas called townships. Townships are for the most part 36 square miles or 6 miles square. Each township is broken down into 36 sections; each section is usually 640 acres. Sections in each township are numbered consecutively beginning with number 1 in the northeast corner of the township, and counting right to left then left to right and so on weaving back and forth through the sections of the township, and ending with number 36 in the southeast corner.
- ~~Lots and Block Description~~. This method is based on plat maps lodged with the County public records. The plat map subdivides areas into subdivisions, which may then be divided into blocks and lots.

#### 4.2.3.00      ~~4.02.03.00~~      Description Writers

It is preferred that legal descriptions be written and plat maps prepared by the same company that prepared the survey for the property or property interest being acquired.

#### 4.2.4.00      ~~4.02.04.00~~      Commission and RCA Policy

It is the Commission's and RCA's policy that a currently licensed surveyor stamp be included on all legal descriptions for the following acquisitions:

- ~~Total parcels~~ (when needed)
- ~~Partial parcels~~
- ~~Permanent easement rights~~
- ~~Temporary construction and access easements~~

**5.00.00.00 ~~5.00.00.00~~ APPRAISAL****5.1.00.00 ~~5.01.00.00~~ REAL PROPERTY APPRAISAL BASIC OPERATING POLICIES****5.1.1.00 ~~5.01.01.00~~ Policy**

It shall be the policy of the Commission to secure at least one appraisal of each acquisition having an estimated value exceeding \$10,000. Appraisals will be prepared in an approved appraisal format and comply with the provisions of Federal Uniform Relocation Assistance and Real Property Acquisition Policies ~~Acts~~Act, California eminent domain law and the Uniform ~~Appraisal~~ Standards of Professional Appraisal Practice (USPAP) and/or the Uniform Appraisal Standards for Federal Land Acquisitions (“Yellow Book”), prior to initiation of negotiations. All appraisals for projects utilizing federal funds will be reviewed by a qualified review appraiser. RCA’s appraisal standards are set forth in the MSHCP and explained further in Section 13.8.00.00 of this Manual.

**5.1.2.00 ~~5.01.02.00~~ Necessity for Appraisal**

An Appraisal is necessary to ensure compliance with the Constitutional requirement to pay “Just Compensation” when private property is acquired or damaged for public use. The measure of “Just Compensation” is “fair market value” which is contained in an Appraisal Report.

An appraisal is generally required for acquisition and record keeping purposes. The report shall contain a summary of basic information, determination of highest and best use and conclusions together with pertinent supporting data.

**5.1.3.00 ~~5.01.03.00~~ Appraisal Not Required**

An appraisal is not required if the Commission determines that an appraisal is unnecessary because the valuation problem is noncomplex and the fair market value is estimated at \$10,000 or less, based on a review of available data. An appraisal waiver may also be used up to a maximum of \$25,000, if the Commission offers the property owner the option of having the Commission appraise the property and the property owner declines the appraisal.

The right of way department staff ~~or designated consultant should~~may prepare a waiver valuation ~~and a “Determination of Just Compensation.”~~ A waiver valuation is not an appraisal and is used merely for documentation in support of the amount of Just Compensation to be paid to the property owner. A “Determination of Just Compensation” will be prepared using the appraised value as the basis. The “Determination of Just Compensation” may be documented with a diary entry, stating the basis of the value conclusion, i.e., land value (with calculations) and improvement value. In addition, a photograph(s) of the property must be included. Waiver valuations are not subject to USPAP or Yellow Book.

Waiver valuations cannot be used for condemnation proceedings, including precondemnation offers required by the Government Code.

The RCA may prepare an appraisal for property donations for asset valuation purposes (i.e., compliance with (GASB 51).

~~An appraisal is also not required if the property owner is donating or exchanging the property and has released the Commission from the obligation to appraise the property.~~

The criteria to be considered in making the determination of whether the parcel valuations are noncomplex are:

- ~~•~~ There is no serious question as to highest and best use
- ~~•~~ Adequate market data is available
- ~~•~~ Substantial damages and benefits are not involved
- ~~•~~ There is no substantial decrease in market value due to the presence of hazardous waste.

#### 5.1.4.00      ~~5.01.04.00~~      **Review Appraisal**

All appraisals for federally funded projects, whether prepared by Commission staff or by an independent fee appraiser, must be reviewed by an independent review appraiser.

Before an appraisal is sent to a review appraiser, Commission staff shall internally review the appraisal to ensure that it accurately states the following:

- ~~•~~ Property address
- ~~•~~ Property owner(s) name
- ~~•~~ Property APN
- ~~•~~ Purpose of the appraisal
- ~~•~~ Property interests to be acquired
- ~~•~~ Legal description and plat map of the property interest to be acquired

The review appraiser must review the appraisal(s) for compliance with the appraisal contract, State and Federal Law requirements and USPAP and/or Yellow Book. The review appraiser may choose from the following:

- ~~•~~ Recommend the valuation of an appraisal as Just Compensation
- ~~•~~ Not recommend or accept the appraisal even though it meets all requirements
- ~~•~~ Develop and report an amount believed to be Just Compensation

When the review appraiser finds the report lacking in content, support, reasoning, or conclusion, the review appraiser may elect to supplement the areas considered lacking, including modifying the appraised value. A written report clearly delineating the areas in question and full support and documentation for the reviewer's conclusions must be provided. In addition, review appraisers may work with the first appraiser to modify the appraisal report to correct any deficiencies.

#### 5.1.5.00      ~~5.01.05.00~~      **Notice to Property Owner of Decision to Appraise**

When the Commission decides to appraise a property for acquisition, written notice must be given to the property owner. The written notice shall include the following:

- The specific area being considered for a particular public use, i.e., the project
- The owner's property is located within the area
- That all or a portion of the owner's property (which should be generally described) may be acquired for public use
- An offer for the owner or owner's representative to accompany the appraiser on an inspection of the property
- Reasonable notice of the date and time of the inspection

~~Enclosed~~ For Commission projects, enclosed with the written notice will be a written explanation of the eminent domain process and description of property owner rights and a Title VI Brochure.

#### 5.1.6.00      ~~5.01.06.00~~      **Record Keeping**

The original appraisal and review appraisal, when applicable, as well as an electronic copy, shall be kept in each ~~particular~~ parcel file.

#### 5.1.7.00      ~~5.01.07.00~~      **Fee Appraisers and Review Appraisers**

It is the Commission's policy to establish an approved list of "on call" fee appraisers and review appraisers.

### 5.2.00.00      ~~5.02.00.00~~      **REAL PROPERTY APPRAISAL REPORTS**

#### 5.2.1.00      ~~5.02.01.00~~      **Noncomplex Valuations**

Appraisal reports of noncomplex valuations of \$25,000 or less must include at least the following:

- Parcel summary page
- Senior Field Review Certificate
- Certificate of Appraiser
- Photograph(s) of the property
- Index map
- Appraisal map
- Comparable data pages with photographs
- Comparable data map
- An identification of significant personal property

Waiver Valuations with a determination of Just Compensation less than \$10,000 must include the following:

- Determination of Just Compensation and Title Page
- Certificate of Determination of Just Compensation
- Parcel summary page
- Senior Review Certificate
- Photograph(s) of property
- Index map

- Appraisal map
- An identification of significant personal property

Waiver valuations may be prepared by knowledgeable Commission staff ~~or right-of-way consultants~~ and do not have to be completed by ~~an~~ a licensed appraiser.

#### 5.2.2.00     ~~5.02.02.00~~     Appraisal Formats

Appraisal Report Format - USPAP 2-2(a). This format is required when there are other intended users in addition to the client and one of the following occurs:

- There is a substantial acquisition and the appraisal problem is judged to be complex. The complexity might be due to the nature or value of the acquisition of land, improvements, property rights, and/or consequential damages resulting from the acquisition.
- The highest and best use of a property is different from existing use.
- The remainder is an uneconomic remnant.
- Damages, other than cost to cure, are more than nominal.
- Decreases or increases in market value due to the proposed improvements are involved.
- More than one approach to value will be applied.
- Restricted Appraisal formats are unsuitable for any reason.
- There is a possibility of eminent domain proceedings.
- A "Complex Specialty" report is needed. Specialty Reports are used to assist the principal appraiser in estimating contributory value of specialty items, such as machinery and equipment.
- A Uniform Residential Appraisal Report (URAR Form) may be used when the following occurs:
  - The subject property is a ~~single family~~ single-family residence.
  - The residential improvements represent the highest and best use of the property.
  - It is a total acquisition or in the case of a partial acquisition the remainder is an uneconomic remnant.

Restricted Appraisal Report Format - USPAP 2-2(b). This format shall be used when the only intended user is the client and one of the following occurs:

- The value will be low but the property requires an appraisal.
- The appraisal involves only vacant land or land with minor improvements.
- Before and after valuations are not required.

#### 5.2.3.00     ~~5.02.03.00~~     General Criteria for Appraisals

- Appraisals may not include any payment of relocation assistance benefits or consider that such relocation payments will be made.

- Appraisals must be independently prepared, and each appraisal must be signed by the individual(s) making the appraisal and include appropriate certification prior to submittal for review.
- Documentation by reference is acceptable when the referenced material is in the Commission's files.
- Qualifications of all appraisers and all technicians who contribute to the report must be in the Commission's files or in the report.
- Fee appraisers must be State Licensed.
- Appraisals must be consistent with the Uniform Standards for Professional Appraisal Practice (USPAP).
- Appraisals may also need to be consistent with the Uniform Appraisal Standards for Federal Land Acquisitions ("[Yellow Book](#)").
- Appraisals must comply with State approved requirements.

#### 5.2.4.00      5.02.04.00      **Instructions to Appraisers**

When Commission staff order an appraisal, clear and specific written instructions in the form of a scope of work will be provided which will include the following information:

- Address of the property to be appraised
- Assessor's Parcel Number
- Owner of the property, mailing address and phone number (if available)
- Name of tenant (if any), mailing address and phone number (if available)
- Purpose of the appraisal (estimate Just Compensation; disposal/sale of excess; etc.)
- Interest to be appraised (total/partial acquisition; easement; aerial rights; rental estimate; access rights; loss of business goodwill; outdoor signs)
- Legal description of property (in cases of partial acquisition, provide legal description of remainder)
- Survey/plat maps/[GIS exhibits](#)
- Fee to be paid to appraiser (if more than one (1) appraisal is involved, itemize fees)
- Specific date when appraisal(s) is due to be completed
- Contact person at the Commission [or the RCA](#)

#### 5.2.5.00      5.02.05.00      **Approaches to Value**

- Sales Comparison Approach. This approach should be developed and relied upon whenever there is adequate market data. The approach shall include adequate research to identify all pertinent similar properties for which sales, listings or rental data are available.

All comparable information will be verified with the buyer, seller, broker or other person having knowledge of the price, terms and conditions or the reason for not so confirming shall be stated.

Significant adjustments for similarities and dissimilarities such as market conditions, location, physical and economic characteristics, and motivation for the transaction shall be individually explained. Substantial lump sum adjustments are not acceptable.

- Cost Approach. This approach can be relied upon when appraising a special purpose property. However, this should not be used unless the special purpose improvements develop the property to its highest and best use and a potential buyer would reasonably consider, as an alternative, the cost of acquiring comparable site and reproducing the improvements. The cost of the improvements to a site with a different highest and best use should be addressed together with the incurable obsolescence inherent in this type of analysis.

This approach shall consist of factual data beginning with reproduction or replacement cost and shall state the specific sources of all figures used. Physical deterioration, functional and external obsolescence shall be individually supported in narrative form. All calculations must be shown. The appraiser's opinion of the value of the land shall be supported by confirmed comparable sales in the same manner as in the sales comparison approach.

- Income Approach. Reliance on this approach is appropriate when the property is income providing, including but not limited to rental properties. It shall include verified market data arranged to show and support, as a minimum, gross economic rent or income, allowance for vacancy and credit losses, itemized estimate of each pertinent expense and any reserves for replacement.

Capitalization of net income shall be at a rate prevailing in the market for the type of property and location. Capitalization technique and rate used shall be explained in a narrative form and supported by a statement of the market facts, which support such rates and factors, and appraiser's analysis of such market factual data that leads to the conclusion of the capitalization rate.

#### 5.2.6.00      ~~5.02.06.00~~      **Special Appraisal Considerations**

The following are special considerations in reviewing appraisals (internally):

- American with Disabilities Act of 1990 ("ADA"). The ADA applies to any public accommodation, commercial facility or private entity that offers examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional or trade purposes. It requires that all new improvements after January 26, 1993, must be designed and constructed to be readily accessible and usable by individuals with disabilities.

Property to be appraised shall be inspected on the date of valuation for its compliance or non-compliance with ADA regulations. All comparable sales should be analyzed as to their compliance or non-compliance to ADA regulations.



- Hazardous Waste or Materials. Properties that involve hazardous waste or materials (as defined by state and federal laws) will be appraised under two scenarios. The first reflects the hypothetical condition as if free and clear of hazardous waste and the second is recognizing the effects of hazardous waste or materials, or “as is.” For the second valuation the appraiser must consider the estimated cost of cleanup requirements, provided by the environmental consultant, market data of properties with comparable cleanup problems and marketability of parcels with known hazardous waste problems.
- Access Rights. The value of access rights is measured by the loss of value of the remaining property before and after the restriction.
- Agricultural Improvements. Agricultural buildings, farm residences and specialized fences will be valued as improvements at depreciated value in place.
- Severance Damages. Severance damage is the loss in value of remaining property after acquisition and construction. Severance damages are valued by appraisal of the remainder as a portion of the total property in the before condition and as a remainder in the after condition (disregarding the benefits of the construction project).
- Cost to Cure. Some severance damages may be mitigated or entirely eliminated by estimating the cost to cure the damage.
- Benefits. Benefits are valued by appraising the remainder before and after the acquisition and construction of the project. Benefits are to be offset against any severance damages.
- Public Utility Parcels. Property owned in fee by public utilities (including governmental utility agencies) utility agencies, irrigation districts and flood control districts may be subject to special treatment, including the purchase of replacement land for exchange.
- Excess Land Appraisal. Excess land will be valued using a Market Value Appraisal or Market Value Determination (\$10,000 or less) and excess land with a highest and best use as plottage (joinder or assemblage) to an adjoining property will be appraised at the amount it adds to the value of the adjoining property unless directed otherwise by staff. The before and after valuation method will be used when appropriate.
- Airspace Valuations. Methods in appraising airspace rights will be the same as those applied in appraising any right of way acquisition parcel, except that consideration should be given to all of the factors that may limit or enhance its utility because of the existence of the project improvement located on or near the parcel. Full consideration will be given to any enhancement of real estate values in the area because of the location of the project improvement.

- Rent Determination. A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

### 5.3.00.00      5.03.00.00      **UNIFORM REGULATIONS**

#### 5.3.1.00      5.03.01.00      **The Uniform Relocation Act**

Regulations implementing appraisal standards of the Uniform Relocation Act are found in 49 CFR Part 24. The Uniform Relocation Act applies to any federal or federally-assisted program or project if federal funding is to be used in any phase of the program or project. Federal funding for the right of way acquisition is not the key in determining whether or not federal requirements apply to appraisals. If federal funds are going to be used in any part of the project, but not in acquiring right of way, the Uniform Relocation Act still applies to the appraisals and acquisitions.

#### 5.3.2.00      5.03.02.00      **Purpose**

The purpose of the Uniform Relocation Act is to ensure that all property owners are treated fairly and uniformly when it is necessary for their property be acquired for any Federal or federally-assisted program or project.

#### 5.3.3.00      5.03.03.00      **Appraisal Requirements of the Uniform Relocation Act**

The amount determined to be Just Compensation must be established by the Commission before the initiation of negotiations (the first time a formal written offer is presented to the owner preferably in person or by certified mail, if necessary).

Any decrease or increase in the market value of the property, which is caused by the public improvement or its likelihood prior to the date of valuation, must be disregarded by the appraiser, except physical deterioration within the reasonable control of the owner.

When property values go up or down because of the proposed public improvement, the appraiser must disregard such changed value when estimating the before value but not in estimating the after value as permitted by state law, typically represented as damages and/or benefits.

The appraiser should consider the possibility of uneconomic remnants and the Commission must offer to buy any remainder that is of little or no value or utility to its owner.

The appraiser must separately state damages to the remainder property and value of the property acquired.

All buildings, structures and improvements, including those owned by tenants, as part of the real property if they will be required to be removed or will be adversely affected must be valued by the appraiser.

Tenant owned buildings, structures and improvements must be appraised as part of the real property based on their contributory value as if they could remain in place, or their value for removal (salvage value), whichever is greater. Lease terms requiring tenants to remove building,

structures or improvements must be disregarded and appraise as if they could stay through their useful life as extended by normal maintenance.

If the Commission acquires any interest in real property, it must acquire equal interest in any buildings, structures and improvements located upon the real property, which the Commission will require to be moved or will adversely affect.

This also applies to tenant owned buildings, structures and improvements located on the real property, even if the tenant is required by lease to remove them at the end of the lease. Such buildings, structures and improvements will be valued at contributory value as part of real property or value for removal (salvage value), whichever is greater.

An adequate description of the items identified as personal property. When there is [an](#) agreement as to ownership between fee owner and tenant, the Commission must make a separate offer to tenant for tenant owned buildings, structures and improvements, thus, there must be a separate appraisal.

#### 5.4.00.00     ~~5.04.00.00~~     CALIFORNIA REGULATIONS

##### 5.4.1.00     ~~5.04.01.00~~     Regulations

Appraisal requirements for any acquisition that utilizes the power of eminent domain in the State of California are found in Government Code Section 7267, et seq. and California Code of Civil Procedures 1263, et seq.

##### 5.4.2.00     ~~5.04.02.00~~     Purpose

The purpose of the California regulations is to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices.

##### 5.4.3.00     ~~5.04.03.00~~     California Appraisal Requirements

The owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during his or her inspection of the property.

The fair market value of the property acquired is defined as the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

The appraisal shall include the date of valuation, highest and best use, applicable zoning of property, principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value, if appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and

shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

Compensation for damages to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded.

#### 5.4.4.00     ~~5.04.04.00~~     **Property Owner Appraisals**

California Code of Civil Procedures 1263.025 requires the Commission to offer to pay the reasonable costs, not to exceed five thousand dollars (\$5,000), ~~of~~ of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal must be conducted by an appraiser licensed by the ~~Office~~Bureau of Real Estate Appraisers.

[When dealing with an RCA project, property owners often obtain a second appraisal to negotiate as outlined in Section 6 of the MSHCP.](#)

#### 5.4.5.00     ~~5.04.05.00~~     **State Requirements**

All appraisals for State Highway System projects must meet all conditions and forms outlined in Chapter 7 of the Caltrans Right of Way Manual.

### 5.5.00.00     ~~5.05.00.00~~     **SPECIALTY APPRAISALS**

#### 5.5.1.00     ~~5.05.01.00~~     **Outdoor Advertising Signs**

Outdoor advertising signs will be valued as improvements unless they are owned by outdoor advertising companies. If relocation of such signs is feasible, that fact may be shown for information purposes only. Outdoor advertising signs may be valued by a goodwill appraiser or a fixtures and equipment appraiser. Caltrans Right of Way Manual 7-EX-14 contains a schedule for outdoor advertising values, however, the schedule may not be utilized for condemnation. Legal counsel should be consulted as to the approach for valuing outdoor advertising signs.

#### 5.5.2.00     ~~5.05.02.00~~     **Mobile Homes**

As a general rule, mobile homes are considered realty if installed on the owner's land. They are considered personal property if tenant-owned or they do not meet "decent, safe and sanitary standards"; no adequate number of suitable replacements sites are available; or, they are not roadworthy and thus incapable of being moved. Mobiles Homes that are considered personal property should not be valued as they will be covered under Relocation Assistance.

#### 5.5.3.00     ~~5.05.03.00~~     **Goodwill Appraisals**

Code of Civil Procedure, Title 7, Eminent Domain Law, Chapter 9, Article 6, Sections 1263.510, 520 and 530 provide the basis for compensating the owner of a business for the loss of goodwill.

The business owner shall be compensated for the loss of goodwill if the owner proves that the loss is caused by the Commission's acquisition of the property and that the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting measures that a reasonably prudent person would take and adopt to preserve the goodwill. The business owner has the burden of proof for loss of goodwill.

The business owner must be notified, in writing, of the owner's right to claim a loss of business goodwill. The notice must be sent by certified mail with return card requested together with a questionnaire asking for information about the business. A reasonable time for the owner to respond must be set forth in the letter.

Goodwill valuation shall be prepared under the direction of the Commission's legal counsel. Reports will be submitted to the Commission's legal counsel.

#### 5.5.4.00     ~~5.05.04.00~~     **Fixture and Equipment/Improvements Pertaining to Realty Appraisals**

Trade fixtures, equipment, machinery, and other items installed for use on a property will be appraised if they cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed. Appraisals for improvements pertaining to realty shall be prepared by a qualified individual in accordance with current and appropriate standards and will contain cost sources for each item.

#### 5.6.00.00     ~~5.06.00.00~~     **CONTRACT APPRAISERS**

##### 5.6.1.00     ~~5.06.01.00~~     **Approved Contract Appraisers**

It is the Commission's and RCA's policy to establish a current roster of approved contract appraisers through the procurement process. This roster will be updated according to procurement guidelines and based on the Commission's and RCA's work requirements.

##### 5.6.2.00     ~~5.06.02.00~~     **Selection of Contract Appraisers**

Every effort shall be made to select the most qualified appraisers available to the Commission. Appraisers will be classified into:

General Fee Appraisers. Appraisers qualified to perform all types of ~~appraisal~~appraisals will be included in this classification, such as residential, commercial, industrial and agricultural property appraisers.

Specialty Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate airspace leases, hazardous waste, mobile homes, outdoor advertising signs or other specialty items. Specialists performing services of this nature may be members of appraisal or engineering firms whose principal occupation is the appraisal of specialty items, contractors who are engaged in the installation of such items or equipment, or suppliers or dealers of such specialty items who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and thereby

document their opinion in accordance with accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

Goodwill Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate business goodwill for a variety of businesses. Specialists performing services of this nature may be members of appraisal firms whose principal occupation is the appraisal of going concerns and who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and document their opinion in accordance with the Uniform Standards of Professional Appraisal Practice or any other applicable standards and accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

Furniture, Fixtures and Equipment Appraisers. Appraisers who are well qualified (based on education, training and experience) to evaluate furniture fixtures or equipment or other specialty items. Specialists performing services of this nature may be members of appraisal or engineering firms whose principal occupation is the appraisal of personal property items, contractors who are engaged in the installation of such items or equipment, or suppliers or dealers of such items who are fully qualified to offer an opinion of value. They must be capable of submitting written information, which is essential to explain, substantiate and thereby document their opinion in accordance with the Uniform Standards of Professional Appraisal Practice or any other applicable standards and accepted appraisal principles and techniques. Specialty Appraisers must be qualified to provide expert testimony in eminent domain and other real estate related court proceedings.

#### 5.6.3.00     ~~5.06.03.00~~     **Non-Competitive Proposals for Contract Appraisers**

In instances when Specialty Items will be appraised, the Right of Way Department may select the most qualified appraiser(s) available for the particular assignment. Consideration should be given to anticipated appraisal problems, talents, skills and special qualifications of the individual appraiser. The Right of Way Manager shall exert best efforts in negotiating the lowest cost possible for the appraisal assignment.

#### 5.6.4.00     ~~5.06.04.00~~     **Review Appraisers**

It is the Commission's and RCA's policy to establish an approved list of "on call" review appraisers through the procurement process. Review appraisal contracts will be awarded in the same manner as contract appraisers.

**6.00.00.00 ~~6.00.00.00~~ ACQUISITION, NEGOTIATION, AND EMINENT DOMAIN****6.1.00.00 ~~6.01.00.00~~ GENERAL PROVISIONS****6.1.1.00 ~~6.01.01.00~~ Purpose**

The purpose of this section is to establish the Commission policies and procedures related to the acquisition function in negotiations for land, property and rights necessary for the proper and economical construction and maintenance of Commission projects. The intent and purpose of the policies and procedures are to assure uniform acquisition practices, which will provide consistent and equitable treatment of owners and tenants of real property acquired by the Commission for public purposes.

**6.1.2.00 ~~6.01.02.00~~ Authority to Acquire Land**

Public Utilities Code Section 130220.5(a) authorizes county transportation commissions, including the Commission, to make contracts and enter into stipulations of any nature whatsoever either in connection with eminent domain proceedings or otherwise.

**6.1.3.00 ~~6.01.03.00~~ Federal Code Requirement**

Acquisition of private property for public use utilizing federal funds is to be in accordance with the following:

- ~~United States Code~~ entitled “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) 49 CFR Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17; and the Final Rule dated January 4, 2005.
- 23 CFR Parts 130, 480, 620, 630, 635, 645, 710, 712 and 713 – The Federal Highway Administration, Right of Way Program Administration
- Federal Highway Administration, Office of Real Estate, Project Development Guide
- Federal Transit Administration Circular ~~5010.1D~~5010.1E dated ~~November 1~~July 16, 20082018, as amended, titled Federal Transit Administration Grant Management Requirements
- Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21)

**6.1.4.00 ~~6.01.04.00~~ State Oversight Projects**

Commission projects on the California State Highway System (on-system) will have State oversight and must adhere to Chapter 17 of the Caltrans Right of Way Manual. Commission projects utilizing FHWA or State funds that are not on the State Highway System (off-system) will also have State oversight and must adhere to Chapter 13 of the Caltrans Local Assistance Procedure Manual.

**6.1.5.00 ~~6.01.05.00~~ Terminology**

For purposes of this Right of Way Manual, the following terms are synonymous:

- Acquisition and negotiation

- ~~•~~ Negotiator, acquisition consultant, acquisition agent and right of way consultant
- ~~•~~ Right of Way Staff and contract negotiator
- ~~•~~ Offer and offer of Just Compensation
- ~~•~~ Eminent domain and condemnation

#### 6.1.6.00      ~~6.01.06.00~~      **Acquisition of Real Property Interest**

All rights, title, interest of fee and subordinate interests in real property within the right of way and/or easement boundaries are to be acquired as necessary for economical construction, operation, protection, support, preservation and maintenance of the project.

#### 6.1.7.00      ~~6.01.07.00~~      **Occupancy of Right of Way**

The area within right of way boundaries is devoted to public use. Any encroachments, use of airspace, joint development or multiple uses of right of way and installation of public and private facilities must be in accordance with established regulations and policies governing such uses.

#### 6.1.8.00      ~~6.01.08.00~~      **Public Meetings or Hearings**

Right of Way Staff may be required to attend public meetings and hearings when the Executive Director, Project Delivery Director or project management staff present information concerning the Commission's projects and programs. The Right of Way Staff will be available to answer questions concerning the Commission's right of way acquisition process and will become familiar with possible problems that may arise during the right of way acquisition process.

#### 6.1.9.00      ~~6.01.09.00~~      **Project Field Inspection**

Right of Way Staff are encouraged to participate in project field inspections. If field inspections reveal that a revision in the design would contribute to the social, economic or environmental effects of a project, the Right of Way Manager should immediately advise the Project Manager.

#### 6.1.10.00      ~~6.01.10.00~~      **Pre-Negotiation Public Relations Contacts**

Acquisition Agents may be assigned to make or receive calls from property owners and discuss right of way procedures and provide general information concerning the proposed project prior to actual offers and negotiations. Right of Way Staff, who may be later involved with the appraisal, acquisition, or relocation for the project, may make or receive such calls. Care should always be taken to avoid discussing assumptions, possible offers, possible damage, value conclusions or any other discussion that may lead to a claim of pre-condemnation damages. This initial call should be brief and is only intended to provide project information and promote public relations.

#### 6.1.11.00      ~~6.01.11.00~~      **Who Conducts Negotiations**

- ~~•~~ Right of Way Staff. Negotiations for the acquisition of real property and/or property rights for Commission and RCA projects will be conducted by qualified Right of Way Staff.
- ~~•~~ Acquisition Consultants. Negotiations may also be conducted by Acquisition Consultants who have a written agreement with the Commission or the RCA, as appropriate, and under the direction of the Right of Way Manager.



**6.1.12.00     ~~6.01.12.00~~     Relocation Assistance Information**

Residential owner occupants being displaced are to be provided an explanation of the relocation benefits for which they are eligible. General relocation assistance information should be provided at the same time or shortly after the offer.

**6.2.00.00     ~~6.02.00.00~~     COMMISSION ACQUISITION POLICIES****6.2.1.00     ~~6.02.01.00~~     General Policies**

- ~~It is the policy of the Commission that all negotiations shall be expeditious and result in the property owner receiving Just Compensation, the settlement being just and fair to the owner and the public. Every courtesy, consideration and patience will be extended to the property owner to create and establish trust in the Commission, the members of its Board of Commissioners and its employees.~~
- ~~All offers shall represent the approved amount of Just Compensation as determined through the Commission's valuation procedures. Right of Way Staff or the Acquisition Agent shall make a reasonable effort to demonstrate and promote confidence in the approved Just Compensation offer.~~
- ~~If the Acquisition Agent discovers facts, which were not recognized in the Just Compensation, the information shall be made available to the Right of Way Manager who will evaluate and give full consideration to those items prior to continuation of negotiations.~~
- ~~Acquisition Agents must demonstrate that they represent the interest of the property owner as well as those of the public. Care should be exercised at all times to protect the interests of owners who may be unfamiliar or inexperienced in real estate transactions.~~
- ~~Acquisition Agents are required to maintain a written record of negotiations, documenting that all elements of the transaction were given adequate consideration and that there was a mutual understanding between the Acquisition Agent and the property owner.~~
- ~~The Commission shall make every reasonable effort to expeditiously acquire real property by negotiation. Real property shall be appraised before initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during the inspection of the property.~~

**6.2.2.00     ~~6.02.02.00~~     Payment Prior to Possession**

No owner will be required to surrender possession of real property acquired by the Commission prior to the deposit of payment of the agreed purchase price or ~~payment of~~ the amount ~~determined by the court to be probable of~~ Just Compensation into escrow if a Possession Clause is included in the Purchase and Sale Agreement. If a Possession Clause is not included in the Purchase and Sale Agreement, then possession will be obtained at the close of escrow.

**6.2.3.00     ~~6.02.03.00~~     Coercion**

In no event shall the Commission either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other

action coercive in nature, in order to compel an agreement on the price to be paid for the property.

**6.2.4.00      ~~6.02.04.00~~      Institution of Condemnation Proceedings**

If any interest in real property is to be acquired by exercise of the power of eminent domain, the Commission shall institute formal condemnation proceedings.

**6.2.5.00      ~~6.02.05.00~~      Acquiring Property Owned by a Commission Employee ~~or~~,  
Member of the Board of Commissioners, or The RCA Board of Directors**

When the property or property interest to be acquired by the Commission is owned fully or partially by a Commission employee or a member of the Board of Commissioners, the Right of Way Department will consult legal counsel to ensure that conflict of interest laws are not violated.

**6.2.6.00      ~~6.02.06.00~~      Functional Replacement of Real Property in Public Ownership**

When publicly owned real property, including land and/or facilities, is to be acquired by the Commission in lieu of paying the fair market value of the real property, the Commission may, with prior approval of FTA or FHWA, provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. (See 23 CFR Part 710.509).

**6.2.7.00      ~~6.02.07.00~~      Continuation of Possession on Rental Basis**

If the Commission permits an owner or tenant to occupy their real property acquired on a rental basis for a short term, or for a period subject to termination by the Commission on short notice, the amount of rent required shall not exceed the fair market rent of the property for short term occupancy.

**6.2.8.00      ~~6.02.08.00~~      Reimbursement of Property Owner's Expenses**

**~~6.02.08.01~~      Out of Pocket Expenses:**

The Commission may reimburse property owners for expenses incurred in development of a property, when development is interrupted by acquisition, provided certain criteria are met and an audit of the validity of the claimed expenses supports such payment. Expenses incurred by the property owner for the following items ~~are~~may be reimbursable by the Commission, subject to entering into a written agreement:

- ~~Change~~ in development, architectural, structural and drainage plans
- Map checking fees
- Building permit fees materials
- Survey fees
- Inspection fees

**6.2.9.00      ~~6.02.08.02~~      Reimbursement of Mortgage Prepayment Penalty:**

Owners will be reimbursed for actual penalty costs for prepayment of a preexisting mortgage entered into in good faith and recorded prior to initiation of negotiations.

6.2.10.00    ~~6.02.09.00~~    Options

The Commission may consider utilizing options on a project specific basis. Options allow the Commission to reserve rights to purchase the property in the future by making an upfront payment substantially less than the full market value of the property. Options may be entered into prior to completion of the environmental process (NEPA/CEQA) with the permission of the funding agency. The future purchase price of the property may be established at the time the option is purchased, or the option may define the process by which fair market value is determined.

6.2.11.00    ~~6.02.10.00~~    Incentive Payments

The Commission may consider utilizing incentive payments on a project specific basis. Incentive payments provide for an agency to pay an additional amount above the appraised value if the property owner signs within a specified timeframe. The funding agency should be consulted prior to implementation of an incentive payment program as the federal agency may or may not participate in the incentive payment program.

6.3.00.00    ~~6.03.00.00~~    COMMISSION ACQUISITION PROCEDURES6.3.1.00    ~~6.03.01.00~~    Just Compensation

Prior to initiating negotiations for the acquisition of real property, the Executive Director or designee shall establish an amount which it believes to be Just Compensation. In no event shall the amount of Just Compensation be less than the Commission's approved appraisal of the fair market value of the property.

6.3.2.00    ~~6.03.02.00~~    FTA Appraisal Concurrence

For FTA projects, prior FTA concurrence is required when the Commission's recommended offer of Just Compensation exceeds ~~\$500,000~~ 1,000,000, or when a property appraised at ~~\$500,000~~ 1,000,000 or more must be condemned. Appraisals and appraisal reviews must be submitted for review.

6.3.3.00    ~~6.03.03.00~~    Pre-Negotiation Preparation

The Negotiator should ensure possession of all materials and information necessary to conduct and complete negotiations for the orderly and efficient acquisition of a property for the proposed project. At a minimum, the Negotiator should be supplied with the following:

- ~~•~~ Title report of all recorded interests in the property
- ~~•~~ Survey/plat, legal description or appraisal map
- ~~•~~ Documents necessary to acquire all interests
- ~~•~~ Right of way plans
- ~~•~~ Appraisal reports
- ~~•~~ Basis for Just Compensation
- ~~•~~ Offer letter
- ~~•~~ Title VI Brochure

- ~~Overview of the Eminent Domain Process and Description of Property Owner Rights Brochure~~

In order to make an informed explanation of the proposed acquisition to an owner, the Negotiator should make a comprehensive study of the plans, title report, appraisal report and basis for Just Compensation.

#### 6.3.4.00      ~~6.03.04.00~~      Initiation of Negotiations

The term “initiation of negotiations” relates to the date on which the Commission presents the property owner, or their designated representative, a written offer for purchase of the property or rights to be acquired. When non-resident owners are involved who cannot be contacted in person, initiation of negotiations for the property shall be the date such owner or his designated representative received the first communication by mail or telephone from the Commission in which a monetary offer to purchase is made. Certified mail with return receipt requested must be used when the above contact is made by mail to establish and document the date that the written offer is received by the property owner or by their representative.

Should several individuals own fee interest in the property, delivery of the offer letter to one of the owners is sufficient to establish the date of initiation of negotiations, however, all owners are to be provided with all relevant offer items.

#### 6.3.5.00      ~~6.03.05.00~~      Prompt Offer of Just Compensation

All offers of Just Compensation shall be promptly presented to property owners or their designated representatives. The Right of Way Department should determine the appropriate timing for delivery of offers within the scope of good negotiating practices. If offers cannot be made within six months of the completion of the appraisal, the Right of Way Manager should be consulted as to whether or not an updated appraisal is appropriate.

#### 6.3.6.00      ~~6.03.06.00~~      Offer Letter

A written offer will be made to the owner or owners of record to acquire the property for the full amount established. The offer may be conditioned upon the Commission’s ratification of the offer by execution of a contract.

As part of the written offer, the property owner will be informed of their right to secure an appraisal and that the Commission will reimburse the cost of such appraisal report up to \$5,000 (Code of Civil Procedure Section 1263.025).

The offer letter should also advise the property owner of the right to leaseback the property for one year at fair market rent unless the Commission states in writing that the use of the property is scheduled to begin within two years of acquisition (Code of Civil Procedure 1263.615).

#### 6.3.7.00      ~~6.03.07.00~~      Tenant Interests

In some cases, tenants on the property may have interests in the real property for which the offer is being made. The following are guidelines on drafting the offer for when tenants may have an interest:

- Fee Owner Offer. An offer letter is to be delivered to the fee owner or a designated representative. However, the real property interests and amounts included in the offer may vary dependent on tenant ownership of the improvements.
- Tenant Offer. Tenants who have the right or obligation to remove real estate property improvements which contribute to the real estate value, as determined in the appraisal process, have a compensable interest in those improvements. Compensation may include the contributory fair market value for the improvement being acquired or other value for removal purposes.

When a separate amount of Just Compensation is approved for an improvement owned by a party other than the owner of the land, such as a tenant, the offer to the tenant will be conditioned upon the tenant obtaining execution of the necessary disclaimer (release of structures or leasehold) from the owner of the land. Payment for such improvements shall not be made unless the owner of the land disclaims all interest in the tenant improvement. The owner of the land may disclaim his interest in such improvement by executing a deed of conveyance of right, title and interest, a quitclaim or a disclaimer. Tenants are afforded the same rights and protection as fee owners. Should a tenant reject the offer made for the improvement, it will be necessary to condemn all interest in the property including the fee ownership.

- Combined Fee and Tenant Offer Letter for Condemnation Purposes. Immediately prior to condemnation proceedings for a parcel where tenant-owned structures are involved, an offer letter will be presented to all fee owners of record or their designated representative. The offer will be the total of the amount of Just Compensation for the fee and tenant.

#### 6.3.8.00      ~~6.03.08.00~~      Offer Package

Along with the offer letter, each owner or representative will be provided with the following:

- California Government Code Section 7267.2 (b) requires the property owner to be provided a summary of the basis for the amount it established as Just Compensation. However, the Commission will provide a full copy of the appraisal with each offer which includes at a minimum:
  - The date of valuation, highest and best use, and applicable zoning of property.
  - The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.
  - Where appropriate, the Just Compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the

calculations and narrative explanation supporting the compensation, including any offsetting benefits.

- ~~Informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law (Gov't Code Section 7267.2(a)(2))~~
- ~~Conveyance documents~~
- ~~Purchase and Sale Agreement~~
- ~~Summary of rights under Title VI~~
- ~~Project information~~

### 6.3.9.00      ~~6.03.09.00~~      **Improvements Acquired or Damaged**

All of the improvements within the right of way are generally acquired.

- ~~Interest in Improvements Acquired.~~ An equal interest shall be acquired in all buildings, structures or other improvements determined to be a part of the real property when such improvements are to be removed from the land acquired for right of way purposes.
- ~~Improvements Located Partially within the Right of Way.~~ Improvements located partially within the right of way, which are designated for removal shall be totally removed, unless the owner opts to cut it at the right of way line.

The decision to allow an owner to retain and cut an improvement at the right of way line must be made during negotiations. In making the decision, the owner is to understand that the Commission will have to re-evaluate its offer through the appraisal process. If a revised offer is unacceptable to the owner, the original offer and plan for total removal of the improvement will apply and if necessary, condemned as originally designed.

- ~~Improvements Located Outside the Right of Way.~~ Owners will be compensated for any loss in fair market value of improvements that are not required to be removed but are adversely affected as a result of the acquisition, as determined by the appraisal.

### 6.3.10.00      ~~6.03.10.00~~      **Owner Retention of Improvements**

Whenever structural improvements are partially or totally within the required right of way, the improvements are generally acquired. However, there may be occasions where it more prudent to relocate the improvement. Relocation, as referred to in this subsection, is an acquisition concept where improvements are moved from the required property to a replacement, substitute or remainder property. Relocation of improvements at the Commission's cost is only allowed if the Commission determines this action is in the best interest of the public and the cost to relocate the improvements is consistent with current federal regulations.

The determination to relocate improvements at the Commission's cost must be based on economic feasibility. If the owner chooses to relocate the improvement and moving cost is to be made directly to the owner, the amount will be based on the best and most reasonably competitive moving bids obtainable from qualified contractors. A minimum of two (2) bids is required, if obtainable.

If the Commission determines that relocation of the improvement is not cost effective or in the best interest of the public, the Commission may elect to allow the owner to relocate the improvement at their own cost. If the owner chooses to relocate the improvement at their own cost, the Commission will be relieved of any responsibility for their removal and clearing of the site. The owner of the improvements assumes the entire obligation of improvement removal and site clearance.

The decision to allow an owner to retain an improvement must be made during negotiations. In making the decision, the owner is to understand that the Commission may re-evaluate its offer through the appraisal process. If a revised offer is unacceptable to the owner, the original offer and plan for acquisition of the improvement will apply and if necessary condemned as originally designed.

Improvements pertaining to the realty, which an owner has severed from the real estate prior to a Purchase and Sale Agreement, are personal property and handled under the Relocation Assistance Program.

When acquiring motels, hotels or furnished apartments, it may be necessary to acquire the furnishings to prevent the eviction of tenants who would be unable to continue to occupy the premises if the furniture is retained and removed by the fee owner. The appraisal of these types of properties will contain an inventory and estimated market value of the furnishings.

Removal time of improvements should normally be completed in a sixty to ninety (60-90) day period. The Purchase and Sale Agreement shall specify a date by which the improvements are to be removed and provide for clearance of the site.

#### 6.3.11.00     ~~6.03.11.00~~     **Uneconomic Remnants**

If the Commission is acquiring a portion of the property and the acquisition would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the Commission shall offer to acquire the entire property if the owner so desires.

- Definition of Uneconomic Remnant. “A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the Agency has determined has little or no value or utility to the owner.” (49 CFR 24.2 (27))
- Offer to Purchase Uneconomic Remnants. An offer to purchase each uneconomic remnant shall be made to the owner simultaneously with the offer of Just Compensation for the acquisition of the right of way, if the value was established in the appraisal. Situations revealed during negotiations or administrative decision to consider all or part of remainders as uneconomic remnants, may necessitate a revised offer reflecting the value of the uneconomic remnant.

Multiple uneconomic remnants shall be individually identified and individual values must be set out in the offer letter.

**6.3.12.00     ~~6.03.12.00~~     Leasehold Bonus Value**

If bonus value is shown in the appraisal, the Acquisition Agent is not to offer it to the lessee. Ultimately, the lessor and the lessee will either agree to the allocation of any bonus value, or the court will decide. The bonus value may be suggested to the lessor that because of the terms of the lease, the lessee's interest may be more than a compensable interest in the improvements.

**6.3.13.00     ~~6.03.13.00~~     Condemnation Clause**

A lease may contain what is commonly referred to as a "condemnation clause."   This clause usually provides that in the event the property is acquired under the actual or potential exercise of eminent domain, the lease shall terminate, lessee will pay pro-rated rent to the date of vesting or possession by condemnor and lessee has no claim to the compensation paid to the lessor by the condemnor. In partial acquisition, the lease may provide the lessee with the option to terminate the lease or continue in occupancy with a proportionate reduction in rent. Legal counsel should be consulted to interpret this type of lease provision.

**6.3.14.00     ~~6.03.14.00~~     Access Rights**

In cases involving acquisition of access rights only, relinquishments or subordinations are to be secured from all parties whose interest would be detrimental to the achievement of access control. Ordinarily, these include trustees and beneficiaries under deeds of trust, mortgages, lessees, holders of liens, the foreclosure of which would either nullify or jeopardize the rights being acquired by the Commission and holders of easements or rights of way of any kind whose ability to utilize and enjoy them would be materially diminished or damaged by the Commission's acquisition of access rights to the subject property.

**6.3.15.00     ~~6.03.15.00~~     Construction Obligations**

In some cases, the Commission is required to do certain work on grantor's remaining property (as part of the consideration for acquisition). This work can range from construction of fences, irrigation facilities, re-paving driveways to replacement of structures. The extent of construction should be completely described in the Purchase and Sale Agreement and/or Administrative Settlement.

**6.3.16.00     ~~6.03.16.00~~     Exchanges and Abandonments**

Excess property may be used in exchange for other property required for a project. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. Non-contiguous exchanges may be granted under certain circumstances.

Excess real property or an interest therein, proposed for exchange shall be appraised. This requirement does not apply to parcels acquired specifically as substitute parcels for public utilities, government-owned land or railroad.

**6.3.17.00     ~~6.03.17.00~~     Negotiator's Report and Contact Log (Parcel Diary)**

A Negotiator's report and contact log shall be completed and signed by the Negotiator upon termination or completion of negotiations for each parcel. A log of all contacts with the owner or



representative shall be completed. The information for each contact should include the date and place of each contact, parties contacted, offers, counteroffers, issues raised by the owner, reasons settlement could not be reached, and any other pertinent data.

When negotiations are unsuccessful, and the Negotiator considers further attempts to negotiate to be futile, recommendations for action should be recorded.

#### 6.3.18.00    ~~6.03.18.00~~    Negotiating with an Attorney or Designated Representative

Unless otherwise authorized by the property owner, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner, acquisition discussions will generally be with the attorney, unless otherwise authorized in writing by the attorney. In such cases, the Commission or the RCA may likewise be represented by its legal counsel during negotiations and meetings. If the property owner employs someone as his representative, the extent of the authority of the representative should be in writing, signed by the owner.

#### 6.4.00.00    ~~6.04.00.00~~    COMMISSION EARLY AND ADVANCED ACQUISITIONS

Federal regulations allow federal funds to be used for right of way acquisition prior to NEPA completion for transportation projects provided that certain findings are made, which include the following:

- A parcel or a limited number of parcels is involved.
- It is within the limits of a proposed corridor.
- The acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process.
- No project development will proceed until the NEPA process has been completed.
- Threat of condemnation will not be utilized.

Proper documentation shall be submitted to show that the acquisition meets the above criteria.

A major consideration in making a decision on advance acquisition is the effect on federal funding for the parcel and the project as a whole. It is important to keep in mind that if federal regulations (40 CFR Part 24) are not followed in the advance acquisition of a parcel, the FHWA or FTA, as the case may be, may deny federal funding for the whole project or, if it is determined that the advance acquisition of a parcel influenced the environmental assessment of the project, the cost to acquire the parcel may not become eligible for use as the credit towards the agency's share of a federal-aid project. In the latter instance, the project's application for environmental clearance under NEPA may also be denied.

The Commission will not consider the following types of parcels for early or advanced acquisition:

- Properties with historic structures
- Archaeological properties

- ~~Section 4(f)~~ properties (publicly owned park and recreation areas, and wildlife and waterfowl refuge)
- Properties contaminated with hazardous waste

Early and advanced acquisitions are generally approved only after the acquiring agency has given official notice to the public that it has selected a particular location for the project alignment, or a public hearing has been held, or an opportunity for such hearing has been afforded, except when “core parcels” are to be acquired in advance of environmental clearance. “Core” parcels are full parcel acquisitions that are required for every alternative under consideration. Properties not considered “core parcels” may be acquired in exceptional cases as determined by the Right of Way Manager in consultation with the federal funding agency.

#### 6.4.1.00      ~~6.04.01.00~~      Early Acquisition

The Commission may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations, if the above conditions are met.

Early acquisition costs are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the Commission’s share of a Federal-aid project.

#### 6.4.2.00      ~~6.04.02.00~~      Hardship Acquisition

Hardship acquisition is early acquisition of property by the agency at the property owner’s request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Federal approval must be obtained prior to proceeding with a hardship acquisition in order to be eligible for reimbursement.

#### 6.4.3.00      ~~6.04.03.00~~      Protective Acquisition

Protective acquisition is done to prevent imminent development of a parcel, which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project. Federal approval must be obtained prior to proceeding with a ~~hardship~~protective acquisition in order to be eligible for reimbursement.

### 6.5.00.00      ~~6.05.00.00~~      COMMISSION ACQUISITIONS WITH SPECIALTY CONSIDERATIONS

#### ~~6.05.01.00~~      Donations and Dedications

##### 6.5.1.00      Donation

~~6.05.01.01~~      ~~Donations.~~—Donation is the voluntary conveyance of property without compensation, for the improvement of a public project. Donations must be voluntary and owners must be advised of their benefits under the State and Federal Uniform Relocation Act and of their right to compensation, relocation assistance benefits and ~~their right to receive~~must be provided with an appraisal ~~report~~ of the ~~market value of their~~ real property to be ~~donated~~acquired, or a

waiver valuation, if appropriate, unless the owner/owners release the Commission from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. The property owner should be advised of the Commission's policy of accepting donations and the offer to donate should not in any way result from an act of coercion. Donations may be made at any time during the development of a prospective project.

Every donation must have a detailed financial analysis of the actual and potential costs. Project management staff should be careful in accepting ~~donation~~ donations of a contaminated property where the clean-up cost exceeds the value of the property. Relocation benefits and loss of business goodwill should likewise be considered.

In order for the Commission to claim the value of the donated property as a credit against its matching share of projects costs (federal and state assisted projects), certain conditions must be met:

- The value of the donated property must be determined through an appraisal for the purposes of calculating a credit to the Commission's matching funds of the project costs.
- Environmental requirements must be met (NEPA process).
- Environmental assessment (Phase I and if appropriate Phase II) must be conducted on the property.

Any document executed to effect donation prior to approval of the environmental clearance of the project shall clearly state:

- All alternatives to an alignment will be studied and considered. The acceptance of the donated property did not influence the environmental assessment of a project including the decision about the need to construct the project or the selection of a specific location for the project. In other words, the Commission must not be influenced by the donation of the property in its decision on which alternative to approve.
- Any property acquired by gift or donation for projects covered by the Federal Highway Act, shall be re-vested to the grantor or successors, if such property is not needed for the alignment chosen after public hearings and if not required seven years after completion of the environmental document.
- Donations will not be accepted until a hazardous waste assessment has been completed.

The Commission may accept a property owner's offer to donate or a portion thereof in exchange for construction features or services rendered that will benefit the property owner. However, for the purposes of crediting the value of the donation to the Commission's share of project costs, such donation is limited to the fair market value of the property donated less the value of the construction features or services received by the Commission.

#### 6.5.2.00      Dedication

~~6.05.01.02~~ Dedication.—Dedication is the setting aside of property for public use without compensation as a condition prior to or in exchange for any government or Commission action that will enhance the value of or development potential of property. The property owner must initiate the request for dedication and dedications can be accepted throughout the project development process.

The Commission may accept a parcel of land that a developer of real estate has dedicated or proposes to dedicate for street purposes in developing a subdivision. Land obtained in this manner may be incorporated into a federally-assisted project without jeopardizing participation in other project costs.

Prior to acceptance by the Commission, the property to be dedicated shall be subject to a hazardous waste assessment and a review of the condition of title.

Dedication must be accepted by the Commission formally with an acceptance document.

#### 6.5.3.00 ~~6.05.02.00~~ **Outdoor Advertising Structures and ~~On-Premise~~On-Premise Advertising Signs**

Outdoor advertising structures are defined as all signs, billboards, drawings or paintings which advertise activities conducted elsewhere or services and/or products provided other than at the subject property. Whereas on premise signs advertise activities conducted on the premises or services and/or products provided on the subject property.

6.5.3.1 ~~6.05.02.01~~ Outdoor advertising structures. The outdoor advertising company must have a written or oral agreement with the owner ~~efor~~ lessee of the real property. The agreement must be in effect and authorize the structure to remain placed for a period of time beyond the date of acquisition. The owner of the structure may be entitled to compensation for loss of business goodwill, in addition to the value of the signboard improvement.

The Commission should determine whether relocation of the sign is feasible and, if so, whether the cost to do so would be less than the cost of acquiring the improvement and any related goodwill. Compensation for the sign may be based on a number of approaches, including a fixture and equipment appraisal, a goodwill appraisal, the State schedule for Poster Panel Removal (7-EX-14) or the cost of relocating the sign to a replacement location. However, prior to any condemnation action, an appraisal must be performed for the sign structure improvement.

Section 5403, Business and Professions Code and Section 721, Streets and Highways Code, regulate outdoor advertising structures on highway right of way. Sections 5405, 5406 and 5408, Business and Professions Code, regulate advertising structures within 500 feet of any highway, included in the interstate and primary highway systems. Removal or relocation of outdoor advertising

company structures from right of way for interstate or primary highways to a location outside the area being acquired shall conform to the requirements of the above code sections.

If the structure is fully conforming to state and local law and would create no problems if allowed to remain in place until start of construction, then the site for the structure can be rented to the company without loss of its right of compensation. Rental rates will be determined as described in Chapter 8.

If the structure is not fully conforming and/or its removal is imminent, no rental will be permitted and the contract should provide for immediate removal of the structure.

A quitclaim deed or contract will be obtained from the company to release the rights to the sign.

Existing structures may remain if they do not conflict with the use by the Commission.

6.5.3.2 ~~6.05.02.02~~ On-Premise ~~On-Premise~~ Signs. In partial acquisitions, it is the policy of the Commission to treat all on premise signs including trademark and logo signs as personal property under the Relocation Assistance Program. The exception would involve a situation in which there is insufficient land on which to relocate the sign. In these circumstances, the sign will be valued and acquired as real estate. No ~~on-premise~~ on-premise signs (except enter and exit signs) will be allowed to remain on the right of way.

6.5.3.3 ~~6.05.02.03~~ Signboards on Williamson Act Agricultural Preserves. Land placed in an agricultural preserve contract under the Williamson Act (Government Code sections 51200-51295) is limited to agricultural uses. Other uses are prohibited by the terms of the contract. If the property being acquired has an outdoor advertising structure located in the acquisition area, the compensability status of the structure will have been determined prior to the commencement of appraisal.

6.5.4.00 ~~6.05.03.00~~ Hazardous Waste

The Commission and the RCA must not acquire property contaminated with hazardous waste without adequate prior investigation and property contractual and valuation safeguards. In order to avoid delay in a project or acquiring property with possible contamination, investigation to determine clean-up costs must be made as soon as possible.

If hazardous waste is suspected or discovered during the acquisition process, the Right of Way Department should immediately notify the Project Manager, in writing, and hire a consultant to perform an Initial Site Assessment.

The Project Manager may advise the Right of Way Department to proceed with the acquisition because it is in the best interest of the project and the potential hazardous waste contamination risks and costs are low, or the problem can be handled with engineering methods during construction. The decision to acquire is made by the Project Manager and must be fully documented.

If further investigation is necessary, the Acquisition Agent will contact the property owner to advise of the process being pursued and to obtain Right of Entry Permits.

When testing is complete and cleanup costs are known, the appraisal must reflect the effect contamination and required cleanup has on market value.

Settlements, whenever possible, are to be based on cleanup prior to acquisition. Settlements made where cleanup occurs after acquisition are to be based on the original appraisal contingent upon cleanup, or a revised appraisal that includes the effects of hazardous waste and clean-up costs.

If settlement is reached based on the Commission [or the RCA](#) doing the cleanup, close of escrow may need to be delayed until cleanup has been completed (depending upon project requirements) and an amount equal to two hundred percent (200%) of the estimated cleanup costs shall be withheld in escrow or (if closing has occurred) by the Commission [or the RCA](#) to assure an adequate source of payment for cleanup costs. Appropriate provisions will be included in the Purchase and Sale Agreement.

#### 6.5.5.00      ~~6.05.04.00~~      **Mobile Homes**

Mobile homes which cannot be moved from their present locations may be purchased.

The Acquisition Agent will be responsible at the appraisal stage for determining if a mobile home should be purchased. The reasons underlying this decision will be communicated by the Acquisition Agent in writing to the Right of Way Manager, which will become part of the appraisal.

Mobile homes are generally personal property, rather than realty, unless the owner has converted the mobile home to real property. This should be verified prior to the appraisal. The size of the mobile or manufactured home determines whether it is registered with the Department of Housing and Community Development (HCD) or the Department of Motor Vehicles (DMV) Homes with dimensions of 40 feet long or 8 ½ feet wide or more are registered with the HCD and homes under this size are registered with the DMV. Once it has been determined where the mobile home has been registered the transfer of title is handled through the appropriate agency, HCD or DMV. HCD has multiple forms for use in handling the transfer.

To convey title to a mobile home, the owner's signature will be obtained on the following when applicable:

- Purchase and Sale Agreement
- Notice of Transfer
- Bill of Sale
- Authorization for Payoff (if financed)
- Power of Attorney (if needed)
- Certificate of Title
- Quitclaim deed (if tenant occupied)

The owner should have the Certificate of Title that will reflect the legal and registered owner. If not available a duplicate Certification can be obtained.

All fees and charges required by the HCD in connection with the transfer of title to the mobile unit to the Commission, except liens, encumbrances, assessments, taxes delinquent registration or license fees, shall be paid by the Commission.

#### 6.5.6.00     ~~6.05.05.00~~     **Federal and State Lands**

Interests in land owned by federal and state agencies are secured under appropriate federal or state statutes which vary based on the agency that owns the land. Interests in federal and state lands can be obtained through a permit, easement, grant or patent. Acquisition of interests in federal or state lands should be initiated early as the process can be very lengthy.

#### 6.5.7.00     ~~6.05.06.00~~     **Indian Lands**

The Bureau of Indian Affairs approves transactions involving Indian lands. Indian lands are held in trust by the federal government as either “tribal land” or “allotted land.” Tribal lands are lands within the boundaries of an Indian reservation that are held in trust by the federal government for the Indian tribe as a community. Allotted land is land within a reservation, which is apportioned and distributed in severalty to tribe members. Title to allotted land is held in trust by the federal government for individual Indians.

The Bureau of Indian Affairs should be consulted for the appropriate procedure for acquisition.

#### 6.5.8.00     ~~6.05.07.00~~     **Railroads**

The clearance of projects that involve railroads consists of both the acquisition of railroad property rights and the agreement with the railroad for physical construction of the project.

Either of these functions will involve federal and state agencies, such as, Interstate Commerce Commission (ICC) and the State of California Public Utilities Commission (PUC). These properties should be addressed early in the acquisition process to ensure sufficient time for negotiations with the railroad, as well as approval by the appropriate commission.

#### 6.5.9.00     ~~6.05.08.00~~     **Mining Claims**

An unpatented mining claim establishes an interest in land, which will continue in existence until eliminated, whether by an appropriate conveying document or by legal process before a court of competent jurisdiction.

Every reasonable effort shall be made to obtain quitclaim deeds from persons holding mining claims on the land to be acquired even though the claim may appear to be abandoned. If clearance of the claim cannot be obtained by Purchase and Sale Agreement and quitclaim deed, then condemnation shall be instituted.

If the owner cannot be located after a diligent search, a statement of facts will be noted in the acquisition file and a recommendation may be made to acquire title subject to this outstanding interest. Such recommendation must be approved by legal counsel.

#### 6.5.10.00     ~~6.05.09.00~~     **Water Wells**

The replacement of an existing water well can be done through the appraisal or by the Commission contracting for the drilling of a replacement well. If the Commission will be contracting for the replacement of the well, copies of all the standard tests on both the existing well and new well should be kept in the parcel file. The new well should produce the same or better quality and quantity of water compared to the old well.

#### 6.5.11.00     **Tax-Defaulted Properties**

When acquiring property that has been declared tax defaulted by the Riverside County Treasurer- Tax Collector's office, a resolution objecting to the public sale of the property scheduled for auction will be provided. The resolution will be forwarded to the Riverside County Board of Supervisors for approval. Per Chapter 8 the Purchase Agreement will go to the California State Controller's Office for final approval. When final approval is obtained, the Riverside County Treasurer-Tax Collector's office will then notify the public for a specific period of time whereby the former property owner has the opportunity to reclaim the property if the back taxes are paid. If no response is received, the purchase of the property will be complete.

##### 6.5.11.1     Complete and gather the following information to create a Chapter 8 packet

- Application to Purchase Tax-Defaulted Property
- Mission statement
- Jurisdiction map
- List of APNs
- Parcels in FEMA map
- Objection to Chapter 7 Sale of Parcels

##### 6.5.11.2     Tax Collector will send a letter of instructions and purchase price for the property

- Quote the purchase price of each property
- Including 3 years of projected taxes

##### 6.5.11.3     Documentation needed to submit to County of Riverside Board of Supervisors (BOS) for approval of purchase



Board Item with required attachments for each parcel:

- Legal description
- Assessor's plat map
- Regional map
- Mission statement

Resolution must include wording addressing the following points:

- Object to the public sale
- Offer to purchase
- Purchase price
- Legal description
- APN
- Specific public purpose
- Costs of giving notice

6.5.11.4 Board Item and Resolution to the Tax Collector

- A fully executed certified copy of the approved Board Item and Resolution to the Tax Collector.
- A letter informing the Tax Collector of the parcels the Commission or the RCA is no longer interested in purchasing.

6.5.11.5 Tax Collector to forward Agreement of Sale

- Tax collector will forward an Agreement of Sale after confirming said APNs to the adopted Resolution
- Complete the agreement and obtain authorized signature
- Forward executed agreement to the Tax Collector

6.5.11.6 Tax Collector routes Agreement to other levels for approval of sale

- County to the Board of Supervisors (if within the city to the Mayor or City Manager)
- State Controller's Office for final authorization (may or may not approved sale T&R Code 3795)

6.5.11.7 Tax Collector will forward Demand for Payment letter

- Pay in full within 14 days from receiving request
- If payment is not received, sale will be voided

6.5.11.8 Tax Collector to send out Notice of "Authorization to Sell"

Notice to set time and date Agreement will go into effect (No sooner than 5:01PM on the 21st day after the first publication of notice.

- Notify all persons of interest by certified mail
- Place an ad in newspaper for 3 successive weeks (including parcel area)
- Personal service to property owners, if necessary
- Obtain title report on each parcel

#### 6.5.11.9 Tax Collector will forward deed of property

Issue recorded Tax Deed to new owner with the following information:

- Name of purchaser
- Effective date of the sale and the date of the transfer of the deed to new owner
- Amount for which the property was sold
- Description of the property conveyed

The acquisition of tax-defaulted property is timely and may continue for a few years.

#### 6.6.00.00     ~~6.06.00.00~~     COMMISSION AND RCA TITLE CLEARANCE

##### 6.6.1.00     ~~6.06.01.00~~     Clearance of Unrecorded Interests

Recorded interests will be addressed through a preliminary title report as outlined in Chapter 3.

However, there are matters that affect title which do not appear of record. It is the responsibility of the Acquisition Agent to protect the Commission and the RCA against loss due to any matters affecting title, which do not appear of record. These matters may be discovered through property inspection during negotiations. Some items which inspection of the property may disclose include the following:

- Parties in possession under an unrecorded deed or contract of purchase
- Community driveways, pole lines, pipelines, irrigation ditches, or roadways indicating easements or rights of way, which do not show in the title report
- Streams, lakes, rivers or ocean which may affect boundaries
- Overlapping or encroaching improvements
- Violations of restrictions or zoning ordinances

The Purchase and Sale Agreement or an amendment thereto shall specifically obligate the property owner to eliminate such interest at owner's sole cost and expense prior to acquisition.

#### 6.6.2.00     ~~6.06.02.00~~     Presumption of Interest and Right to Cancel

A lessee or tenant in possession is to be presumed to have some interest in the property unless the contrary is established.

The Commission shall not attempt to use any lease cancellation clause to acquire improvements at less than their salvage value or contributory value, whichever is greater.

It may be appropriate for a tenant to sign a quitclaim deed waiving their interest in the property.

#### 6.6.3.00     ~~6.06.03.00~~     **Indemnification Clause**

Whenever the Commission or the RCA is acquiring title subject to exceptions of a questionable nature, an appropriate indemnification clause is to be approved by the Commission's or RCA's legal counsel as to form and substance.

#### 6.6.4.00     ~~6.06.04.00~~     **Easements**

All easements are to be considered as to both the present and future effect on property being acquired. The location of the easement in relation to the part acquired is to be determined prior to preparation of the Purchase and Sale Agreement. If an easement constitutes a present or future adverse interest in the part acquired, it should be eliminated by appropriate instrument prior to close of escrow, if possible. Where the nature of the easement does not warrant the cost in time and effort to eliminate, or is not in conflict with the acquisition, it may be acquired "subject to" or through an indemnification clause.

- Gross or Appurtenant Easements. All gross or appurtenant easements in favor of third parties for personal or business use, such as driveways, roads or utilities should be cleared prior to scheduling and certification of the project for construction. This clearance should be done concurrently with the fee acquisition.

Interests not cleared prior to the close of escrow may appear as an exception in the Purchase and Sale Agreement since they will also appear as exceptions in the title policy.

- Blanket Easements. The interest of easement holders in so-called "blanket" or "floating" easements should be cleared if the choice of location has been exercised. An example is an easement affecting a whole subdivision. Such easements affect title to the entire property and will be shown as encumbrances in title policies unless eliminated by property conveyance.
- Obsolete Easements. Easements or rights that are discovered by either observation or inquiry to be obsolete, abandoned and extinct, and have no present or future adverse effect are to be listed in the Purchase and Sale Agreement as such.
- Utility Easements. Public or private utility easements may have a facility (overhead, surface or underground) located on the property. Clearance and elimination of private/service connection easements from the right of way being acquired will be the responsibility of the Acquisition Agent. This is usually done by quitclaim deed with an

obligation in the Purchase and Sale Agreement to secure a replacement easement, if necessary. Relocation of a private facility may be handled by or with assistance from the Relocation Agent or Utility Coordinator.

If the easement is public (easement in gross) and no facility exists, the Acquisition Agent in consultation with the Project Manager, must determine whether to take title subject to the easement. The utility company may have plans for the future facility so it is incumbent upon the Acquisition Agent to negotiate an agreement with the utility company recognizing such future use.

The Acquisition Agent and Utility Coordinator will coordinate to arrange for relocation of all facilities installed in public utility easements and to acquire substitute easements, as appropriate. The substitute easement will be acquired either by the utility company or by the Commission. If acquired by the Commission, the location shall be acceptable to the utility company. This replacement area is subject to the same controls and clearances that apply to regular rights of way, including hazardous waste clearances.

Acquisition of right of way from a utility company involves a variety of approaches, i.e., fee or easement, vacant site or corridor, improved site or corridor, replacement right of way. The Acquisition Agent should be thoroughly knowledgeable with the procedures involved in acquiring right of way from the utility company.

#### 6.6.5.00     ~~6.06.05.00~~     Court Actions, Consent to Dismissal

Title may be acquired subject to the Commission's pending condemnation action. Elimination of other court actions is generally required. In all instances involving right of way on which the Commission has filed condemnation suit, it is imperative that the dismissal clause be included in the Purchase and Sale Agreement.

#### 6.6.6.00     ~~6.06.06.00~~     Clearance of Lessee Interest

The interest of a lessee or other legal occupant, e.g., tenant, is cleared through either a quitclaim deed granted to the lessor or to the Commission or through the eminent domain process. Leases that are in effect must either be eliminated or assigned to the Commission. See further discussion of leasehold interests in section above.

#### 6.7.00.00     ~~6.07.00.00~~     COMMISSION LOSS OF BUSINESS GOODWILL

State law provides that in certain cases, an owner of a business may be compensated for the loss of goodwill. The law requires that the owner of a business conducted on the property acquired, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves the following:

- The loss is caused by the acquiring of the property or the injury to the remaining property.

- The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.
- Compensation for the loss will not be included in payment under Section 7262 of the Government Code (Relocation Assistance Program).
- Compensation for the loss will not be duplicated in the compensation otherwise awarded to owner.

For purposes of this subsection, “goodwill” consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality and any other circumstances resulting in probable retention of old or acquisition of new patronage.

The burden of proving that the loss cannot be prevented by relocation or other efforts by the business owner to mitigate, rests on the business owner. “Business” as used in this subsection is defined as follows:

- A commercial or mercantile activity engaged in as a mean of livelihood
- A commercial or sometimes industrial enterprise
- A particular field of endeavor-patronage

The operation of residential, non-transient, rental housing is not considered a business. However, the operation of housing units where rental is ordinarily billed on a daily basis (e.g. motels, hotels) is to be considered a business. A farm is not generally considered a business unless there is an ~~on~~ on-premise full time, retail, commercial operation involving products grown or developed in the property. A seasonal fruit stand operation would not be considered as a business.

An estimate of the loss of goodwill or the evaluation of documentation submitted by the business owner will be made by the Commission’s appraiser. The results will be used by the Acquisition Agent to conclude the transaction recognizing any “in-lieu” payments that may have been or will be made under Relocation Assistance. State law requires that state tax returns of the business be made available for audit, solely for the purpose of assisting and determining the amount of compensation to be paid for the loss of goodwill.

If a settlement has been agreed upon with the business owners but the claim for loss is deferred, the Purchase and Sale Agreement shall note that a claim for loss of business goodwill must be submitted to the Commission two (2) years from date of the contract. If the business owner and the Commission cannot reach an agreement on compensation within three (3) years from date of contract, the Commission shall file a declaratory relief action in superior court solely for the purpose of determining compensation, if any, for loss of owner’s business goodwill.

6.8.00.00     ~~6.08.00.00~~     **MEDIATION** FOR COMMISSION

Eminent domain mediation is a process through which a neutral mediator assists the Commission and a property owner in reaching a settlement agreement that each finds acceptable. Mediation can be a cost and time effective way to reach settlement in eminent domain cases. Mediation can be done by agreement of the Commission and the property owner or it can be mandated by the court prior to scheduling an eminent domain case for trial. Legal counsel should be consulted about whether or not to utilize mediation to settle cases. [The mediation process for the RCA is described in section 6.1.1 of the MSHCP "Conflict Resolution Process".](#)

#### 6.9.00.00     ~~6.09.00.00~~     ADMINISTRATIVE AND LEGAL SETTLEMENTS FOR COMMISSION

##### 6.9.1.00     ~~6.09.01.00~~     Purpose

Administrative settlements are made for the purpose of concluding negotiations for amounts considered reasonable, prudent and in the public interest after reasonable efforts to negotiate agreements for Just Compensation have failed. When federal or state funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates what available information (e.g. appraisals, recent court awards, estimated trial costs, development permit fees or valuation problems) support such a settlement. (See 49 CFR 24.102(i)).

Administrative settlements are not to be used for the purpose of correcting errors or omissions in an appraisal. Such errors or omissions should be addressed by correcting the appraisal and making a revised offer.

##### 6.9.2.00     ~~6.09.02.00~~     Settlement Authority

The Project Delivery Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 10% in excess of the offer or 2) \$100,000.

A Deputy Executive Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 15% in excess of the offer or 2) \$250,000.

The Executive Director is authorized to approve a settlement when the difference between the approved Just Compensation and the proposed settlement is no more than the greater of 1) 20% in excess of the offer or 2) \$500,000.

When the difference between the approved Just Compensation and the proposed settlement is in excess of the approval authority of the Executive Director, the proposed settlement must be approved by the Board of Commissioners.

All administrative settlement forms shall be prepared by the Right of Way Manager or designated representative stating the justification for the settlement.

##### 6.9.3.00     ~~6.09.03.00~~     Legal Settlements

When a condemnation action has been filed and an expert witness has been hired, the Commission may consider making a revised offer based on a higher opinion of value from the

trial appraiser, new information discovered during the eminent domain process, or an assessment of a potential adverse trial result. Agreement under these terms will be considered a legal settlement subject to funding source regulations and policies.

Settlement authority for legal settlements will be the same as administrative settlements (see above).

#### 6.9.4.00     ~~6.09.04.00~~     **FTA Concurrence**

For FTA projects, administrative settlements in excess of \$50,000 or more than the current fair market value must be submitted to the FTA for advance concurrence before the settlement is consummated. The Commission must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare written justification supporting why the settlement is reasonable, prudent and in the public interest.

#### 6.9.5.00     ~~6.09.05.00~~     **Record Keeping**

The original copy of the administrative and legal settlement forms should be filed in the parcel.

#### 6.10.00.00     ~~6.10.00.00~~     **EMINENT DOMAIN** FOR COMMISSION

##### 6.10.1.00     ~~6.10.01.00~~     **General**

Eminent domain is the inherent power of government to acquire private property for public use. The owners of private property shall not be deprived of their property without Just Compensation as provided for in the United States and California Constitutions.

The power of eminent domain is exercised in accordance with Article I, Section 19 of the California Constitution, which states:

“Sec. 19. Private Property may be taken or damaged for public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

##### 6.10.2.00     ~~6.10.02.00~~     **FTA Concurrence**

For FTA projects, FTA concurrence is required before filing for condemnation if the appraised value exceeds \$~~500,000~~1,000,000.

##### 6.10.3.00     ~~6.10.03.00~~     **Notice of Intent to Adopt Resolution of Necessity**

California Code of Civil Procedure (CCP) Section 1245.235 requires that an owner be given notice of the meeting at which the Board of Commissioners will consider a Resolution of Necessity for acquisition of the owner's property. The Notice of the Resolution of Necessity hearing must be mailed to property owners whose property is required. One of the following must sign the Notice:

- ~~The Executive Director or designee~~
- ~~The Project Delivery Director~~

- The Right of Way Manager

The Notice should be delivered to the owner no less than fifteen (15) days prior to the date of the meeting at which the Board of Commissioners will consider the request. If the project is on the State Highway System, the State requires a ~~forty-five~~thirty (~~45~~30) day notice.

If for any reason, any information in the Notice or legal description already provided to the owner ceases to be correct prior to adoption by the Commission, a new Notice should be sent to the owners concerned.

The Commission shall also give notice to the legislative body of the affected city or within the unincorporated area of any affected county as required by section 130220.5(c) of the California Public Utilities Code.

#### 6.10.4.00     ~~6.10.04.00~~     **Impasse Letter**

If an offer to purchase has been rejected and it is determined that further negotiations will not be productive, the Acquisition Agent shall prepare an Impasse Letter to the property owner. The purpose of the letter is to confirm and document the rejection of the offer and inform the property owner of the Commission's intent to proceed with a Resolution of Necessity hearing. The Impasse Letter will be signed by the Executive Director or designee. After the letter is transmitted to the owner, the Acquisition Agent shall attempt to continue negotiations towards reaching an agreement.

#### 6.10.5.00     ~~6.10.05.00~~     **Grantor's Request for Appearance**

If an owner believes that its property should not be acquired or that the project should be realigned to avoid its property, the owner may request an appearance before the Commission regarding the Resolution of Necessity. This request must be made in writing within fifteen (15) days from mailing of the Notice by the Commission, however, in practice, the Commission may choose to grant the request to appear whether the Commission receives a written request or not. The negotiating process continues and assures that all issues are identified and resolved, if possible, prior to the Commission meeting.

#### 6.10.6.00     ~~6.10.06.00~~     **Record of Condemnation Case Status**

The Right of Way Department will maintain a record of the status of condemnation cases commencing with the submittal of the Request for Resolution of Necessity to the Commission. The record is kept current through the duration of the condemnation action.

#### 6.10.7.00     ~~6.10.07.00~~     **Condemnation Suit**

Legal counsel shall have full control of the condemnation proceeding and should be afforded full cooperation by the Right of Way Department, right of way consultants and expert witnesses.

### 6.11.00.00     ~~6.11.00.00~~     **REPORTING OF ACQUISITIONS FOR COMMISSION AND RCA**

#### 6.11.1.00     ~~6.11.01.00~~     **Commission and RCA Policy**



It is the policy of the Commission [and the RCA](#) to report the acquisition of real estate or real estate rights to the Internal Revenue Service (IRS).

**6.11.2.00**     ~~6.11.02.00~~     **1099-Misc. Reporting Procedures**

6.11.2.1     ~~6.11.02.01~~     Transactions Reported. The Commission [or the RCA](#), through the escrow company acting on its behalf, is responsible for reporting real estate acquisitions in excess of \$599 to the IRS. This reporting includes all acquisitions by either negotiated settlement or by condemnation. The following must be reported:

- Real estate acquired for Commission [or the RCA](#) use
- Property acquired by purchase or condemnation for right of way or permanent easement
- Damages to remainders included with the amount paid for the acquisition of a permanent easement or right of way
- When a jury verdict or a legal settlement results in \$600 or more of interest due the owner
- Lost Rent and Temporary Construction Easements as reportable as rents

6.11.2.2     ~~6.11.02.02~~     Transactions Not Reported. The following does not need to be reported:

- Purchases from corporations and governmental agencies
- Transactions where total compensation is less than \$600

6.11.2.3     ~~6.11.02.03~~     Year of Reporting. Under IRS rules, an acquisition has to be reported in the year the transaction is closed. For purchases, this is the date the check is received by the escrow agent or the property owner. For condemned property, it is the date the probable compensation is deposited in the Condemnation Deposit Fund of the State Treasury.

**6.11.3.00**     ~~6.11.03.00~~     **Taxpayer Identification Numbers**

It is required that the Commission [or the RCA](#) (or escrow agent) request a taxpayer identification number (TIN) from all persons having an interest in the real property to be acquired, at or before the time of closing. Under IRS rules, any person whose TIN is required must furnish such TIN and certify that it is correct. The solicitation must be made in writing to the taxpayer that they are required to furnish a correct TIN and that they may be subject to civil or criminal penalties for failing to furnish a correct TIN. Acquisition Agents should solicit TIN information from owners during negotiations. TIN shall be provided to the Accounting Department prior to any disbursements.

When dealing with a representative of the owner, it is permissible to request that the representative obtain the TIN from the taxpayer, however if they fail to supply the information, a request must be sent to the taxpayer by certified mail.

~~6.11.4.00~~     ~~6.11.04.00~~     **Methods of Reporting to the IRS**

- For negotiated settlements, the escrow company is responsible for reporting to the IRS.
- If the property is condemned and a jury verdict or settlement is obtained, it should be determined if the County Clerk is reporting transactions to the IRS. If not, then the Accounting Department will report the transaction to the IRS.
- If the property is condemned and the jury verdict or settlement is greater than the deposit of probable compensation, a correct 1099-S should be sent to the IRS.

~~6.12.00.00~~     ~~6.12.00.00~~     **PROJECT COMPLETION FOR COMMISSION AND RCA**

~~6.12.1.00~~     ~~6.12.01.00~~     **Filing of Recorded Documents and Policy of Title Insurance**

Upon completion of acquisition, all original recorded or unrecorded deeds, Final Orders of Condemnation, appraisal reports, escrow closing statement, survey/appraisal plats, legal description, the policy of title insurance, Negotiator's log (parcel diary) and Certificate of Completion (as applicable) are to be filed in the original parcel file kept in the Right of Way Department.

Any changes in the condition of title that occurs after the date of issuance of the title policy shall be noted in the file, as well as Joint Use and Consent to Common Use Agreements, Joint Development Agreements, Abandonments and Special Use Permits.

7.00.00.00 ~~7.00.00.00~~ RELOCATION ASSISTANCE7.1.00.00 ~~7.01.00.00~~ GENERAL POLICIES AND INFORMATION7.1.0.00 ~~7.01.01.00~~ Policy

The Relocation Assistance Program, as outlined in this chapter of the Right of Way Policies and Procedures Manual, is applicable to all properties acquired by the Commission regardless of whether the project receives federal or state funds. The Relocation Assistance Program will not normally be applicable to the MSHCP land acquisitions, but may be applied on a case by case basis if necessary as determined by the Right of Way Manager.

The only exception relates to voluntary sales where the owner-occupant of a property voluntarily sells their property to the Commission after being informed in writing that if a mutually satisfactory agreement cannot be reached, the property will not be acquired. Any tenants displaced as a direct result of such voluntary sale will be entitled to relocation benefits.

7.1.1.00 ~~7.01.02.00~~ Purpose

The purpose of this chapter is to promulgate in accordance with the following objectives:

- ~~•~~ To provide uniform, fair and equitable treatment of persons who are displaced, to ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement, to ensure that no individual or family is displaced unless decent, safe and sanitary housing is available within the displaced person's financial means, to help improve the housing conditions of displaced persons living in substandard housing and to encourage and expedite acquisition by agreement and without coercion
- ~~•~~ To ensure that persons displaced as a result of Commission projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole
- ~~•~~ To ensure that Commission employees and consultants implement government regulations in a manner that is efficient and cost effective

7.1.2.00 ~~7.01.03.00~~ Availability of the Relocation Program

The Relocation Assistance and Payment Program is available to eligible individuals, families, businesses, farm operations and non-profit organizations which are wholly or partially displaced by Commission projects. Relocation advisory services (not payments) are also available to any person occupying property immediately adjacent to property acquired by the Commission when the Commission determines such person is caused substantial economic injury because of the acquisition.

7.1.3.00 ~~7.01.04.00~~ Applicable Law and Regulations

Federally Funded or Assisted Projects. When the Commission projects are federally funded or federally assisted, the Uniform Relocation Assistance and Real Property Acquisition Policies Act

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of 1970 (42 U.S.C. 4601, et seq.), 49 Part 24, as further amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, the Final Rule dated January 4, 2005, and Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) apply.

State and Locally Funded Projects. When the Commission's projects are state or locally funded, California Government Code Sections 7260-7266 apply.

Conflict. In case of conflicts between federal and state regulations and the provisions of this manual, the regulations and policies that provide greater benefits to the displacee will be followed by the Commission.

#### 7.1.4.00      ~~7.01.05.00~~      **General Eligibility Requirements**

To be eligible for relocation benefits, displacees must legally occupy the property that is scheduled for acquisition by the Commission at the time negotiations are initiated for the subject property and also meet minimum ownership and/or occupancy time requirements and other specific requirements as discussed in this chapter for each of the various relocation benefits available. Displacees who vacate their parcel prior to the initiation of negotiations shall also be eligible (if they meet other requirements) if they were in legal occupancy at the time the Commission notified them, in writing, of its intention to acquire the property. Such notices shall not be given as routine procedure or without prior concurrence from the Right of Way Manager.

The preceding General Eligibility Requirements also apply to moving cost payments except that displacees who move to and legally occupy properties being acquired by the Commission after the initiation of negotiations can qualify for moving cost payments and advisory services, but normally for no other type of relocation payment, provided they are still in occupancy of the subject property at the time it is acquired by the Commission.

#### 7.1.5.00      ~~7.01.06.00~~      **Cancellation of Eligibility as Displaced Person**

Eligibility as a "displaced person" can be cancelled and relocation payment offers withdrawn, normally due to a change in construction plans which eliminates the need for a previously designated right of way parcel, if the person is notified in writing that he will not be displaced as originally planned. The written notice must advise that the Commission will reimburse the person's reasonable expenses incurred to satisfy any binding good faith contractual relocation obligations entered into after they were originally notified of relocation eligibility. Relocation eligibility cannot be canceled if the person has moved from the property.

#### 7.1.6.00      ~~7.01.07.00~~      **Definitions**

The following definitions are applicable to this chapter and to the Relocation Assistance Program in general.

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Acquired. The time the property owner, his agent or representative receives payment from the Commission for the property and/or rights being purchased; or if condemnation is involved, at the time of the amount of probable Just Compensation is deposited into the court.

Affordable. Comparable replacement rental units available to displaced or subsequent occupants with less than ninety (90) days occupancy will be considered “affordable” if the total of the monthly rent plus utilities does not exceed the total rent and utility costs at the displacement site. Other circumstances may indicate the affordability, or lack thereof, of any available replacement dwelling. The Right of Way Manager will approve on a case by case basis exceptions to the above procedure.

Business. Business, for the purposes of this chapter, is defined as any lawful activity, except farm operations, conducted primarily for the following:

- For the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacture, processing and/or marketing of products, commodities or any other personal property
- For the sale of services to the public, or outdoor advertising displays, when the display must be moved as a result of a project
- A non-profit organization that has established its non-profit status under applicable federal or state law

Comparable Replacement Dwelling. A comparable replacement dwelling is:

- Decent, safe and sanitary (DS&S) as defined in the following subsection
- Functionally equivalent to the displacement dwelling, provides the same utility, is capable of contributing to a comparable style of living and is adequate in size to accommodate the occupants. While it need not possess every feature of the displacement dwelling, the principal features must be present
- In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person’s dwelling with respect to public utilities and commercial public facilities, and is reasonably accessible to the person’s place of employment
- On a site that is typical in size for residential development with normal site improvements including customary landscaping
- Within the financial means of the displaced person. It will automatically be considered within financial means if the owner is paid a replacement housing payment or the tenant is paid a rent supplement.
- Currently available to the displaced person on the private market unless the displacee is receiving assistance under a Government Housing Program before displacement, in which case, a comparable replacement dwelling may reflect similar governmental housing assistance. Public housing can be offered to those being displaced from non-public

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housing if they are advised in writing of their right to non-public housing and do not object.

NOTE: If replacement dwellings meeting the above requirements are not available on the market, dwellings which exceed those requirements may be treated as comparable replacement housing.

Contributes Materially. During the two taxable years prior to the taxable year in which displacement occurs, a business or farm operation had average annual gross receipt of at least \$5,000, or had average annual net earnings of at least \$1,000, or contributed at least 33 1/3 percent of the owner's average annual gross income from all sources.

NOTE: It is permissible, with prior approval from the Right of Way Manager, to use a different period if it will be more equitable to the displacee (in lieu of using the two prior taxable years).

If the business has not been in operation, or has not been operated by the current owner-displacee, for the entire two taxable year period, the computation can be based on the actual period of the ~~owner-displacee's~~owner-displacees operation projected to annual rate. The rate would be computed by determining the total gross receipts, net earnings, or gross income, whichever is applicable, during the actual period of the ~~owner-displacee's~~owner-displacees operation; dividing the figure by the number of months of operation, and multiplying by 12 to determine the annual average. A loss for any year should be counted as "0" when averaging, not a negative number.

Conventional Loan. Any loan not guaranteed or directly provided by a governmental agency, or not guaranteed through private purchase of loan insurance, e.g., mortgage guarantee insurance, is considered to be a conventional loan.

Date of Acquisition. The date the subject property is acquired by the Commission.

Decent, Safe and Sanitary Dwelling (DS&S). A dwelling which meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, the dwelling shall meet the following standards (unless waived for good causes by the funding federal agency):

- Be structurally sound, weather tight and in good repair
- Contain a safe electrical wiring system adequate for lighting and other electrical devices
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system
- Be adequate in the size and respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lit and

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ventilated bedroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, property connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for an oven and refrigerator.

- Contain unobstructed egress to safe, open space at ground level.
- Be free of any barriers for a disabled displacee, which would preclude reasonable ingress, egress or use of the dwelling

Displaced Person (Displacee). Any individual, family, business, farm operation, or non-profit organization who moves from legally occupied real property (and in federally funded projects, self certifies legal residence in the United States) or moves personal property from legally occupied real property, as a direct result of the acquisition of such real property in whole or in part by the Commission including any person who moved from the real property as a result of the initiation of negotiations for the property or is issued a notice of intent to acquire.

Displaced Tenants and Owners not Located Within Right of Way Acquisition. Residential tenants who occupy a portion of a parcel that is affected by a partial acquisition, but who are not actually located within limits of the acquisition, will normally be eligible for the same relocation payments they would have been eligible to receive had they been located within the acquisition if (a) the right of way acquisition causes the remainder which they occupy to be uninhabitable due to the acquisition of a facility or service that is not replaced, or (b) if they are located in the remainder of a mobile home park that was so severely damaged and/or reduced in size by the right of way acquisition that the owner justifiably discontinues the entire mobile home park operation at the subject site within one year after the Commission takes physical possession of the portion of the property that was acquired as right of way.

An owner who occupies a remainder that is made uninhabitable due to the acquisition of a facility or service will not be eligible for relocation payments if (a) his right of way payment includes damages, in addition to the payment for property and rights acquired from him, which were specifically computed as being adequate to pay for a cure of the deficiencies which makes the remainder uninhabitable, and (b) he has the legal right and physical space to accomplish the cure. Owners who are in a position to control the necessity for their displacement, and who can reasonably avoid such necessity, cannot qualify for relocation payments by electing not to provide the cure which they have been paid to accomplish. Condemnation awards and legal settlements, which are equal to or exceed the approved offer will be considered to include payment for such cures if the approved offer included such payment. If a condemnation award or legal settlement is less than the approved offer, the Relocation Agent should recommend a payment eligibility determination to the Right of Way Manager.

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Occupants of remainders which become legally and/or physically landlocked due to a right of way acquisition are eligible for the same relocation assistance and payments as occupants of properties which are actually acquired by the Commission, therefore, routine policies and procedures provided throughout this chapter are applicable under this circumstance.

Dwelling. The place of permanent or customary residence. It includes a ~~single-family~~ single-family house, a one-family unit in a multi-family building, a unit in a condominium or cooperative housing project, or any other residential unit, including a mobile home.

Dwelling Site. A land area that is typical in size for similar dwellings located in the same neighborhood or rural areas.

Family. Two or more individuals living together in a single-family dwelling unit who are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or individuals who live together without an identifiable head of household will be considered one family for the purpose of administering the relocation program, unless otherwise determined by the Right of Way Manager.

Farm Operations. Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Initial Occupant. Applies to any person who has been in legal occupancy of the subject real property for not less than ninety (90) consecutive days prior to the initiation of negotiations for the acquisition of such property, or is in receipt of a written notice of the Commission's intent to acquire the property and moves from the subject property (or moves personal property therefrom) subsequent to the initiation of negotiations for such real property. Residential occupants are normally entitled to a relocation housing payment and/or rental assistance payment, moving costs and advisory services.

Initiation of Negotiations for the Property. Relates to the date on which the Commission or their designated representative presents the owner of the property a written offer for the property or rights to be acquired. When non-resident owners are involved who cannot be contacted in person, initiation of negotiations for the property shall be the date such owner or his designated representative received the first communication by mail or telephone from the Commission in which a monetary offer to purchase is made. Certified mail with return receipt requested must be used when it becomes necessary to contact a property owner or designated representative by mail.

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When property owners are donating right of way, they will not be presented a written offer. Under this circumstance, the date that they are invited to execute the conveyance deed will be accepted as the initiation of negotiations for the property.

When displacees are provided a “Notice of Intent to Acquire” the initiation of negotiations will be the earlier of the following, as long as it is subsequent to the issuance of the Notice of Intent to Acquire:

- The date they move from the property
- The date the property owners or their representatives are presented a written offer for their property

Lawful Business. Any business not prohibited by law. Businesses operating in violation of zoning ordinances and/or laws, except those legally operating under a “grandfather clause”, will be considered unlawful. It is possible for a lawful business to be operating illegally due to improper licensing. Lawful businesses operating with license deficiencies will, if otherwise qualified, be eligible for fixed moving payments.

Leaseback Agreement. When a replacement site is not available at the close of escrow for the displacee, an owner or tenant may be allowed to lease back the property based on a monthly rental rate. A Leaseback Agreement shall be developed by the Commission with legal counsel’s concurrence, and may be terminated by the Commission at thirty (30) days’ written notice, provided that the displacee is provided with alternative housing.

Less than Ninety (90) Day Occupants. Persons who are in legal occupancy of a property at the initiation of negotiations for such property, or at the time they were provided a Notice of Intent to Acquire, but who had not been in such occupancy for ninety (90) consecutive days prior thereto, are referred to as “less than ninety (90) day occupants”.

Such persons are normally entitled to reimbursement of moving costs and relocation advisory assistance but for no other type of relocation payment unless the comparable replacement housing is not affordable. Under the latter circumstance, the displacee can be paid a relocation housing payment, either rent supplement or down payment assistance payment, whichever is applicable, under the Last Resort Housing Program. Payment computation procedures are explained in the appropriate sections of this chapter.

Non-Profit Organization. An organization that is incorporated under the applicable laws of the state as a non-profit organization and is exempt from paying federal income taxes under Section 501 of the Internal Revenue Code.

Notice of Intent to Acquire. Issuance of a Notice of Intent to Acquire informs owner-occupants that the Commission will be acquiring their property for a public project and that they can relocate prior to the initiation of negotiations without jeopardizing their relocation benefits.

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Notices of Intent to Acquire are not available to the owners of businesses, farms and non-profit organizations. Such notices should not be given to tenants unless they initiate the action and make a request in writing to the Commission.

Partial Displacement. Situations when the acquisition does not require the displacement of the occupant, but does necessitate the removal of items of personal property, which are located within the new right of way boundaries.

Person. Any individual, family, partnership, company, corporation, organization or association.

Rental Subsidy Payment. The payment available to displaced residential occupants to cover additional rental costs they will experience in renting comparable replacement housing during the forty-two (42) month period following their displacement. It is synonymous with the terms "Rental Differential Payment" and "Rent Supplement".

Replacement Housing Payment. Payments available to qualified long-term owner-occupants to assist in the purchase of replacement housing, computed as the difference between the amount paid to them for their residential property and (1) the amount necessary to purchase the most nearly comparable DS&S replacement housing available, or (2) the amount actually paid for a DS&S replacement, whichever is less. A replacement housing payment may also include a mortgage interest differential payment and an incidental expense payment. It is synonymous with the term "Purchase Price Differential".

Replacement Property. The property being purchased or rented by the displacee to replace the subject property, parcel or dwelling.

Small Business. A business having not more than five hundred (500) employees, working at the site being acquired or displaced by a program or project, which site is the location of economic activity.

Subject Property, Subject Parcel, Subject Dwelling, Displacement Property. When the word "subject" or "displacement property" is used to identify a property, a parcel or a dwelling, it always relates to the property, parcel or dwelling which is being acquired or affected by the Commission and is always the property, parcel or dwelling from which a displacee is being either partially or totally displaced.

Subsequent Occupants. A person who is in occupancy of a right of way parcel at the time it is acquired by the Commission, but who was not in occupancy of such parcel at the initiation of negotiations. Subsequent occupants are eligible for relocation advisory assistance and can normally qualify for moving cost payments, but for no other type of relocation payment unless the comparable replacement housing is not affordable. Under the latter circumstance, the displacee can receive a replacement housing payment, either a rent supplement or down payment assistance payment, whichever is applicable, under the Last Resort Housing Program.

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The Commission will make every effort to minimize subsequent occupants by offering to enter into a protective rent agreement (this is also known as a rent to hold vacant agreement) with the owner of the real property at the time of the initiations of negotiations.

Tenant. A person who has the temporary use and legal occupancy of real property owned by another.

Tenant Displaced to Make Room for Rearrangement of Landowners Business Operation. A tenant who is forced by his landlord to vacate the remainder of a partial acquisition to make room for the landlord to rearrange a business operation that was affected by a partial acquisition will normally be considered a displaced person, and as such will be eligible for the same relocation assistance and payments that he would have been entitled to receive if he had been located within the acquisition area. If an owner-occupied residence is involved in this type of situation, the Right of Way Manager will make a determination of eligibility.

Total Displacement. Complete displacement of a person, family, business, farm operation or non-profit organization.

Uniform Relocation Act. An abbreviated title for the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

Utility Costs. Expenses for heat, electrical, water, sewer and trash collection.

#### 7.1.7.00     ~~7.01.08.00~~     **Interest Acquired**

The type of interest acquired by the Commission does not affect the eligibility for relocation assistance payments provided the interest acquired is sufficient to cause the displacement.

#### 7.1.8.00     ~~7.01.09.00~~     **Ownership Qualifications**

7.1.8.1     ~~7.01.09.01~~     General Ownership Requirements. An owner is an individual(s) who meets one of the following criteria:

- Owns, legally or equitably, the fee simple estate, a life estate, a ninety-nine (99) year lease (regardless of the length of the unexpired term) or other proprietary interest in property. Holders of long-term leases but less than ~~ninety-nine~~ ninety-nine (99) year leases, shall also be considered owners if the unexpired term including options for extension after the date of acquisition of the subject parcel, totals (fifty) 50 years or more.
- Is the contract purchaser of any of the foregoing estate or interests. Displacees who are in the process of purchasing the property from which they are being displaced under a contract to purchase which legally binds both parties to an agreement that calls for the subsequent transfer of title to the

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displacees, is considered qualified if the contract has been in effect for the required ownership time period.

- ~~Has~~ succeeded to any of the foregoing interest by devise, bequest, inheritance or operation of law. In the event of acquisition of ownership by any of the foregoing methods, the tenure of ownership (not occupancy) of the succeeding owner shall include the tenure of the preceding owner.
- ~~Owns~~ an interest in a cooperative housing project which includes the right to occupy a dwelling.
- ~~Holds~~ any other interest, including leases with less than fifty (50) years unexpired term, which in the judgment of the Commission warrants consideration as ownership.
- ~~The owner~~, as defined in this subsection, of a residential dwelling who has owned and occupied the dwelling for at least ninety (90) consecutive days immediately prior to the initiation of negotiations for the subject dwelling is more commonly referred to as a “long term owner”.

### 7.1.8.2

~~7.01.09.02~~ Owner’s Acquisition by Devise, Bequest, Inheritance or Operation of Law. Displacees who acquire a property that is scheduled for right of way acquisition by devise, bequest, inheritance or operation of law are considered to have met the ownership time eligibility requirements (but not necessarily the occupancy requirements ninety (90) day owner and occupied) if the time they have owned the property since acquiring it plus the time it was owned by the person or persons from whom they acquired it totals the required time period.

This policy applies even though the displacees “inherited” the subject property after the initiation of negotiations for the property. It also applies if the inheritance occurred after the original owners signed the deed conveying the subject property to the Commission or after the property was condemned but the probable Just Compensation has not been deposited and as a consequence, possession had not passed to the Commission.

### 7.1.8.3

~~7.01.09.03~~ Part Owners, Partnerships, Estate Members, Subject Right of Way Parcel. If a dwelling acquired by the Commission is partially owned by those who occupy it and partially owned by other parties who are not in occupancy, those in occupancy shall be eligible, if qualified, for relocation payments as owner-occupants.

Estates are not eligible for replacement housing payments (purchase price differential, incidental closing costs, increased interest payments, rental subsidy payments or down payment assistance) but are entitled, when qualified, to moving cost payments.

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It is not necessary that another party who owned an interest in the subject, but did not occupy it, also purchase an interest in the replacement. The name of the other party should not be included as payee on the replacement housing check.

#### 7.1.9.00     ~~7.01.10.00~~     **Eviction for Cause**

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance, unless the Commission determines the following:

- ~~•~~ The person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted.
- ~~•~~ The person is evicted after the initiation of negotiations for serious or repeated violation of material term(s) of the lease or occupancy agreement.

A person evicted due to failure to move or relocate when instructed or failure to cooperate in the relocation process does not lose relocation eligibility.

A displaced person cannot be denied relocation benefits if the eviction was undertaken for the purpose of evading the obligation to make available the relocation benefits the person would otherwise be entitled to.

#### 7.1.10.00     ~~7.01.11.00~~     **Incompetent Owner or Occupant**

If an owner and/or occupant has been legally declared to be incompetent, the Relocation Program should be explained to the legal guardian. Guardians will normally have authority to execute documents for the ward, accept possession notices and handle details related to their ward's displacement. If any complications are encountered, provide all facts to the Right of Way Manager and request specific instructions. The Right of Way Manager should seek assistance from the legal counsel in handling cases of this nature.

#### 7.1.11.00     ~~7.01.12.00~~     **Displacee Dies During Displacement Period**

7.1.11.1     ~~7.01.12.01~~     **Displacee Dies Prior to Occupying Replacement Housing.** The following instructions apply when displacees who are eligible for replacement housing payments (either rental subsidy payments, down payment assistance payments, or purchase price differential payments) or moving costs die before they actually occupy a replacement dwelling:

- ~~•~~ If the deceased is the head of a household or the member of a displaced family, the relocation payment is not affected.
- ~~•~~ If the deceased was the only occupant of the unit acquired by the Commission, the payment would be forfeited as he would never occupy the

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replacement dwelling. (Any portion of a relocation housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate).

7.1.11.2     ~~7.01.12.02~~     Claims Executed Prior to Displacee's Displacees Death. The unpaid relocation claim of an eligible deceased displacee that has been signed and executed prior to his death should be processed for payment in the routine manner. The check should be forwarded to the administrator of the ~~displacee's~~ displacees estate together with an explanation of the relocation payment involved. If an estate has not been opened and/or an administrator has not been appointed, present the facts to the Right of Way Manager and ask for specific instructions. The Right of Way Manager should seek legal advice in handling cases of this nature.

7.1.11.3     ~~7.01.12.03~~     Claims Not Executed Prior to Displacee's Displacees Death. If a head of household dies after qualifying for a relocation payment, but before executing his claim, it is permissible to accept, process and pay a claim executed by the administrator to his estate. The check will be delivered to the administrator.

If the head of household dies prior to filing a claim that qualifies for payment and an estate has not been opened, or an administrator has not been appointed, present the facts to the Right of Way Manager and request instructions concerning execution of the claim and delivery of the check.

7.1.12.00     ~~7.01.13.00~~     Rest Home and Nursing Home Patients

The term "rest home" as used herein also applies to nursing homes, convalescent homes and other similar establishments.

In applying the following policy, it will be necessary to determine whether a subject rest home resident is a temporary or permanent occupant of the rest home.

A temporary resident is one who is in the rest home during an illness, convalescence or illness recovery period, and is currently maintaining permanent residence elsewhere, which he intends to re-occupy when physically able to do so.

A permanent resident is one who has made the rest home his permanent place of residence, is not maintaining a residence elsewhere, and has no plans to leave the rest home at a later date.

In case of doubt or conflict in determining whether a displacee is a temporary or permanent resident or a rest home, legal counsel should be consulted.

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7.1.12.1

~~7.01.13.01~~ Moving Cost-Rest Home Displaced. When a displaced rest home operation is moved by its owner and reestablished in a new location, the individual residents involved (both temporary and permanent) will not be entitled to relocation payments if the cost of moving them from the existing rest home to the replacement is borne by the rest home owner. The rest home owner will be reimbursed for such moving costs as part of the usual business moving cost payment.

If permanent residents are forced to move to a new location at their own expense, and are not moved by the rest home owner as part of his business move, they shall be entitled to residential moving cost payment based either on actual costs, or on the fixed payment schedule, as the occupant of a furnished sleeping room.

If temporary residents are forced to move to a new location at their own expense, they shall be entitled to a moving cost payment which also applies if the temporary residents return to their original permanent residence instead of moving to a new rest home facility.

7.1.12.2

~~7.01.13.02~~ Rental Subsidy Payments-Rest Home Displaced. Rental subsidy payments are not available to temporary rest home residents who maintain permanent and legal residence elsewhere.

A permanent rest home patron, who is displaced due to the Commission's acquisition of the rest home will not be entitled to rental subsidy payment, if the subject rest home is relocated, remains in operation, and is available to the resident after is it relocated unless the existing rental fee is actually increased as a result of the move.

If the displaced rest home does not relocate and does not continue in operation after displacement, and the permanent resident will be forced to relocate to a different rest home, they will normally be entitled to a rental subsidy payment computed as follows:

- Determine the portion of the total monthly rental fee being paid by the displacee prior to displacement that is chargeable to basic "room rent" which normally includes utilities. It will be necessary to "carve out" and separate the basic room rent payment from nursing services, food, and other services paid for in the overall monthly payment. (Rest home records may establish these figures, if not, the determination must be made and documented by an appraiser).

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- Locate the most nearly comparable replacement rest home available to the displacee and determine the portion of the total monthly rental fee charged for the replacement that is chargeable to basic room rent.
- Compute the rental subsidy payment in the same manner based on the difference between the “basic room” rental fees charged by the displaced rest home and the replacement rest home, or on the difference actually paid by the displacee, whichever is less. To determine if the 30% rule applies (see below), each case will have to be discussed with the Right of Way Manager individually.

If the payment computation procedure discussed in this subsection creates an undue hardship on a displacee, the Right of Way Manager should formulate a solution to alleviate such hardship.

7.1.12.3     ~~7.01.13.03~~     Moving Costs-'Rest Home Residents' Property Acquired by the Commission. If a residential, business or farm property is acquired by the Commission while its owner or tenant is residing in a rest home (either temporary or permanent), such owner or tenant is entitled to applicable moving cost payment and may be entitled to other relocation benefits.

7.1.12.4     ~~7.01.13.04~~     Residential Relocation Payments-'Rest Home Residents' Property Acquired by the Commission. Temporary rest home residents who maintain permanent residence elsewhere that are being acquired by the Commission, are entitled to any relocation payment they are eligible to receive and the fact that they are temporarily residing in a rest home has no effect on such eligibility.

Permanent rest home residents may own residential property occupied by others, or unoccupied. If they do, they are entitled to actual cost moving payments.

If a displacee, who is displaced from a conventional dwelling unit, or from a mobile home, moves to and becomes a permanent resident of a rest home, they can qualify for a rental subsidy payment, if eligible, provided that such rest home meets DS&S standards. In determining the amount actually paid by the displacee for their “replacement unit” consider the “basic room fee”~~.”~~.” If the displacee moves to a rest home as a temporary basis after displacement, provide all facts to the Right of Way Manager and request instructions before making commitments to the displacee.

7.1.13.00     ~~7.01.14.00~~     Displaced Students

7.1.13.1     ~~7.01.14.01~~     Moving Costs. Students who are displaced from “temporary” housing, usually furnished rooms they occupy during the school year are entitled

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to moving cost payments, either fixed payment or actual costs, if their displacement occurs during the school year and they, of necessity, move to other temporary housing. Students who move to other temporary housing or return to their permanent homes are only eligible for moving. Students who occupy housing on a “year-round” basis are eligible for all relocation benefits.

7.1.13.2      ~~7.01.14.02~~      Rental Subsidy and Down Payment Assistance. Students occupying housing on a temporary basis during the school year, as discussed in the preceding subsection, and have permanent homes elsewhere, are not entitled to either rental subsidy or down payment assistance.

Students who occupy housing on a full-time “year round” basis, and establish such housing as their permanent and legal residence, shall be entitled to the same relocation payments as any other displaced tenant.

#### 7.1.14.00      Constructive Occupancy

To qualify an occupant for replacement housing payments, the dwelling must be the displacees primary residence. (Payment of moving costs does not require occupancy.) Where the cause of the displacees absence is temporary, displacee shall be considered in occupancy. For example, the dwelling is maintained as principal residence, but displacee is:

1. temporarily employed in another location
2. in the hospital
3. on vacation
4. on temporary military duty
5. not able to occupy because of a major disaster.

Displacee can be considered to be in “constructive occupancy” provided that another party has not established eligibility during displacees absence. Cases of constructive occupancy that differ substantially from examples listed above or cases where another party has occupied property and become eligible during the absence must be decided on an individual basis and be fully documented.

#### 7.1.15.00      ~~7.01.15.00~~      Losses Due to Negligence

Losses due to negligence on the part of the displacee, his agent or employees are not eligible for reimbursement under the Relocation Program.

#### 7.1.16.00      ~~7.01.16.00~~      ~~Displacee's~~Displacees Refusal of Assistance

There is no provision for the Commission to authorize displacees to waive their right to claim a relocation payment to which they are entitled to receive; unless the acquisition of the property qualifies as a “voluntary acquisition<sup>2</sup>.” However, a displacee cannot be forced to sign and submit a relocation payment claim if he elects not to do so. In any circumstance when a displacee does not

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accept a relocation payment, there must be clear evidence in the file that the person was fully informed of all of their potential benefits including probable dollar amounts.

### 7.1.17.00     ~~7.01.17.00~~     **Rental of Commission-Owned Property**

7.1.17.1     ~~7.01.17.01~~     **New Renters after Acquisition.** Persons who rent property from the Commission after it has been acquired and vacated are not eligible for relocation payments. This must be fully disclosed at the time of the rental.

Decent, safe and sanitary units owned by the Commission will be available for rent when a Leaseback Agreement is used. Improved parcels owned by the Commission that do not meet DS&S standards must not be rented for residential purposes.

7.1.17.2     ~~7.01.17.02~~     **Rental Rates.** Rental rate policies are outlined in the Property Management chapter of this Manual.

7.1.17.3     ~~7.01.17.03~~     **Rental Holdovers.** California Code of Civil Procedure Section 1263.615 requires that the Commission offer a one-year ~~leaseback agreement~~ **Leaseback Agreement** to the owner of a property to be acquired under threat of eminent domain unless the Commission states in writing that the property is scheduled to be used for the project within two years of its acquisition. The Commission may opt to allow rental holdovers if the property will be used in less than two years. A decision to allow rental holdovers requires the approval of both the Right of Way Manager and the Project Manager.

7.1.17.4     ~~7.01.17.04~~     **Residential Rental Holdovers.** If eligible displacees of a property acquired by the Commission desire to rent it after the possession period has expired, they can do so, if the construction schedule permits, without jeopardizing or changing their eligibility for relocation payments, including down payment assistance, incidental closing cost payments, or increased interest payments. Residential rental holdovers will normally be accomplished under a Leaseback Agreement.

An owner occupant must be served notice to vacate (at the time the property is needed for construction) under the terms specified in the Leaseback Agreement, which will normally be thirty (30) days written notice.

A tenant occupant must be served with a 90-Day written Notice to Vacate before the Commission takes possession of the property under the terms specified in the Leaseback Agreement. A 30-Day Notice to Vacate will be sent to the tenant sixty (60) days after the 90-Day Notice to Vacate is issued.

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7.1.17.5      ~~7.01.17.05~~      Residential Rental Holdovers – Moving Costs. When residential property is rented back to the occupant by the Commission, the residential moving cost payment will be made after the move to a replacement dwelling is completed. The payment will be based on the amount of personal property actually moved, unless it is obvious that the quantity of personal property was substantially increased after the property was rented to the displacee by the Commission. If a substantial increase is noted, an adjustment will be made in the moving cost payment to eliminate payment for the items added after the property was acquired by the Commission.

If fixed-rate moving cost schedule is used, the payment amount will be based on the number of furnished rooms occupied by the displacee at the time the property was acquired by the Commission. Additional “rooms” (i.e., storage shed or fully occupied garage) may be considered for additional payment.

7.1.17.6      ~~7.01.17.06~~      Residential Rental Holdovers – Replacement Housing Payment. The replacement housing payment offer that is in effect at the end of the possession period may be adjusted if the comparables offered are more than ninety (90) days old from when they eventually purchase and occupy a DS&S replacement dwelling. A replacement housing claim cannot be processed or paid until the displacee has actually fulfilled all requirements necessary to qualify for this payment, unless a hardship advance is required.

7.1.17.7      ~~7.01.17.07~~      Residential Rental Holdovers – Rental Subsidy Payment. Tenants who occupy a dwelling unit being acquired by the Commission and who are eligible for a rental subsidy payment, can rent the subject parcel after it has been acquired by the Commission without jeopardizing or changing his eligibility for the subsidy payment.

The rental subsidy payment offer that is in effect at the end of the possession period may be adjusted if the comparables offered are more than ninety (90) days old from when the tenants eventually move to a DS&S replacement rental unit.

The rental subsidy claim cannot be paid until the tenant actually vacates the subject property, moves to a DS&S replacement dwelling and otherwise qualifies for the payment, unless a hardship advance is required.

7.1.17.8      ~~7.01.17.08~~      Business Rental Holdovers. The renting of business, farm or non-profit property, could create serious problems in administering the Relocation Assistance Program. For this reason, the Commission should try to avoid renting back to businesses, farms or non-profit organizations.

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**7.1.18.00     ~~7.01.18.00~~     Relocation Payments Not To Be Considered As Income**

No payment made under the Relocation Assistance Program outlined in this chapter shall be considered as income for the purpose of the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low income housing assistance, consequently, all payments are not reportable to the IRS on Form 1099S.

The above statement also applies in general to state welfare laws; however, if questions exist concerning the effect of such relocation payments on the state welfare payment eligibility of specific displacees, definite answers must be obtained from local state welfare officials.

Relocation payments are generally considered exempt from levy payments as well. If the local IRS field personnel intend to take levy action against a relocation payment, inform Right of Way Manager who will, in turn, seek advice from legal counsel.

**7.1.19.00     ~~7.01.19.00~~     Delivery of Relocation Payment Checks**

~~All checks issued~~ If a check is utilized as the form of payment under the Relocation Assistance Program ~~are to~~ they should be mailed to the designated recipient by certified mail or personally delivered. A letter of transmittal setting out the check number, amount and type of payment (e.g. moving cost, replacement housing, etc.) should accompany the check. The certified return receipt should be attached to the file copy of the transmittal letter and retained in the parcel file. Electronic Funds Transfer (EFT) is also an option as a form of payment.

It is also permissible to deliver or assign relocation checks to responsible parties other than the displacee to whom such checks are made payable provided that the displacee specifically and clearly requests such action in writing.

Relocation payment checks must be made payable to the subject property displacees, except as authorized herein (administrators of estate, guardians). Moving cost payment checks can be made payable directly to moving companies under certain specific terms discussed hereafter.

**7.1.20.00     ~~7.01.20.00~~     “Rounding” of Claim Amounts**

Relocation claims based on actual costs must not be rounded. Claims based on computed amounts (judgments, not actual costs) can be rounded to the nearest dollar. Only the “total amount due” can be so rounded, the component parts of a claim must be set out in their exact amounts.

**7.1.21.00     ~~7.01.21.00~~     Duplicate Payments**

Under no circumstances can a displacee be paid duplicate relocation payments, covering the same displacement, by two different governmental acquisition agencies.

If the relocate is an employee being transferred by a private company is in occupancy of a parcel being acquired by the Commission at the initiation of negotiations for such parcel, or upon receipt

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of a Notice of Intent To Acquire, the Commission will pay all relocation payments such as displacee is qualified to receive regardless of any transfer payments made to him by his employer and regardless of when the transfer was initiated.

#### 7.1.22.00     ~~7.01.22.00~~     **Documentation Requirements**

7.1.22.1     ~~7.01.22.01~~     **Relocation Case Files.** The Right of Way Consultant shall maintain a Case File for each person who meets the definition of displaced person or persons not displaced. The Case File shall contain the Relocation Agent's Log or Diary, Correspondence to and from the displacee or pertaining to the displacement, and copies of claim forms and supporting documents.

7.1.22.2     ~~7.01.22.02~~     **Relocation Log or Diary.** The Relocation Agent shall maintain a complete and legible log that will contain, at least, the following entries:

- ~~•~~ Date case was assigned to the Relocation Agent
- ~~•~~ Date, status and pending required action when transferred from Agent to Agent
- ~~•~~ Date and place of each personal contact, list of persons present and particulars of the discussion
- ~~•~~ Date and particulars of all significant phone calls
- ~~•~~ Date of Relocation Assistance Program being delivered or mailed, including statement that relocation program was explained and assistance offered
- ~~•~~ Amounts of relocation payments offered. Copies of benefit letters delivered or mailed
- ~~•~~ Claimant's response to offer of assistance and relocation intentions known
- ~~•~~ Date claim forms were delivered and kinds and amounts of payments involved
- ~~•~~ Date payment amounts received; if revised, date claimant was advised of change in entitlement and amounts involved
- ~~•~~ An entry to the effect that replacement housing and the replacement housing valuation was current as of date of vacation. Case File will contain written backup that valuation is current
- ~~•~~ Addresses and prices of replacement properties offered to displace and methods used to transmit information
- ~~•~~ Dates correspondence or documents were received or transmitted
- ~~•~~ Delivery dates of official notices, such as 90-Day Notice
- ~~•~~ Entry when a moving claim is processed indicating circumstances of vacation, e.g., voluntary self-relocation, eviction, subject to a 90 or 30-Day Notice, advisory assistance used

~~• Right of Way Manager sign-off for closed files~~

#### 7.1.23.00     ~~7.01.23.00~~     **Manner of Notices**

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The following notices are required by federal regulation and must be in writing and personally served or sent by certified or registered first-class mail with return receipt requested. Parcel files must be documented to show that the notices are provided in the prescribed manner. Persons who are unable to read and/or understand the notices must be provided with appropriate translation and counseling.

- ~~General Information Notice~~
- ~~Relocation Brochure~~
- ~~Notice of Relocation Eligibility (Relocation Payment Offer)~~
- ~~Title VI~~
- ~~Vacancy Notices~~

Additional notices developed under the Commission's procedures are discussed in various sections of this Manual.

#### 7.1.24.00     ~~7.01.24.00~~     **Relocation Program on Projects Affected by a Major Disaster**

Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to re-occupy their homes by the initiation of negotiations for the subject property can be considered to be in constructive occupancy provided the following occurs:

- ~~That the area has been declared as a major disaster area by the President~~
- ~~That the funding federal agency has determined that constructive occupancy is acceptable under the circumstances. (When a situation of this nature is encountered, provide facts to the Right of Way Manager prior to making eligibility commitments to the displacee.)~~

The replacement housing payment for a long term owner occupant will be based on the difference between the amount the Commission pays for the subject property in its damaged condition and the confirmed price of the most nearly comparable replacement property available (comparable to the subject before the disaster) or the difference between the Commission's payment and the amount that the displacee actually pays for a DS&S replacement, whichever is less, minus any proceeds received by the displacee as payment for damage to his residence from insurance companies and/or from any other source.

NOTE: Procedural Instructions will be issued by the Right of Way Manager in consultation with the Commission's legal counsel when tenants, businesses, farm operations or non-profit organizations are involved in a major disaster. Also, instructions for computing relocation payments will be issued when a displacee experiences disaster which damages or destroys his home or business after the initiation of negotiations for the subject parcel.

#### 7.1.25.00     ~~7.01.25.00~~     **Notice of Intent to Acquire**

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It is the policy of the Commission not to issue Notices of Intent to Acquire (whether verbal or in writing) except when authorized in writing by the Right of Way Manager. The exception applies only when it is obviously in the Commission's best interest to do so or when a displacee will suffer serious personal or financial hardship if such action is not taken.

#### 7.1.26.00     ~~7.01.26.00~~     **Administrative Responsibility**

The Right of Way Manager has the primary responsibility for implementing the Relocation Assistance Program on all Commission projects. The Right of Way Manager shall designate, at least one member of the Right of Way Staff whose primary assignment is to carry out the Relocation Assistance Program on projects that involve relocation assistance.

#### 7.1.27.00     ~~7.01.27.00~~     **Legal Residency**

If the project is federally funded, the displacee will have to "self-certify" their legal residency in the United States and eligibility for relocation benefits and assistance. The Relocation Agent shall advise the displacee of this requirement as early as the provision of advisory assistance and no later than the application for benefits.

#### 7.1.28.00     ~~7.01.28.00~~     **Loss of Goodwill**

When any relocation payment precedes settlement of a claim for compensation for loss of goodwill under the eminent domain law, the Commission, before tendering the relocation payment, shall state in writing what portion of the relocation payment, if any, is considered to be compensation for loss of goodwill and shall explain that it will reduce any future compensation for loss of goodwill payment by that amount.

When any loss of goodwill payment precedes a claim for a relocation payment, the relocation payment will be reduced by an amount, if any, that was considered as part of the loss of goodwill payment. The Commission will advise the displacee in writing the method of the calculation.

#### 7.1.29.00     ~~7.01.29.00~~     **Manner of Disbursement**

Rental subsidy payments will be disbursed in lump sums, unless the Commission determines that payment should be made in installments.

#### 7.1.30.00     ~~7.01.30.00~~     **Basic Rights of Displaced Person**

No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. The Commission shall not require any displaced person to accept a dwelling provided by the Commission (unless the Commission and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

#### 7.2.00.00     ~~7.02.00.00~~     **RELOCATION PLANNING**

During the early stages of development, the Commission shall plan federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the *[Link-to-previous setting changed from on in original to off in modified.]*



displacement of individuals, families, businesses, farms, and nonprofit organizations to develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the Commission which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

- An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families and persons with disabilities when applicable.
- An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, the Commission should consider housing of last resort actions.
- An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
- An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
- Consideration of any special relocation advisory services that may be necessary from the Commission and other cooperating Agencies.

7.3.00.00~~7.03.00.00~~**RELOCATION ASSISTANCE ADVISORY SERVICE**7.3.1.00~~7.03.01.00~~**General**

The Relocation Assistance Program can be divided into two functions (a) relocation benefits, and (b) advisory services and assistance to those being displaced. The term “advisory services” relates to advice and assistance only.

7.3.2.00~~7.03.02.00~~**Purpose**

To establish a Relocation Assistance Advisory Services Program which will enable relocation personnel to provide meaningful assistance to those being displaced regardless of race, color, religion, sex, age, special assistance, physical disability or national origin. The services discussed in this section must be provided by personal contact, if reasonably possible. If personal contact cannot be made, the Relocation Agent must document the file to show that reasonable efforts were made to make personal contact with displacees.

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**7.3.3.00      ~~7.03.03.00~~      Eligibility for Advisory Service**

Relocation assistance advisory services must be offered to the following:

- ~~•~~Any "displaced person"
- ~~•~~Any person occupying property immediately adjacent to the real property being acquired when such person(s) are caused substantial economic injury as a result of the acquisition
- ~~•~~Any person who moves from their residential unit, which is not located in the acquisition, due to reasonable necessity, because of the acquisition of their business or farm operation
- ~~•~~Any person who moves personal property from real property not located within the acquisition, due to reasonable necessity, as a result of the acquisition of their business or farm operation

**7.3.4.00      ~~7.03.04.00~~      Advisory Service Requirements**

The Relocation Assistance Advisory Service Program must include such measures, facilities or services as may be necessary or appropriate to do the following:

- ~~•~~Discuss and explain the service available, relocation payments and the eligibility requirements therefore and assist in completing any applications or other forms required
- ~~•~~Determine the need, if any, of displaced persons, for relocation assistance
- ~~•~~Provide current and continuing information on the availability, prices and rentals of comparable DS&S housing, and of comparable commercial properties and locations for displaced businesses
- ~~•~~Assist a person displaced from the business or farm operation in obtaining and becoming established in a suitable replacement location
- ~~•~~When appropriate, supply information concerning federal and state housing programs, disaster loan programs, and other federal and state programs offering assistance to displaced person
- ~~•~~Advise displaced persons that no payments received under the Uniform Relocation Act shall be considered as income for the purpose of the IRS code or for the purpose determining the eligibility or the extent of eligibility of any person for assistance under the social security act or any other federal law
- ~~•~~Provide other advisory services, as deemed appropriate and necessary, to displaced persons in order to minimize hardships to such persons in adjusting to a new location.

Advisory services shall be administered on a reasonable basis commensurate with the displacees' needs. This could vary from (a) minimum assistance when displacees are well informed, mentally, physically, and financially able to manage their displacement (or overcome their economic injury) and who, as a consequence, neither need or desire Commission assistance to (b) almost unlimited advisory services and assistance for those who are elderly, disabled or otherwise unable to cope

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with their displacement or economic injury problems. All displacees, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

**7.4.00.00     ~~7.04.00.00~~     RELOCATION NOTICES****7.4.1.00     ~~7.04.01.00~~     General Information Notice ("GIN")**

As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Commission's relocation program which includes the following:

- ~~•~~ Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- ~~•~~ Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- ~~•~~ Informs the person that he or she will not be required to move without at least ninety (90) days of advance written notice and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement has been made available.
- ~~•~~ Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.
- ~~•~~ Advises the person not to move until their eligibility for relocation benefits has been established.

**7.4.2.00     ~~7.04.02.00~~     Notice of Relocation Eligibility**

Eligibility for relocation assistance shall begin on the date of Initiation of Negotiations for the occupied property. When this occurs, the Commission shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

**7.4.3.00     ~~7.04.03.00~~     Reminder Notice**

The Relocation Agent shall send timely written notification of the possible loss of rights and expiration date thereof to persons who are eligible for monetary benefits, and have moved from the acquired property, but have not filed a claim.

Notification shall be sent periodically throughout the qualification period. In any event, written contact shall be made no later than within the last six months prior to the filing expiration date. This will allow sufficient time within which to obtain necessary documentation to complete the claim filing(s).

If no response to the written notification is received, the Relocation Agent should make telephone contact within the appropriate time limit and document the contact in the log or diary.

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7.4.4.00     ~~7.04.04.00~~     **90-Day Notices**

No lawful occupant shall be required to move unless he or she has received at least ninety (90) days advance written notice of the earliest date by which he or she may be required to move.

The 90-Day Notice may not be served prior to initiation of negotiations for acquisition of a parcel and, as a general rule, shall not be served until the Commission has obtained legal possession of the property. If possession of the right of way parcel is obtained through the court system, the court documentation can be considered to be the 90-Day Notice if it is provided at least 90 days prior.

Lawful eligible occupants must be informed of the maximum relocation housing payment amount to which they are entitled prior to or in conjunction with the issuance of the 90-Day Notice.

The 90-Day Notice shall either state a specific date as the earliest date by which the occupant may be required to move (90-Day Notice to Vacate) or state that the occupant will receive a further notice indicating, at least thirty (30) days in advance, the specific date by which he or she must move (90-Day Informational Notice).

7.4.4.1     ~~07.04.04.01~~     **90-Day Notice to Vacate.** A 90-Day Notice to Vacate shall not be given until the Commission has control of the property. Control of property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, or the date the Order of Possession is signed by the court (unless the Order of Possession has a specific date-see below).

Since no eligible person shall be served a Notice to Vacate from a residential unit unless appropriate housing is available, at least one available comparable replacement property that is within financial means, must be offered to displacee simultaneously with the Notice to Vacate. A parcel log or diary entry shall indicate by address the specific dwellings offered at the time of service.

7.4.4.2     ~~07.04.04.02~~     **90-Day Informational Notice.** The 90-Day Informational Notice is not a notice to vacate. A Relocation Agent serves the 90-Day Informational Notice in person to eligible and ineligible lawful occupants who are required to vacate because of the proposed project, and have personal property located on the acquired property. A 90-Day Informational Notice must be followed by a 30-Day Notice.

If the 90-Day Informational Notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than ninety (90) days after such dwelling is made available.

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If a 30-Day Notice to Vacate is not served within six (6) months following issuance of the 90-Day Informational Notice, the original 90-Day Informational Notice shall be canceled and a new one issued.

On an exception basis, such as projects with short lead time or instances where rental delinquencies can be anticipated, a 90-Day Informational Notice may be given on or after initiation of negotiations for the parcel. In such instances, the 30-Day Notice to Vacate shall not be given until the Commission has legal possession of the property.

#### 7.4.5.00     ~~7.04.05.00~~     **30-Day Notice to Vacate**

A 30-Day Notice to Vacate is issued sixty (60) days or more after the 90-Day Informational Notice is issued. This notice cites a specific date by which the displacee must vacate. This date may be extended, but any extension must be in writing and must cite a new specific date by which displacee is to vacate.

Since no eligible person shall be served a Notice to Vacate from a residential unit unless appropriate housing is available, at least one available comparable replacement property that is within financial means, must be offered to displacee simultaneously with the Notice to Vacate. A parcel log or diary entry shall indicate by address the specific dwellings offered at the time of service.

#### 7.4.6.00     ~~7.04.06.00~~     **60-Day Notice to Vacate (Mobile Home Park Occupants)**

Civil code Section 798.55 requires a minimum 60-Day Notice to Vacate be given to mobile home park occupants who reside in mobile homes or trailer coaches that require permits to be moved. Service of this notice shall be made in accordance with the instructions for service of a 30-Day Notice to Vacate except that the Notice is effective sixty (60) days after service.

#### 7.4.7.00     ~~7.04.07.00~~     **Notice to Vacate with Order of Possession**

If the Order of Possession contains a specific date, the Relocation Agent may also issue a 90-Day Notice to Vacate that is served simultaneously and is effective the same date as the Order of Possession. Addresses of comparable replacement dwellings are supplied in the 90-Day Notice, and a 30-Day Notice to vacate is not required.

If the Order of Possession does not contain a specific date by which it will become effective, the Relocation Agent serves a separate 90-Day Notice to Vacate that is effective the same date as the Order of Possession and accompanies service of the Order.

#### 7.4.8.00     ~~7.04.08.00~~     **Notices to Unlawful Occupants**

Eligible tenants who are either delinquent in their rental payments or in violation of their rental agreement for any other reason are considered unlawful occupants and are served either a 3-

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Day Notice demanding payment of rent or possession or a 30-Day Notice of Termination of Tenancy and Notice to quit.

Although the Commission is under no obligation to the unlawful ineligible tenant, the Relocation Agent is encouraged to provide advisory services as a method of assisting unlawful tenants in vacating the property, particularly where hardship conditions exist.

#### 7.4.9.00      ~~7.04.09.00~~      **Urgent Need**

In unusual circumstances, an occupant may be required to vacate the property on less than ninety (90) days advance written notice if the Commission determines that a 90-Day Notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Commission's determination shall be included in the relocation file.

#### 7.5.00.00      ~~7.05.00.00~~      **COMPARABLE REPLACEMENT DWELLINGS**

##### 7.5.1.00      ~~7.05.01.00~~      **General**

No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined above) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if the following occurs:

- The person is informed of its location.
- The person has sufficient time to negotiate and enter into a Purchase and Sale Agreement or lease for the property.
- Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease the property.

One of the Commission's goals is that any available comparable used to determine a price/rental differential should be available at the listed price during the period the displacee is actively seeking replacement housing. This period of active search ends when the displacee enters into a contract to purchase (acceptance of Deposit Receipt), builds, or rents a replacement property or when the displacee vacates the displacement property.

##### 7.5.2.00      ~~7.05.02.00~~      **Waiver of Policy on Comparable Replacement Housing Availability**

The federal agency funding the project may grant a waiver of the policy in any case where it is demonstrated that a person must move because of:

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- ~~•~~ A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121)
- ~~•~~ A declared national emergency
- ~~•~~ Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

7.5.3.00     ~~7.05.03.00~~     **Emergency Move**

Whenever a person is required to relocate for a temporary period because of an emergency, the Commission shall:

- ~~•~~ Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling.
- ~~•~~ Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation.
- ~~•~~ Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling).

7.5.4.00     ~~7.05.04.00~~     **Replacement Dwellings for Multiple Occupants of One Dwelling**

If two or more individuals are living together and occupying one dwelling unit, the Commission is not obligated to provide them with more than one replacement dwelling. The Commission is obligated to provide eligible individuals with a comparable dwelling on a reasonable-cost basis. If it costs less to provide one comparable replacement dwelling than two or more, the Commission shall determine the occupants' maximum entitlement based on one replacement dwelling.

7.5.5.00     ~~7.05.05.00~~     **Replacement Dwellings for Multiple Families of One Dwelling**

If two or more families occupy the same single-family dwelling unit, the Commission will first attempt to locate a replacement unit that is comparable to the subject unit which will enable the families to relocate together; however, if such comparable is not available, the Commission's obligation to provide comparable replacement housing will be met if a separate DS&S replacement unit is made available to each family which provides functional comparability to the space and utility they enjoyed.

7.6.00.00     ~~7.06.00.00~~     **RELOCATION CLAIMS**7.6.1.00     ~~7.06.01.00~~     **Documentation of Claims**

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or

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other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

The Relocation Agent must verify qualifying activities, such as moving and occupying replacement housing, by personal inspection with documentation in the parcel log or diary.

#### 7.6.2.00     ~~7.06.02.00~~     **Deadline for Filing Claims**

For tenants, all claims for a relocation payment shall be filed with the Commission within eighteen (18) months after the date of displacement.

For owners, all claims for a relocation payment shall be filed with the Commission within eighteen (18) months after the later of the date of displacement, which is the date that the move was completed, or the date of the final payment for the acquisition of the real property including condemnation awards, stipulated legal settlements and jury awards. This time period may be waived by the Commission for good cause.

#### 7.6.3.00     ~~7.06.03.00~~     **Claims for Multiple Occupants of One Dwelling**

There are separate entitlements to relocation payments only if two or more occupants are clearly maintaining separate households within the same displacement dwelling. The Relocation Agent must document why the occupants should be considered as maintaining more than one household in the displacement dwelling and prepare an economic analysis of available replacement housing alternatives.

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Commission, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Commission determines that two or more occupants maintained separate household within the same dwelling, such occupants have separate entitlements to relocation payments.

### 7.7.00.00     ~~7.07.00.00~~     **RELOCATION PAYMENTS**

#### 7.7.1.00     ~~7.07.01.00~~     **Expeditious Payments**

The Commission shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

#### 7.7.2.00     ~~7.07.02.00~~     **Assignment of Payment**

Displacee may assign part or all of the claim. Examples include assigning to the following parties:

- Payment of rent for the replacement dwelling to the landlord
- Payment of moving company expenses to the moving company

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- Deposit of replacement housing payment into escrow to purchase replacement dwelling
- Payment of relocation expenses directly to the vendor/contractor providing the service
- Payment to a lending institution for repayment of loans

NOTE: Relocation payments are not assignable for obligations, such as general debts and rent owed to former landlord.

#### 7.7.3.00     ~~7.07.03.00~~     **Delivery of Payment**

Payment shall be delivered by the Relocation Agent, except in the following cases:

- Payment is delivered to an escrow agent by check or wire transfer.
- Payment is delivered to an assignee.
- Payment is mailed by accounting.

#### 7.7.4.00     ~~7.07.04.00~~     **Advance Payments**

If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

When replacement housing is built or rehabilitated, payments are made only when the unit is completed, inspected to be decent safe and sanitary, and occupied by the displacee.

#### 7.7.5.00     ~~7.07.05.00~~     **Occupants Separate or Divorce**

Eligible occupants who subsequently separate or divorce and establish separate households, whether by choice or by litigation, qualify for payments as one displaced family. The family's payments may be divided between the occupants in any proportion on which they agree. This agreement must be in writing and cannot be changed without written consent from both parties.

If the parties cannot reach an agreement, entitlement is calculated as if they relocated together. Payment can be determined by type of eligibility established by the first party to relocate and file a claim. Although only one party needs to sign the claim forms, checks must be made payable to both parties.

If divorce or separation occurs and one spouse vacates the property prior to initiation of negotiations, the spouse who remains in occupancy is eligible for all relocation benefits that may accrue.

#### 7.7.6.00     ~~7.07.06.00~~     **Deduction from Payments**

The Commission shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Commission shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

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Courts have held that Relocation Assistance Payments cannot be attached through legal actions. In bankruptcy situations, the displacee must advise Trustees of any possible relocation payments.

#### 7.7.7.00     ~~7.07.07.00~~     **Notice of Denial**

If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination and the procedures for appealing that determination.

#### 7.8.00.00     ~~7.08.00.00~~     **MOVING COSTS**

##### 7.8.1.00     ~~7.08.01.00~~     **Payment Eligibility**

All displaced persons, including less than ~~ninety-day~~ ninety-day occupants, subsequent occupants and occupants partially displaced, are eligible for moving costs.

##### 7.8.2.00     ~~7.08.02.00~~     **General Moving Cost Policies**

7.8.2.1     ~~7.08.02.01~~     **Policy Concerning More Than One Move.** Moving costs cannot be paid for more than one move of the same personal property without prior approval by the Right of Way Manager. More than one move will not be approved unless it is clearly in the best public interest to do so. This policy does not apply when it is necessary to move personal property to and from storage.

Two moves can be justified when personal property is located within a temporary or permanent easement - one move from the easement area and another to return the personal property after the easement (if temporary) reverts to the property owner.

7.8.2.2     ~~7.08.02.02~~     **Distance of Move.** There is no limitation on the distance a displacee can move personal property. However, moving cost payments must not include the expenses involved in moving the personal property more than fifty (50) miles. When the relocation cannot be accomplished within the fifty (50) miles from the subject location, the Right of Way Manager may allow reimbursement of cost to the nearest adequate and available site.

Moving cost payments can be made to cover the cost of moving personal property on to remaining or other lands owned by the displacee or his or her landlord.

7.8.2.3     ~~7.08.02.03~~     **Owner Retention of Real Property.** When an owner retains any item that was classified as real property, the cost of moving it to a new location is never eligible for reimbursement.

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If a retained dwelling is moved without removing the occupant's personal property, the displacee can still be paid a moving cost payment based on the "Fixed-Payment Moving Cost Schedule." No additional moving cost payment will be made. If, however, furnishings are removed during the time the building is being relocated, displacee could be paid the actual cost of removing, storing and replacing the subject furnishings, or the fixed-payment option in lieu of actual costs.

7.8.2.4 ~~7.08.02.04~~ Personal Property Sold after Initiation of Negotiations and Prior to Displacement. Displaced persons who sell or otherwise dispose of personal property after initiation of discussions and prior to displacement are eligible for a fixed payment (discussed later in the chapter).

Fixed Payment Option. If the owners of residential personal property who selected the "fixed payment" moving cost option, sell or otherwise dispose of their personal property prior to its being removed from the subject parcel, they shall be entitled to the fixed payment under Schedule B of the Fixed-Payment Moving Cost Schedule after such personal property has been removed from the right of way. The fact that personal property was disposed of prior to its removal from the subject parcel has no effect on the eligibility of the displacee to receive his or her fixed moving cost payment. The person who purchased the personal property will not be eligible for reimbursement of the cost of moving the property.

Actual Cost Option. If the owners of personal property select an "actual cost" moving cost payment, then sell or otherwise dispose of any personal property prior to the time it is removed, they will not be entitled to reimbursement for the cost of moving the items that were sold or otherwise disposed of. The party who acquired the personal property may be eligible for a moving cost payment as a Subsequent Occupant. If a business, farm or non-profit organization is involved, the original owner, who owned the items at the initiation of negotiations, may be eligible for a "Tangible Property Loss" payment relating to the items sold and/or disposed of.

No moving cost payment will be paid for items that are sold to customers of a business, farm operation or non-profit organization, as well as the cost of moving items that are sold to customers and delivered by the displacee.

7.8.2.5 ~~7.08.02.05~~ Real Property Sold to Another Party. If a property owner sells his or her real property which is needed as right of way to another party after initiation of negotiations, and not directly to the Commission, and as a result, vacates such property prior to the time possession is required by the Commission, he or she will

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not be entitled to a moving cost payment as the displacement will be necessitated by the sale of the real property and not due to the Commission acquisition.

#### 7.8.2.6

~~7.08.02.06~~ Payment Assurance to Moving Firms. It is possible that displacees, whose moving cost payments are to be based on “actual costs,” may not be financially able to employ a moving firm and pay for their move prior to receiving a moving cost payment from the Commission. If this situation occurs, it is possible that moving firms will be unwilling to conduct the move without assurance that they will receive payment. In such instances, one of the two following actions may be taken:

Benefits Confirmation Letter. Provide the displacees a letter confirming the moving cost payment offer (based on the lowest, most reasonable moving cost bid or estimate received) which they can present to the moving firm as proof that they will receive payment from the Commission which will enable them to pay the mover.

Check Payable to Moving Company. The displacee and the moving firm can execute an agreement authorizing the Commission to make the moving cost payment check payable to the moving firm and only released to the moving company upon completion of a move satisfactory to all parties

#### 7.8.2.7

~~7.08.02.07~~ Move Bids. The procedures for accomplishing various types of moves normally require at least two (2) moving cost bids or estimates from licensed commercial movers who are qualified to conduct the ~~displacee's~~ displacees move. Each bid must reflect the total amount that will be charged for conducting the move. When it is only possible to get one (1) bid, advise the Right of Way Manager of the facts involved and ask for authority to proceed on the basis of one (1) bid or estimate.

If the lowest bid appears to be unreasonable, the Relocation Agent must obtain additional bid(s) to assure that the moving cost will be acceptable. It is expected that bids will be provided without cost; however, with prior approval of the Right of Way Manager, movers can be compensated for preparing bids for specific moves.

If it is not practical to obtain advance moving cost bids due to the complexity of a move, the displacee can be authorized by the Right of Way Manager to conduct the move without them. When the requirement for obtaining bids is waived due to the complexity of the move, the Case File must be documented and state the justification therefore.

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The displacee must be given a reasonable opportunity to help select the two moving firms who will be asked to bid on his or her move. This can be accomplished by assembling a list of all certified moving companies in the area which are acceptable to the Commission.

The reasonable preference of the displacee should be honored; however, the Relocation Agent is not permitted to accept unreasonable requests which would not reflect good business practices, or which involve moving firms not acceptable to the Commission. If it is not reasonably possible to agree with the displacee, the Relocation Agent has authority to carefully select qualified movers and to proceed without the ~~displacee's~~displacees concurrence. The Relocation Agent shall advise the Right of Way Manager, in writing, at any time it is necessary to proceed without the ~~displacee's~~displacees concurrence.

Copies of all bids must be retained in the Relocation Case File.

Arrangements for making the move are the responsibility of the displacee. The Commission will not contact or employ the mover on behalf of the displacee and will not supervise the move except under unusual circumstances and only after approval is granted by the Right of Way Manager. Approval will not be granted unless the displacee is physically or mentally incapable of such actions and when they do not have anyone else willing and able to assist them.

7.8.2.8 ~~7.08.02.08~~ Overtime Charges. Moving cost payments must be based on "straight time" rates and not on overtime rates except in cases where it is essential that the move be conducted during "off duty" hours. Prior approval from the Right of Way Manager is required before a move involving overtime rates can proceed.

7.8.3.00 ~~7.08.03.00~~ General Moving Costs

The following items are eligible moving costs for all displaced persons:

7.8.3.1 ~~7.08.03.01~~ Professional Services. The reasonable costs of professional services necessary for one of the following:

- ~~—~~Planning the move of personal property
- ~~—~~Moving the personal property
- ~~—~~Installing the relocated personal property at the replacement site

7.8.3.2 ~~7.08.03.02~~ Reasonable "Out of Pocket" Fees. Reasonable "out of pocket" fees paid to consultants for preparing inventories of personal property are normally reimbursable. Displacees should be encouraged to submit proposals for obtaining

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professional services, including the anticipated costs, to the Relocation Agent prior to approval. The cost of professional services will be limited to the reasonable hourly rate charged by others in the specific profession.

7.8.3.3     ~~7.08.03.03~~     Transportation. Transportation of the displaced person and personal property to the replacement location up to a distance of fifty (50) miles. Such costs can be on a mileage basis, computed as one trip from the property acquired to the replacement property, or actual costs if commercial transportation is used.

7.8.3.4     ~~7.08.03.04~~     Packing and Crating. The reasonable costs of packing, crating, unpacking and uncrating personal property are reimbursable incidental moving costs.

7.8.3.5     ~~7.08.03.05~~     Insurance. The cost of insurance premiums covering loss and damage of personal property while in transit or storage can be included in a moving cost claim based on actual expenses but must not exceed the reasonable replacement value of the personal property involved, including the deductible, if applicable. Claims including insurance premiums must be supported by paid receipts showing the amount paid for the insurance and the amount of coverage involved.

7.8.3.6     ~~7.08.03.06~~     Losses in Moving. The reasonable replacement value of property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employee) in the process of moving is reimbursable, when insurance to cover such loss or damage was not reasonably available. This payment is not authorized when residential moving cost payments are based on the fixed-payment schedule, or when the fixed-payment non-residential option is selected in lieu of moving costs. The replacement value of damaged personal property will not be paid if the damaged item can be reasonably repaired.

7.8.3.7     ~~7.08.03.07~~     Storage. If it is necessary for displaced persons to store their personal property, the actual cost of such storage, not to exceed twelve months can be included in their moving cost claim. The Case File must be documented to explain why such storage was necessary and justify the amount of the storage charges. The cost of storing personal property on real property being acquired or on another property owned or leased by the displacee, is not eligible for payment under the Relocation Program. If the most practical solution is for the personal property to be temporarily stored in rented mobile storage units parked on the subject property, such as vans, trailers, etc., the reasonable cost of renting such units may be eligible for reimbursement. In these instances, the approval of the Right of Way Manager is required.

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Moving cost claims which include storage costs must be accompanied by a paid receipt showing the amount paid as storage costs, length of storage period, where the personal property was stored, and if applicable, a breakdown of the storage costs.

Storage costs cannot be paid when residential moving cost payments are based on the “Fixed-Payment Moving Cost Schedule”, or when a fixed non-residential payment is made in lieu of moving costs.

Should the owners of personal property sell the personal property while they are in storage, their eligible storage cost period terminates at the end of the month in which it is sold and neither they, nor the buyer, shall be entitled to any payment covering the cost of moving such personal property from the storage area. When storage is necessary, the Commission will normally pay the reasonable cost of moving the personal property to the storage site and at the end of the storage period to a place designated by the displacee, provided the combined distance of both moves, to and from storage, does not exceed fifty (50) miles in distance. If the move from the storage occurs later than sixty (60) days after the end of the twelve (12) month storage period, without authorized extension, the Commission will not reimburse the displacee for the cost of moving the personal property from the storage unit.

A storage period in excess of twelve (12) months must be approved by the Right of Way Manager based on necessity.

7.8.3.8 ~~7.08.03.08~~ Costs of Attempting to Sell Personal Property. The reasonable cost incurred in attempting to sell an item of personal property that is not to be relocated is reimbursable.

7.8.3.9 ~~7.08.03.09~~ Other Moving Related Expenses. In addition to the specific incidental moving costs discussed herein, eligible displacees can be reimbursed for other moving expenses that the Commission determines to be reasonable and necessary that are not specifically ineligible. Under no circumstances will the Right of Way Consultant discuss with a displaced person any payment under this section until the Right of Way Manager has approved the payment.

7.8.4.00 ~~7.08.04.00~~ Residential Moving Policies

7.8.4.1 ~~7.08.04.01~~ Two or More Families Occupy Same Single-Family Dwelling Unit. In most instances, the term “families” is used in explaining the procedures in this subsection; however, the principles and instructions also apply when one family

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jointly occupies a single-family dwelling unit with other individuals who are not a part of the family.

Joint-occupancy families are entitled to separate moving cost payments if they are eligible for separate replacement housing or rental subsidy payments. In most cases joint-occupancy families will be treated as multiple occupants in one dwelling.

7.8.4.2 ~~7.08.04.02~~ Separation after Displacement. In some instances, two or more families living together in the same single-family dwelling unit prior to displacement, will move into separate dwelling units after being displaced. If this occurs and the Commission determines they are separate households, each family can claim a separate moving cost payment, either the actual cost of moving their portion of the personal property involved or a payment based on the appropriate Fixed-Payment Moving Cost Schedule.

When the payment is based on the fixed-payment schedule, each family can be paid using the schedule method. Their benefit under the schedule method will be determined by their ownership of the furnishings, as with any other residential occupant.

7.8.4.3 ~~7.08.04.03~~ All Families Relocate Together. Families who live together prior to displacement will not be entitled to separate moving cost payments if they move to the same single family replacement dwelling unit and continue to live together after displacement, regardless of the circumstances involved.

#### 7.8.5.00 ~~7.08.05.00~~ Residential Moving Costs

Residential moving cost payments as discussed in this subsection relate to all personal property generally classified as household goods, furniture, appliances and any other items used in the establishment and maintenance of a home and is not used in the operation of a business, farm or nonprofit organization. It is important that the Relocation Agent confirm that certain items of personal property, such as satellite dishes, above ground swimming pools, and outdoor spas, were not acquired with the real property. Personal property that was acquired with the real property is not eligible for reimbursement as a move cost payment.

Relocated individuals or families can be paid based on the cost of one, or a combination of the following methods:

- Self-move
- The "Fixed-Payment Moving Cost Schedule"

7.8.5.1 ~~7.08.05.01~~ Commercial Mover. Moves in this category include all situations where eligible displacees, including partial displacements, employ and pay

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someone (normally a moving company or trucking firm) to move their personal property from the unit acquired by the Commission to a replacement unit and claim reimbursement for their actual and reasonable expenses. Applicable related moving expenses paid by displacees, as shown below, are available for reimbursement under this moving payment option.

The owners of mobile homes which have been classified as personal property can claim the actual and reasonable cost of moving the unit to any location within fifty (50) miles distance. Moving cost bids should be from qualified bidders who are equipped and capable of moving mobile homes. The Commission will reimburse the displacee for incidental expenses related to the move, including disconnection and hookup of utilities, permit fees and appliances. The cost of extending water, sewer, electric or other utility lines to and on the replacement site is not eligible for reimbursement as an incidental moving cost (This is considered a capital improvement to the site).

7.8.5.2

~~7.08.05.02~~ Residential Self-Move. A residential occupant, including occupant and non-occupant owners of mobile homes that have been designated as personal property, may conduct a self-move. Payment will be based on one or a combination of the actual and reasonable costs incurred or the lower of two bids prepared by a commercial mover. If payment is based on actual and reasonable costs, it must be supported by receipted bills for labor and equipment. Hourly labor and equipment rental rates should not exceed the rates paid by a commercial mover.

7.8.5.3

~~7.08.05.03~~ Fixed-Payment Moving Cost Schedule. Individuals and families who are displaced from their dwelling, or from a seasonal residence, can elect to receive a moving cost payment based on the Federal Highway Administration's (FHWA) periodically published "UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT-RESIDENTIAL MOVING EXPENSES AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE." The FHWA moving cost schedule is a generally accepted industry standard and therefore will be used by the Commission on projects funded by other agencies, unless the funding agency has an alternate schedule.

Anyone using the schedule method must check with FHWA to ~~insure~~ensure that the schedules below are current.

Schedule A (Occupant Provides Furniture). This schedule covers situations in which a displacee occupies and provides the furnishings for a dwelling unit.

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An attic, basement, enclosed porch, separate shed or other similar-type storage areas can qualify as a compensable room, provided that such area contains furniture, appliances and/or other personal property reasonably equivalent to a routine furnished room. Bathrooms, hallways and closets do not qualify and must not be counted as separate rooms. If the amount of personal property in a room or space actually contains more than the normal contents, the room count can be increased accordingly. If some rooms are considered to be ineligible to qualify as a furnished room due to being sparsely furnished, it is proper to combine two or more of such rooms to qualify as one compensable furnished room.

The number of “eligible rooms” on which the fixed-payment amount is based will be established by the Relocation Agent who is assigned to the unit at the initiation of negotiations and must be compatible with the number of rooms reflected in the Relocation Agent’s report. If the number of rooms shown in the relocation Agent’s report or the letter of eligibility for relocation benefits differs from the number of rooms shown in the needs questionnaire, the difference must be explained on the Relocation Agent’s Report.

Occupants of mobile homes which are classified as real property shall be paid under this schedule for moving their furnishings in the same manner as occupants of conventional dwellings, based on the number of rooms in the subject mobile home.

When an acquisition includes an occupied residence located on a parcel larger in size than a normal building lot in the area, including those located on farms, the qualified owner shall be permitted to select the fixed-payment option for the residential move and also claim the actual cost of moving any items of personal property located on such “extra land.”

<u>Number of Rooms</u>	<u>Payments</u>
<u>1</u>	<u>\$725</u>
<u>2</u>	<u>\$930</u>
<u>3</u>	<u>\$1165</u>
<u>4</u>	<u>\$1375</u>
<u>5</u>	<u>\$1665</u>
<u>6</u>	<u>\$1925</u>
<u>7</u>	<u>\$2215</u>
<u>8</u>	<u>\$2505</u>
<u>Each additional Room \$265</u>	

<u>Number of Rooms</u>	<u>Payments</u>
<u>1</u>	<u>\$685</u>

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2	—\$880
3	\$1100
4	\$1295
5	\$1570
6	\$1815
7	\$2090
8	\$2365

~~Each Additional Room \$250~~

Schedule B (Furniture Provided By Landlord). This schedule applies to occupants when the furnishings in a dwelling unit are owned by someone other than its occupant, normally by the landlord in “furnished units.” “Sleeping rooms” normally fall within this category.

The occupants of mobile homes who do not own the unit or its furnishings shall be paid by use of this schedule as any other occupant of a conventional furnished dwelling unit based on the number of rooms in the mobile home. The owner of the furnishings cannot be paid a fixed-schedule payment, but could normally qualify for a moving payment based on actual costs.

<u>Number of Rooms</u>	<u>Payment</u>
<u>1</u>	<u>\$475</u>
<u>Each Additional Room \$90</u>	

<del>Number of Rooms</del>	<del>Payment</del>
<del>1</del>	<del>—\$450</del>
<del>Each Additional Room \$85</del>	

Schedule Exceptions. If a person has minimal possessions and occupies a dormitory style room, or if the person’s move is performed by an agency at no cost to the person, moving costs are limited to \$100.

When a partial displacement residential move is involved and the displacee (occupant or non-occupant) elects to conduct a self-move based on the fixed-payment schedule, a flat rate of \$175 per room or equivalent will be used not to exceed \$1,750.

Combined Residential and Business or Farm Moves. Should a non-residential moving payment be involved, or a separate business move, it is the Relocation Agent’s responsibility to ~~insure~~ensure that the personal property related to the business is not considered when determining the number of eligible rooms that are to be included in the schedule payment and that there is no duplication of payment.

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7.8.5.4

~~7.08.05.04~~ Additional Eligible Residential Moving Costs. Potential additional moving costs for residential moves include:

- Removal and Reinstallation Expenses. The reasonable costs of disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property are reimbursable. Cost of altering or modifying residential items of personal property, to adapt to the replacement dwelling, cannot normally be a reimbursable incidental moving cost.
- Transportation, Meals and Temporary Lodging. Transportation costs can include special services such as the cost of an ambulance to transport relocates up to a distance of fifty (50) miles.
- The actual reasonable costs of meals and lodging can be paid if it is necessary for the displacees to “eat out” or spend a night in a motel or hotel because of the move. Lodging rates and meals must not exceed the routine rates paid by the Commission to its employees when they travel on Commission business. Receipts will be required to prove that such expenditures were made and the actual costs involved.
- Temporary lodging provisions are not to be used to house displacees, unless extraordinary circumstances dictate otherwise, while other quarters are being acquired or constructed, as comparable replacement housing must be available for occupancy prior to the time the displacee is required to move.
- Mobile Home Appurtenances. The reasonable cost of disassembling, moving and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility hookup charges.
- Mobile Home Repairs. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe and sanitary.
- Nonrefundable Mobile Home Park Entrance Fee. Nonrefundable mobile home park entrance fees at the replacement site are reimbursable as incidental moving costs. Reimbursement for such fees cannot exceed the entrance fee charged by the selected comparable replacement mobile home park on which the ~~displacee's~~displacees relocation housing payment was based.

7.8.6.00

~~7.08.06.00~~ Business, Farm and Nonprofit Organization Moving Cost Policies

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7.8.6.1      ~~7.08.06.01~~      Monitoring Moves. Moves that involve large moving cost payments must be monitored at both the displacement and replacement sites by the Relocation Agent, to the extent necessary to assure that the personal property involved was actually moved (at the ~~displacee's~~displacees expense) to their remaining or replacement property and that the moving cost claim is reasonable and accurate. Displacees are required to give advance written notice of the date the move will begin. Failure to provide the written notice or to permit the Relocation Agent to monitor both at the displacement and replacement sites can cause forfeiture of moving payment eligibility. On-premise monitoring may be waived by the Right of Way Manager in cases of non-complicated moves.

7.8.6.2      ~~7.08.06.02~~      Furnished Rental Units. The owners of furnished multi-family dwellings or furnished single family dwellings, which they do not occupy, can be reimbursed for the cost of moving such furnishings as a routine business move. In an effort to minimize administrative burdens in the relocation process, it is permissible to reimburse the cost of moving the personal property for these types of businesses using the moving schedule. The businesses would be additionally eligible for other related moving costs such as reestablishment payment.

7.8.6.3      ~~7.08.06.03~~      Partial Displacement. If the majority of a business property or farm operation is being acquired as right of way, and/or if the right of way acquisition is so severed that the business or farm operation cannot be continued, the owner can be paid for moving all personal property used in connection with the business or farm operation including items located outside of the right of way acquisition, provided that such items are moved within a reasonable time after acquisition. This is normally by the end of the ~~displacee's~~displacees authorized possession of the acquired area unless an extended time period is agreed upon in writing between the Commission and displacee. The Case File must be documented to show why the entire business or farm operation must be relocated when a partial acquisition is involved.

7.8.6.4      ~~7.08.06.04~~      Two or More Owners of Personal Property Involved. In instances where several different persons or firms own personal property located on business or farm real property being acquired by the Commission, each owner is entitled to the cost of moving his or her items of personal property. Each must file a separate claim.

7.8.7.00      ~~7.08.07.00~~      Business, Farm Operations and Nonprofit Organization Moving Costs

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Owners of displaced businesses, farm operations and nonprofit organizations can employ commercial movers to relocate their personal property, conduct self-move, or have a combined commercial and self-move.

7.8.7.1~~7.08.07.01~~

Commercial Mover. Moves in this category include all situations where the qualified owners of displaced businesses, farm operation and nonprofit organizations employ someone to move their personal property from real estate acquired to a replacement site and claim reimbursement for their actual and reasonable moving expenses. Applicable related moving expenses paid by the displacee are reimbursable under this moving cost payment option.

If the displacee moves more than fifty (50) miles, the payment will be based on the prorated portion of the moving costs that would have been applicable to a fifty (50) mile move.

If there is a need for specialized moving equipment and/or expertise, it is permissible for the owner to employ two or more commercial movers. It is also permissible for such owners to conduct a move by employing a commercial mover to move part of their personal property and move the balance by self-move.

An inventory should be obtained from the displacee or the fixture and equipment appraisal showing the items of personal property to be moved. It is permissible for small items to be grouped into “lots” or to be “lumped” together in some other type of identifiable unit such as specific number of bins, boxes, barrels, etc. The Relocation Agent must make an on-site inspection of the items involved and assure that the inventory is accurate. The Case Files must be documented to show the inspection and photographs taken. Inventories should be prepared at the earlier of the actual move or the acquisition of the parcel.

The Relocation Agent, working in concert with the business, must create moving specifications ~~insuring~~ensuring that there is a meeting of the minds how the personal property will be disconnected (as necessary), packed, disconnected, moved, reconnected and unpacked.

The Relocation Agent must obtain at least two (2) moving cost estimates from qualified movers based on the inventory.

After the move is complete, the displacee must provide the Commission an inventory of the items of personal property that were actually moved to his or her remaining or replacement property. The post-move inventory must contain a statement that all of the items listed therein were actually moved from the project location.

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The Relocation Agent must conduct an on-site review of the post-move inventory to attest that it is reasonably accurate and that does not contain any items of real property that were retained and moved by the displacee. If the post-move inventory is substantially the same as the pre-move inventory, the displacee can be paid the actual moving costs. Eligible documented incidental expenses may likewise be paid.

7.8.7.2

~~7.08.07.02~~ Self-Move. Qualified owners of any displaced businesses, farms or nonprofit organizations have the option of conducting a self-move. Under this option, the displacees will move their personal property and will not employ a commercial mover to conduct the move.

Similar to a commercial move, the Relocation Agent must determine the inventory, obtain moving bids and verify the move.

If the post-move inventory is substantially the same as the pre-move inventory, the displacee may be paid the amount of the lowest moving cost bid, without presenting additional documentation. They can also be paid eligible documented incidental expenses.

7.8.7.3

~~7.08.07.03~~ Additional Business, Farm and Nonprofit Organization Moving Costs. Additional moving costs relevant only to business, farm and non-profit organization moves include:

Removal and Reinstallation of Equipment. The reasonable costs of disconnecting, dismantling, removing, reassembling and reinstalling machinery, equipment and other personal property can normally be included in moving cost payments that are based on actual moving expenses.

The reasonable costs of making modifications to the personal property as necessary to adapt it to the replacement structure, replacement site, or to the utilities at the replacement site, are reimbursable incidental moving costs, but must be preapproved by the Right of Way Manager. The cost of modifications to adapt the utilities at the replacement site to serve the personal property are also reimbursable.

Licenses. Any license, permit, fee, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fee or certification.

Signs and Stationery. Actual reasonable cost of re-lettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move are reimbursable. Generally, the cost of replacing stationery will be

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limited to the amount of stationery the person had “on hand” at the date of the move. In instances when a business has less than a “minimum run” of stationery on hand the Commission may, at its option, pay the full cost of the minimum run. A pre-determined maximum expenditure should be agreed upon between the Commission and the displaced person for these items of cost before a payment commitment is made.

Search for Replacement Site. The owner of a displaced business, farm operation or nonprofit organization can be reimbursed for the actual reasonable and documented expenses incurred in searching for a suitable replacement property, not to exceed \$2,500. Applicable search expenses include:

- ~~•~~ Transportation for search – based on actual fees charged for commercial transportation or allowable RCTC employee mileage rate when a private vehicle is used
- ~~•~~ Meals away from home – not to exceed the rate paid to RCTC employees when they travel on business
- ~~•~~ Lodging away from home – not to exceed standard rates charged by motels and hotels in the area
- ~~•~~ The value of time actually spent in the search, based on the applicable and reasonable salary or earnings of the person(s) conducting the search
- ~~•~~ Fees paid to a real estate agent, broker or other consultant to locate a replacement property, exclusive of any fees or commissions related to the purchase of the site
- ~~•~~ Time spent in obtaining permits and attending zoning hearings
- ~~•~~ Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings

All expenses claimed (except the value of time spent in the search) must be supported by receipts or bills. Time spent will be documented with an invoice that reasonably explains the time actually spent in the search.

Eligible search costs incurred prior to the initiation of negotiations are reimbursable if they were incurred due to reasonable anticipation of the property being acquired by the Commission, and the displacee becomes eligible for a moving cost payment.

Purchase of Substitute Personal Property. If the item of personal property, which is used as part of a business, nonprofit organization or farm operation, is not moved but is promptly replaced with a substitute item that performs comparable function at the replacement site, the displacee is entitled to payment of the lesser of the following:

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- The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item.
- The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate for relocating the item including incidental costs, but excluding any allowance for storage and any allowance for modifying the equipment, the utilities or the replacement structure. One bid or estimate is acceptable in determining the estimated cost of relocating an item when a low cost and/or uncomplicated move is involved.

This procedure should be recommended to displacees when it will cost more to move an item than to replace it in kind or with a suitable substitute at the replacement site. If displacee insists on moving the item, procedural advice from the Right of Way Manager must be requested.

If a situation is encountered where the cost of moving an item that cannot be replaced or suitably substituted is substantially more than its value, all facts must be provided to the Right of Way Manager and procedural instructions requested prior to making a commitment to the displacee. Facts submitted must clarify the importance and/or necessity of the item in carrying out the ~~displacee's~~ displacees business, farm or nonprofit operation.

Professional services. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commission directly related to the purchase or lease of such site). All expenses must be pre-approved by the Right of Way Manager prior to the costs being incurred by the business.

Impact fees. Impact fees or one-time assessments for anticipated heavy utility usage, as determined to be necessary by the Right of Way Manager.

Tangible Personal Property (49 CFR 24.301 (g) (14)). The owners of displaced businesses, farm operations or nonprofit organizations (either partial or complete displacement), who are eligible for a moving cost payment, can elect not to move some, or all, of their personal property and be reimbursed for the monetary loss they will experience by not moving such item provided.

The displacee made a bona fide effort to sell the items involved. The Commission can determine that such effort is not necessary (items "traded in" on replacements will be considered as having been sold). Displacees should not be

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excused from this requirement unless it is rather obvious that the item(s) involved have no resale value. When the Relocation Agent determines that an effort to sell is not necessary, the Case File must be documented to justify the decision.

The tangible property loss payment will be the lesser of the following:

- The fair market value in place of the item, as is for continued use, less the proceeds from its sale.
- The estimated cost of moving the item including disassembling and reassembling, but with no allowance for storage or any allowance for modifying the equipment, the utilities or the replacement structure.

The Right of Way Manager can approve any reasonable method of determining the fair market value including, but not limited to, an independent appraisal procured by the Commission.

The fact that displacees claim tangible property losses for some of the items involved has no effect on their moving cost claim covering other items that were relocated. The claim should be carefully reviewed to make sure cost of moving items included as a tangible loss are not included in a moving cost claim. Items for which tangible property losses are paid must not be included in moving cost inventories, bids and estimates or relocation claim forms.

When payment for property loss is claimed for goods held for sale, the fair market value will be based on the cost of the goods to the displacee, not in its potential selling price.

#### 7.8.8.00     ~~7.08.08.00~~     Ineligible Moving Expenses

Expenses that are not eligible for reimbursement and/or payment under the Relocation Assistance Program and must not be included in moving cost claims are as follows:

- The cost of moving structures, improvements or other real property in which the displaced person reserved ownership
- Interest on a loan to cover moving expenses
- Loss of goodwill
- Loss of profits
- Loss of trained employees
- Any additional operating expenses of a business, farm or nonprofit organization incurred because of operating in a new location, except as provided for previously in this section.
- Personal injury
- The cost of preparing the application for moving and related expenses

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- Any legal fee for representing the displacee in relocation matters, including appeals;
- Expenses for searching for a replacement dwelling
- Physical changes to the real property at the replacement location of a business, farm, and nonprofit organization, except as provided for previously in this section
- Cost for storage of personal property on real property owned or leased by the displaced person except as provided for previously in this section
- Costs incurred to comply with OSHA, federal, state or local requirements except as provided for previously in this section
- Refundable security and utility deposits
- The cost to represent the displaced person during the relocation process, the cost to prepare a claim for the displaced person or any other costs for services that are available from the Commission or its right of way consultants

7.9.00.00~~7.09.00.00~~

## BUSINESS REESTABLISHMENT

7.9.1.00~~7.09.01.00~~

## Eligible Reestablishment Expense (49CFR 24.304)

In addition to the moving payments previously discussed, a small business, farm or nonprofit organization may be eligible to receive reestablishment payment not to exceed \$25,000, unless the Commission adopts an increased amount. This payment is for expenses actually incurred in relocation and reestablishment at a replacement site and does not apply to part-time businesses in the home which do not contribute materially to the household income as defined previously.

7.9.1.1~~7.09.01.01~~

Eligible Expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Commission. They may include, but are not limited to the following:

- Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance
- Modifications to the replacement property to accommodate the operation or make the replacement structures suitable for conducting the operation
- Construction and installation costs for exterior signage to advertise the operation. If the displacee was paid for a sign at the displacement site, their eligibility will be limited to the difference between what they were paid for the sign and the amount necessary to replace it with a comparable sign. Salvage value should be included as part of the replacement cost.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting
- Advertising the replacement location. Payment of monthly advertisement costs, after vacation of the project site, when the cost could not be avoided and the business can demonstrate that it gains no benefit from the continuing

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ad. At no time will advertisement costs be reimbursed if the contract for the ad was initially committed to after the initiation of negotiations.

In instances when the advertisement predominantly markets a phone number and the number does not have to be changed as a result of the move, there will be no payment under this subsection.

In instances when a phone number has to be changed and the advertisement predominantly markets the phone number, the cost under this subsection may be limited to reimbursement of call forwarding for one (1) year from the date of displacement.

- Estimated increased costs of operation during the first two years at the replacement site for such items as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees. The Relocation Agent must verify that replacement sites were not available which would allow the operation to relocate without increased operating costs. The Case File must contain documentation of this verification.
- Other items that the Commission considers essential to the reestablishment of the operation.

In no event, can the total reestablishment cost exceed \$25,000, unless the Commission chooses to adopt a policy increasing the limit.

#### 7.9.1.2

~~7.09.01.02~~ Ineligible Expenses. The following is a non-exclusive listing of reestablishment expenses not considered to be reasonable, necessary or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures
- Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of operation
- Interior or exterior refurbishment at the replacement site which are for aesthetic purposes
- Interest on money borrowed to make the move or purchase the replacement property
- Payment to a part-time business in the home which does not contribute materially to the household income

#### 7.10.00.00

#### ~~7.10.00.00~~ FIXED/IN LIEU PAYMENT

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The terms “fixed payment”, “in-lieu payment”, “displaced nonprofit organization payment”, and “fixed payment for moving expenses, non-residential moves” are synonymous.

#### 7.10.1.00    ~~7.10.01.00~~    Fixed/In Lieu Payments – Businesses

7.10.1.1    ~~7.10.01.01~~    Payment Eligibility Requirements. The owner of any business which qualifies for a moving cost payment may elect to claim a fixed payment for moving instead of a moving cost payment based on actual cost plus related expenses.

The fact that the owners of a displaced business intend to purchase or establish a different type of business after displacement has no effect on their eligibility for a fixed payment.

If the owner of a business scheduled for acquisition sells the business to another party after negotiations are initiated for the subject property, or after receipt of a “Notice of Intent to Acquire”, they will not be eligible for fixed payment. The new owner of the business, if eligible, could qualify for the payment if they continue the business operation on the subject property after it is acquired.

In addition, the following five additional eligibility requirements must be satisfied:

- ~~•~~ The business contributes materially to its owner’s income during the two taxable years prior to displacement. Displacees who claim fixed payments must provide copies of their federal income tax returns for the two applicable tax years to prove that the business operation meets the “material contribution” test, and for use in computing the amount of their fixed payment. Only the portion of the tax returns necessary to prove material contribution and average annual net earnings is required. Income information provided by the displacees may be verified with the IRS if for any reason the amount of net income appears questionable.
- ~~•~~ The business cannot relocate without substantial loss of existing patronage. To qualify for a fixed payment, it must be determined that the business cannot be relocated, or in case of a partial acquisition, that it can’t continue to operate on the remaining property and it can’t be relocated without substantial loss of its existing patronage. “Patronage” as used in the term “substantial loss of existing patronage” relates to either “clientele” or “net earnings”.

When making a determination concerning the ability to satisfactorily relocate the business, a business is presumed to suffer a substantial loss of its existing patronage unless the Commission proves otherwise. Business owners are

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given the benefit of the doubt concerning their ability to relocate. The presumption of loss of existing patronage is outlined in the Final Rule of the Uniform Relocation Act. Presumption, as required under those regulations, is not a statement that the Commission assumes there will be a loss of earnings or patronage for any purpose other than compliance with applicable provisions of the Payment in Lieu of Moving and Related Expenses.

- ~~•~~ The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities. A business which does not “contribute materially” to the owner’s income is not considered “another entity” and does not disqualify the owner from receiving a fixed payment.

To be declared ineligible for a fixed payment, both the business being displaced and the similar businesses not being acquired must have a common ownership. Businesses and corporations are both considered to have common ownership even though they are known by different business or corporate names, if their owners are substantially the same.

- ~~•~~ The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site. An estate is eligible for a fixed payment when the business owned by the estate is displaced.
- ~~•~~ The business is not operated at a displacement dwelling solely for the purpose of renting to others.

#### 7.10.1.2

#### ~~7.10.01.02~~ Two or More Business Operations, Same Site and Same Owner.

When several business activities are located on the same property and operated by the same party, which are closely related and complement each other, they will be considered as one business. This is especially true if it is necessary to combine the income from all of the activities to produce a reasonable business profit.

If the different activities are not related and if they do not complement each other, they will normally be considered as separate businesses and the owner will be entitled to separate fixed payments, provided that each business qualifies on its own merits.

Other factors to be considered in making a multi-business determination is the extent to which the same premises and equipment are shared, substantially

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identical or interrelated business functions are carried out, business and financial affairs are commingled, and how the entities are held out to the public and to those customarily dealing with them, or if the same person or closely related persons own, control or manage the affairs of the entities.

7.10.1.3 ~~7.10.01.03~~ Consideration of Acquisition Payments. Business owners who also own the property on which the business is located cannot qualify for a fixed payment when the right of way payment is adequate to pay for rearranging their remaining facilities to enable them to continue the operation.

Business tenants of properties owned by persons who receive a right of way settlement adequate to reasonably “cure” the impacts caused by the acquisition, or who receive a part of the right of way consideration themselves, which is adequate to “cure”, will not become eligible for this type of payment.

7.10.1.4 ~~7.10.01.04~~ Payment Determinations. The owners of a displaced business who qualify for a fixed payment are entitled to an amount equal to the average annual net earnings of their business (adding back in any payments made to the owners directly as salary), not to exceed a maximum payment of \$40,000 or less than \$1,000.

The term “average annual net earnings” means one-half of any net earnings of the business, before federal, state, or local income taxes have been deducted, during the two taxable years immediately preceding the taxable year the business is displaced.

If a loss occurred in one year and a gain in the other, the year in which the loss was incurred should be considered as zero income when determining the average net income for the ~~two-year~~two-year period.

If a business has operated less than two full taxable years, the fixed payment can be computed by projecting its net earnings to an annual rate.

Interest payments made by a business to the owners of the business cannot be included as a part of the average annual net earnings of the business.

When unusual circumstances exist which indicate that a different period of time (other than the two taxable years prior to displacement) should be used in determining a business’ annual net earnings, seek approval from the Right of Way Manager to use alternate periods.

7.10.2.00 ~~7.10.02.00~~ Fixed/In Lieu Payments – Farm Operations

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7.10.2.1     ~~7.10.02.01~~     Payment Eligibility Requirements. A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses

In the case of a partial acquisition, the farm operation will be considered to have been displaced if the acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land or the partial acquisition caused a substantial change in the nature of the farm operation.

If a sharecropper or tenant is actually conducting the farming operation that is being displaced, he/she is entitled to a fixed payment, even though the landowner may share in the profits.

When minerals are being produced on a farm on a commercial basis and/or when quarrying operations are so conducted, they are to be considered as a separate businesses and not taken into consideration as a part of the farm operation.

Farm operations owned by Estates are entitled to this type of payment.

7.10.2.2     ~~7.10.02.02~~     Payment Determinations. The owners of a displaced farm operations who qualify for a fixed payment are entitled to receive an amount equal to the average annual net earnings of the farm operation not to exceed a maximum payment of \$40,000 or less than \$1,000. (Subsection, Payment Computations).

7.10.3.00     ~~7.10.03.00~~     **Fixed/In Lieu Payments - Nonprofit Organizations**

7.10.3.1     ~~7.10.03.01~~     Payment Eligibility Requirements. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$40,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Commission determines that it cannot be relocated without substantial loss of existing patronage (membership or clientele).

A nonprofit organization is presumed to meet this test unless the Commission demonstrates otherwise. Any payment in excess of \$1,000 must be supported by certified financial statements for the two 12-month periods prior to the acquisition.

7.10.3.2     ~~7.10.03.02~~     Payment Determination. The amount to be used for payment is the average of two years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of funds collection that enables nonprofit

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organizations to operate. Administrative expenses include rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses.

#### 7.10.4.00    ~~7.10.04.00~~    **Time for Filing “Fixed Payment Claims”**

The eligible owners of a displaced business, farm operation or nonprofit organization which is displaced from the acquisition site can claim their fixed payment any time after (1) negotiations are initiated for the real property involved (or Notice of Intent to Acquire), and (2) the operation has been completely discontinued on the displacement property or the Commission has acquired possession of the property (partial acquisitions), but no later than the end of the 18-month period. Subsequent occupants cannot be paid until after the real property involved has been acquired by the Commission. Operations owned by subsequent occupants must be in operation on the site at the time it is acquired by the Commission. If not, the owner is not eligible.

#### 7.11.00.00    ~~7.11.00.00~~    **PURCHASE PRICE DIFFERENTIAL PAYMENT**

##### 7.11.1.00    ~~7.11.01.00~~    **General Policy**

Individuals and families displaced from dwellings including condominium and cooperative apartments they owned and occupied for at least ninety (90) consecutive days prior to the initiation of negotiations for the property are entitled to a replacement housing payment, including a Purchase Price Differential Payment, to enable them to purchase replacement housing. They must meet the payment eligibility requirements outlined in this section.

7.11.1.1    ~~7.11.01.01~~    **Advance Relocation Housing Payments.** If eligible displacees request it, they may receive their relocation housing payment at the escrow closing on the ~~replace-ment~~replacement home, provided the following has occurred:

- ~~•~~ The displacees’ request is made in writing.
- ~~•~~ The displacees have entered into a Purchase and Sale Agreement or some other written agreement to purchase for a specific and available DS&S replacement dwelling.
- ~~•~~ The displacees have a loan commitment from a qualified lender which will enable them to purchase the replacement.
- ~~•~~ The Commission has acquired the existing dwelling.

Advance relocation housing payments will not be processed unless and until all four of the preceding requirements have been satisfied and the Case File documented accordingly. If, in the opinion of the Right of Way Manager, it is in the best interest of the Commission the Right of Way Manager may waive the above requirements.

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7.11.1.2      ~~7.11.01.02~~      Replacement Housing Escrow Agreements. An Escrow Agreement is desirable in making an advance payment if the seller of the replacement dwelling is agreeable to closing the transaction and permitting the displacees to occupy the dwelling prior to receipt of the entire purchase price, with the provision that the relocation payment will be placed in escrow for immediate delivery after the displacees' purchase and occupancy eligibility requirements are fulfilled.

7.11.1.3      ~~7.11.01.03~~      Mortgage Waiver. Displaced homeowner-occupants may hold negative equity in what is commonly referred to as "upside-down" mortgages where the fair market value of the property (or just compensation) is less than the outstanding debt (the mortgage). In these circumstances, an administrative settlement

negotiated to acquire the property may eliminate the replacement housing payment otherwise available to the homeowner-occupant to assist in relocating to a replacement dwelling. ~~The~~While the FHWA ~~has had~~ established a waiver for these situations. ~~This waiver is in effect for FHWA through December 31, 2016 unless otherwise extended or rescinded in writing by FHWA Office of Real Estate Services. Use that program has now expired. Consequently, use~~ of the waiver for projects with ~~other~~any funding agencies requires pre-approval of those agencies. If funding is exclusively from the Commission, then the Executive Director shall approve the use of any waivers for these situations.

The waiver is applicable only to those situations where displaced homeowner-occupants have negative equity in the property being acquired. This waiver eliminates the normal requirement that the replacement housing payment calculation use the amount finally determined and paid as just compensation for the property. Instead, the replacement housing payment calculation uses the appraisal-based just compensation amount in the original offer to acquire, even though the final just compensation amount may have been increased through an administrative settlement that takes into account the amount by which the mortgage/lien balance exceeds the fair market value of the property acquired.

#### 7.11.2.00      ~~7.11.02.00~~      Payment Eligibility Requirements

7.11.2.1      ~~7.11.02.01~~      Ownership and Occupancy Requirements. The individual or family being displaced must have owned and occupied their dwelling unit for at least ninety (90) consecutive days immediately prior to the initiation of negotiations for the subject property or, if they are provided a "Notice of Intent to Acquire" by the Commission, they must have owned and occupied it for at least ninety (90) consecutive days prior to the date they actually vacated the property if it was vacated prior to the actual initiation of negotiations. When a "Notice of Intent to

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Acquire” is used, the ninety (90) day period is measured from the date that negotiations are initiated for the subject or from the date that it was vacated by the owner-occupant, whichever is earlier.

7.11.2.2     ~~7.11.02.02~~     Sale of Property After Initiation of Negotiations. Displaced owner-occupants will not be eligible for a relocation housing payment if they sell the subject dwelling to any party other than the Commission after the initiation of negotiations for the parcel. The “other party” who purchases the dwelling will not be eligible for the payment.

7.11.2.3     ~~7.11.02.03~~     Displacement Must Be Necessitated By Right of Way Acquisition. The displacement must be necessary due to the actual acquisition of the subject dwelling by the Commission, or, due to its being rendered legally or physically landlocked and uninhabitable by the acquisition.

7.11.2.4     ~~7.11.02.04~~     Owner’s Principal Residence. A replacement housing payment cannot be made unless the dwelling acquired as right of way by the Commission or landlocked, is the owner’s permanent or customary and usual residence and/or legal place of residence.

7.11.2.5     ~~7.11.02.05~~     Timing of Replacement Dwelling Purchase. The displacees must purchase and occupy a replacement dwelling which meets DS&S standards within a one-year period beginning on the later of the following:

- ~~•~~ The date the displacees or their Escrow Agent receives payment from the Commission for the acquired dwelling or in case of condemnation, the date the final judgment is paid into court.
- ~~•~~ The date the displacees move from the displacement dwelling.

7.11.2.6     ~~7.11.02.06~~     Displaced Owner Occupies Previously Owned Dwelling as Replacement. Displaced owner-occupants of a residential dwelling unit who move to and occupy a DS&S replacement dwelling that they had previously owned may be eligible for a replacement housing payment, provided that the current value of their interest in the replacement dwelling unit is equal to the entire amount paid for the subject property plus their computed replacement housing payment offer.

7.11.2.7     ~~7.11.02.07~~     Displacee Purchased Replacement in Partnership With Other Parties. If qualified displacees purchase their replacement dwelling in partnership with other parties who did not own an interest in and occupy the subject dwelling, they must invest an amount equal to the entire amount paid for the subject property plus the computed replacement housing payment in the purchase of their interest in the replacement.

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**7.11.3.00     ~~7.11.03.00~~     Amount of Payment**

The replacement housing payment for an eligible ninety (90) day homeowner-occupant may not exceed \$31,000. The payment shall be the sum of the three components of the Replacement Housing Payment for ninety (90) day Owner Occupants:

- ~~Price Differential.~~ The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, and
- ~~Interest Differential.~~ The increased interest cost and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling as described below; and
- ~~Incidental Closing Costs.~~ The reasonable expenses incidental to the purchase of the replacement dwelling, as described below.

In some instances the addition of incidental closing or increased interest costs to the basic replacement housing payment will cause the total to exceed \$31,000. Situations will also be encountered in which the Commission will not be able to make the required comparable DS&S replacement housing available to a displacee within the maximum payment limitation. When these situations are encountered, advise the Right of Way Manager, in writing, and request authority to pay the total under the Last Resort Housing Program.

Replacement housing claims in excess of \$31,000 should include a notation of the back of the form "authority to process payment in excess of \$31,000 granted by the Right of Way Manager letter dated \_\_\_\_\_."

Eligible owner-occupants who rent a replacement dwelling instead of purchasing DS&S replacement housing are entitled to a rent supplement payment. The rent supplement cannot exceed \$7,200 unless there is a qualification for Last Resort Housing.

**7.11.4.00     ~~7.11.04.00~~     Payment Computations**

A replacement housing payment must be for the lesser of an amount equal to the difference between the final amount received by eligible displacees in payment for their displacement dwelling (prior to any deductions covering the value of salvage retained by the owners) and either the actual amount paid for a DS&S replacement dwelling by the displacees (not including incidental closing costs and increased interest payments), or the amount determined by the Commission as necessary to purchase the most nearly comparable DS&S replacement dwelling available. Determination of the most comparable dwelling will be made by the Relocation Agent. The payment, together with authorized incidental closing costs related to the purchase of the replacement and increased interest costs, must not exceed \$31,000.

**7.11.4.1     ~~7.11.04.01~~     Mobile Homes.** If the replacement dwelling is a mobile home, the cost of furniture and appliances should not be included as part of the "consideration paid", even though they were purchased with the mobile home as

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part of a “package” unless such furniture and/or appliances are built-in and are considered to be an integral part of the mobile home.

[7.11.4.2](#) ~~7.11.04.02~~ DS&S Deficiency Corrections. If a displacee purchases a replacement dwelling that has DS&S deficiencies and after purchase corrects those deficiencies, the documented actual expenses may be considered as having been spent in the purchase of the property. The actual cost of correcting the DS&S deficiencies can be added to the purchase price of the replacement. However, under no conditions would a displacee receive more than the differential between a comparable DS&S dwelling and the acquired dwelling.

[7.11.4.3](#) ~~7.11.04.03~~ Improvements to Make Functionally Equivalent. Displacees who acquire a replacement dwelling that is not functionally equivalent to their displacement dwelling can include, as a part of the replacement purchase price, any documented expenditure they make in improving the replacement to a level of functional similarity.

The cost of improvements to the replacement dwelling, other than those required to eliminate DS&S deficiencies or replace functionality, cannot be included as a part of the purchase price of the replacement dwelling.

[7.11.4.4](#) ~~7.11.04.04~~ Previously Owned Dwelling. Eligible displaced residential owner-occupants who move to and occupy a previously owned DS&S dwelling as their replacement dwelling will be entitled to a replacement housing payment. The payment will be based on the lesser of the difference between their payment for the displacement property and the adjusted price of the selected comparable that was used in computing their replacement housing payment offer or the current value of the previously owned replacement dwelling.

[7.11.4.5](#) ~~7.11.04.05~~ Determining Acquisition Amount. For a single-family dwelling, the entire offer made by the Commission to the owner-occupants for their residential property is used. For situations where there are multi-family residences, land in excess of normal residential standards, properties with residential and business operations, and other specialty situations, the Relocation Agent must work in conjunction with the appraiser to carve-out the acquisition amount appropriate to be used for the replacement housing payment.

[7.11.4.6](#) ~~7.11.04.06~~ Multiple Occupancy of Same Single-Family Dwelling Unit. The procedure discussed herein is applicable in computing payment offers for the eligible occupants even though some of the families or separate individuals involved do not meet occupancy time requirements or for some other reason are not eligible for a replacement housing payment.

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If two or more eligible individuals and/or families which occupy the same single-family dwelling maintain separate households, they will be entitled to separate replacement housing payments.

If the individuals and/or families do not maintain separate households, they will be entitled to only one joint replacement housing payment if a comparable, or better, DS&S replacement dwelling is available to them. The one payment can be prorated between eligible individuals and/or families if they choose to relocate into separate DS&S replacement dwellings. If a comparable DS&S dwelling is not available which will enable them to relocate together, they will be entitled to separate replacement housing payments.

7.11.4.7

~~7.11.04.07~~ Multi-Unit Dwelling Complexes. If the owner of a multi-unit dwelling occupies one of the units therein being acquired, their maximum replacement housing payment will be computed as follows:

- ~~•~~ An appraiser must prorate the Commission's total offer for the property to determine the portion that is chargeable to the specific unit occupied by the owners.
- ~~•~~ The most nearly comparable dwelling must be determined. If the same type of complex is not available, the most nearly comparable complex of the next lowest density that is available can be used.
- ~~•~~ If the selected comparable is a single-family residence, deduct the prorated portion of the offer that is chargeable to the occupied unit from the adjusted price of the selected comparable. The resulting figure will be the maximum replacement housing payment.
- ~~•~~ If the selected comparable is a multi-unit complex, prorate the adjusted price of the comparable to determine the portion that is chargeable to the specific unit that is most comparable to the unit occupied by the displacees in the acquisition dwelling complex. Deduct the prorated portion of the offer that is chargeable to the unit occupied by the displacees in the acquisition complex from the prorated portion of the adjusted price of the comparable to determine the maximum replacement housing payment. To qualify for the computed replacement housing payment, the displacees must spend an amount equal to the prorated value assigned to the occupied unit plus the total replacement housing payment.

7.11.4.8

~~7.11.04.08~~ Mobile Homes. If the displaced owner of a mobile home classified as real property qualifies for a replacement housing payment covering both the mobile home and supporting land area, compute the maximum payment similar to owner occupied ~~single-family~~ single-family dwellings. If a comparable DS&S mobile home and/or site is not available, it will be necessary to calculate the

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payment on the basis of the next higher type of dwelling that is available and meets applicable DS&S standards.

The determination of whether a mobile home is, or is not, real property must be determined during the appraisal process and approved by legal counsel.

The displaced owner-occupant of a mobile home which is located on land belonging to another party can be paid a replacement housing payment covering the mobile home, but not the land, when a mobile home has been determined to be real property, the owner has owned and occupied the mobile home while located on the site from which it is being displaced for the required ninety (90) day period and all other eligibility requirements have been met.

The owner of the mobile home could also be paid the equivalent to a rental subsidy payment covering the site if they meet the eligibility requirements for the separate payments involved.

The displaced owner-occupant of a mobile home can be paid a replacement housing payment covering the land on which the mobile home is located when a mobile home was not considered to be a part of the real property and was not acquired, the mobile home was occupied by the displacee on land he/she also owned (subject site) for at least ninety (90) consecutive days prior to the initiation of negotiations and all other eligibility requirements have been met.

#### 7.11.4.9

~~7.11.04.09~~ Insurance Proceeds Due to Catastrophic Occurrence. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.,) shall be included in the acquisition cost of displacement of dwelling when computing the price differential.

#### 7.11.4.10

~~7.11.04.10~~ Owner Retention of Displacement Dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- ~~•~~ Cost of moving and restoring the dwelling in a condition comparable to that prior to the move
- ~~•~~ The cost of making the unit a decent, safe, and sanitary replacement dwelling
- ~~•~~ The current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is reasonable opportunity for the claimant to rent a suitable replacement site

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- The retention value of the dwelling, if such retention value is reflected in the “acquisition cost” used when completing the replacement housing payment.

The combined cost of relocation, rehabilitation, and improvement to DS&S standards are eligible for reimbursement to the extent they do not exceed the maximum price differential entitlement based on comparable replacement properties. This may include construction features such as garages if they cannot be moved.

7.11.4.11

~~7.11.04.11~~ Condemnation Cases. The same procedure is applicable in carrying out the various phases of the Relocation Program when condemnation is involved, except when the owner of a residential property being acquired through condemnation is entitled to a replacement housing payment. Displacees who are entitled to replacement housing payments and whose properties are being acquired through condemnation can enter into a Condemnation Agreement and receive their replacement housing payment prior to final adjudication of the condemnation case. The agreement can be signed after the deposit of just compensation and after the displacees have purchased a replacement dwelling.

Condemnation agreements are not applicable when an owner elects to rent rather than purchase replacement housing. When a condemnation agreement is used, the replacement housing payment must be recomputed after the court order for probable Just Compensation has been ordered and prior to execution of the agreement, and shall be the difference between the portion of the probable Just Compensation that is chargeable to the subject residential property and the actual amount paid for a DS&S replacement dwelling by the displacees or the difference between the probable Just Compensation and the adjusted price of the most nearly comparable DS&S replacement housing available, whichever is the less.

The displacee can also wait until final adjudication of their condemnation case and then file a replacement housing claim. If the owners chose to wait until final settlement of their condemnation case before filing a claim for their replacement housing payment, deduct the portion of the final legal settlement that is chargeable to the residential property from the adjusted price of the most nearly comparable DS&S replacement available as determined on the “Replacement Housing Comparison Record” and in a separate computation, deduct the same portion of the final legal settlement from the amount actually paid for the DS&S replacement property purchased and occupied by the displacees. The displacees are entitled to a replacement housing payment equal to the lesser of these two computed figures.

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Owner-occupants whose residence was acquired by condemnation can be reimbursed for their eligible incidental closing costs and paid any increased interest payment without the need for a condemnation agreement.

7.11.4.12 ~~7.11.04.12~~ Owner-Occupants with Partial Ownership Interest. When a dwelling is owned by several persons and occupied by one or more owners, the replacement housing payment is the lesser of the following:

- The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling
- The difference between the total acquisition of the acquired dwelling and the amount determined by the Commission as necessary to purchase a comparable dwelling

When the partial owner-occupant purchases a replacement that is less costly than the estimated replacement cost and is DS&S for the owner-occupant, then "spend to get" is that party's share in the acquisition price plus the price differential.

#### 7.11.5.00 ~~7.11.05.00~~ Replacement Housing Comparison Record

7.11.5.1 ~~7.11.05.01~~ When the Record is Prepared. The Relocation Agent must make eligible owner-occupants a written replacement housing payment offer at the initiation of negotiations. A Replacement Housing Comparison Record will be used in establishing this offer.

For parcels that are included in the critical path, the Replacement Housing Comparison Record should be completed during the period that the appraisals of the parcel are being reviewed so that negotiations can be initiated immediately after a negotiating figure is approved.

7.11.5.2 ~~7.11.05.02~~ Selection of "Comparables". In every case, the comparables used in the Replacement Housing Comparison Record must meet the following requirements:

- Is currently available for purchase on the market
- Meet DS&S requirements
- Meet the definition of comparable replacement dwelling
- Be the three dwellings that are most nearly "comparable" to the subject than any other available properties which meet the above requirements

Comparables must be "functionally equivalent" to the displacement dwelling with particular attention to the number of rooms and gross living space. The

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comparable must perform the same primary function as the displacement dwelling and enable the displacees to maintain a similar lifestyle in the dwelling as before displacement.

It is desirable that the comparable replacement be physically similar to the subject in regard to age, type of construction, room arrangement, or minor attributes. Gross living space is based on outside measurements excluding garages and unfurnished areas.

## 7.12.00.00    ~~7.12.00.00~~    INCIDENTAL CLOSING

### 7.12.1.00    ~~7.12.01.00~~    Definition of Incidental Closing Costs

The incidental closing cost payment is the amount necessary to reimburse qualified displacees for the actual and reasonable costs incurred by them incident to the purchase of their replacement dwelling.

Reimbursable incidental closing costs may include the following items, if the amounts involved are reasonable and if such costs are normally paid by the buyer.

- Legal, closing and related costs including title search, preparing
- conveyance ~~Conveyance~~ contracts, notary fees, surveys, preparing drawings or plats, and charges incident to recordation
- Lender, FHA or VA appraisal fees
- Lender, FHA or VA application fees
- Inspections fees, such as structural inspection, termite inspection, asbestos inspection
- Credit report fees
- Title insurance, not to exceed the costs that would have been involved in the purchase of the selected comparable on which the RHP was based
- Escrow fee, based on comparable
- Sales or transfer tax (not to exceed the costs for a comparable replacement dwelling)
- Professional home inspection, certification of structural soundness, and termite inspection
- Other costs which the Right of Way Manager agrees to be incidental to the purchase

Incidental closing costs must not include any prepaid expenses, such as, prepaid taxes, prepaid insurance or prepaid interest. The costs incurred in securing mortgage financing in cases where there is not mortgage on the property acquired and any additional costs in securing large mortgage on the replacement dwelling than existed on the acquired property are not reimbursable. Appraisal fees and survey fees may, however, be reimbursable.

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The reasonable cost of transferring a mortgage when an existing mortgage on a replacement property is assumed by a displacee is eligible for reimbursement as incidental closing costs. Reasonable refinancing expenses paid by displacees who retain and move their existing dwellings to their remaining land or who build replacement dwellings on their remaining properties are reimbursable. One-time mortgage default insurance premiums are reimbursable.

Loan service fees and points and loan origination fees can be included in increased interest and down payment assistance on a limited basis.

#### 7.12.2.00    ~~7.12.02.00~~    **Payment Eligibility Requirements**

Any displacee who meets the eligibility requirements for either a replacement housing payment, or down payment assistance is entitled to an incidental closing cost payment.

#### 7.13.00.00    ~~7.13.00.00~~    **INCREASED INTEREST PAYMENT**

##### 7.13.1.00    ~~7.13.01.00~~    **General Policy**

Increased interest payments (interest rate differential) are available to eligible displaced long term owner occupants of residential property. These payments are intended to compensate owners for the additional expense that may be encountered due to a higher interest rate for a new mortgage on a replacement residential property.

##### 7.13.2.00    ~~7.13.02.00~~    **Payment Eligibility Requirements (49 CFR)**

To be eligible, all of the following conditions must exist:

- •The displacee must have been an owner-occupant for more than ninety (90) days prior to the date of initiation of negotiations or the date of the Notice of Intent to Acquire.
- •The displacee must have purchased and occupied a suitable replacement dwelling within the prescribed time limits.
- •The mortgage or contract of sale must be bona fide and have been a valid lien for not less than ninety (90) days prior to the date of initiation of negotiations or date of the Notice of Intent to Acquire. All mortgages shall be used to compute the payment.
- •There must be a mortgage or contract of sale on the replacement dwelling.
- •Mortgages or similar notes used to purchase mobile homes are mortgages for the purpose of this procedure.
- •Temporary construction loans and short-term notes covering the period relocation payments are being processed will not be considered on any increased interest computation.

##### 7.13.3.00    ~~7.13.03.00~~    **Payment Computations**

The payment will be the amount which will reduce the balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

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7.13.3.1     ~~7.13.03.01~~     When to Compute Payments. Displaced owners must be advised of the estimated amount of this payment and conditions that must be met to receive it. This must be done as soon as owners provide the necessary information on their existing mortgage to the Relocation Agent. Displaced owners will receive an eligibility notice which advises them to contact the Relocation Agent immediately after they have signed a contract to purchase their replacement residence to obtain an estimate.

7.13.3.2     ~~7.13.03.02~~     Payments Computed By Whom. The Relocation Agent is authorized to compute increased interest payments and have approved by the Right of Way Manager.

7.13.3.3     ~~7.13.03.03~~     Payment Computation. Displacees are entitled to an increased interest payment if the interest rate applicable to the mortgage on their replacement property has been increased above the rate charged on the mortgage on their existing residential property. Increased interest payment computations are based on the remaining term of the existing mortgage or on the actual term of the new mortgage, whichever is less, and on the unpaid balance of the existing mortgage or on the actual amount of the new mortgage, whichever is less.

Displacees are also entitled to reimbursement for the actual amount they paid as “points” on the amount refinanced and for any amount paid by them as an origination or service fee.

Displacees must provide Relocation Agent with the following documents:

- ~~•~~ For estimates or payments, provide a copy of all Notes and Deeds of Trust and current payoff amounts on existing mortgages on the subject property.
- ~~•~~ For payments, provide a copy of the loan application and commitment.
- ~~•~~ For payments, provide a copy of all Notes and Deeds of Trust on new mortgages on the replacement property.
- ~~•~~ For payments, a copy of estimated closing costs, for payments, a copy of the closing statement covering the replacement property purchase which clearly reflects any origination or loan service fees and/or any “points” paid by the displacee.

## 7.14.00.00     ~~7.14.00.00~~     RENTAL SUBSIDY PAYMENTS

### 7.14.1.00     ~~7.14.01.00~~     General Policy

Tenants and owners who rent rather than purchase replacement housing, are entitled to a rental subsidy payment if they meet the payment eligibility requirements outlined in this section.

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Payments for displaced tenants are based either on the increased monthly rental costs above the rental they were paying for the unit acquired that they would have to pay over ~~forty-two~~forty-two (42) months for an available comparable DS&S replacement dwelling unit, or the increased rental for ~~forty~~forty-two (42) months that the tenants actually pay for their replacement dwelling unit, whichever is less.

For owners who rent rather than purchase a replacement dwelling, the payment will be based on either the difference between the economic rental fee of the subject dwelling and the actual rental fee charged for the most nearly comparable DS&S replacement dwelling available, or the difference between the economic rental fee and the actual rental fee paid for the replacement unit, whichever is less.

Rental subsidy payments cannot normally exceed \$7,200. The total amount due will be paid in one lump sum (assuming the displacement property has been vacated) unless the Commission determines that it should be made in installments.

#### 7.14.2.00     ~~7.14.02.00~~     **Payment Eligibility Requirements for Tenants**

7.14.2.1     ~~7.14.02.01~~     Prior Occupancy Requirements. The individual or family being displaced must have rented and legally occupied the subject dwelling unit for at least ninety (90) consecutive ~~property~~days, or if they are provided a “Notice of Intent to Acquire”, they must have rented and occupied it for at least ninety (90) consecutive days prior to the date they actually vacated the property if it was vacated prior to the actual initiation of negotiations.

If any doubt exists concerning the actual length of time tenants occupied a subject dwelling, the date of occupancy should be confirmed by their landlord and the file documented accordingly.

When an owner-occupied mobile home that has been classified as personal property and must be removed from a rented site, the site occupancy date is the controlling factor. Displacees must have occupied a mobile home on the subject site for the required ninety (90) day period.

If both the mobile home and site are rented, the displacees’ rental subsidy payment will be based on the rental fee of both the mobile home and site for the required ninety (90) day period. Consecutive occupancy of other sites (within the displacement property) can also be considered when determining the displacees’ occupancy period.

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In determining the applicable occupancy period of a displacee in a multi-unit residential complex, it is permissible to consider consecutive occupancy of other units which are being acquired or demolished due to the Commission project.

7.14.2.2     ~~7.14.02.02~~     Occupancy Required At Initiation of Negotiations. The tenants must have been in legal occupancy of the subject dwelling unit at the initiation of negotiations for the parcel acquired, or if they are provided a “Notice of Intent to Acquire”, at the time they receive the notice.

7.14.2.3     ~~7.14.02.03~~     Timing for Replacement Occupancy. The displacees must rent and occupy a DS&S replacement dwelling within one year after they move from the subject dwelling. This one-year time period may be extended, with Right of Way Manager approval, for good cause.

7.14.2.4     ~~7.14.02.04~~     DS&S Standards. A displacee must rent and occupy a replacement dwelling that meets decent, safe and sanitary standards, to be eligible for a rental subsidy payment.

7.14.2.5     ~~7.14.02.05~~     Sleeping Room. Displaced tenants of sleeping rooms who meet the payment eligibility requirements are entitled to a rental subsidy payment.

#### 7.14.3.00     ~~7.14.03.00~~     Payment Eligibility Requirements for Owners

Owners who occupied their displacement dwelling for at least ninety (90) consecutive days and who elect to rent rather than purchase a replacement dwelling are eligible for a rental subsidy payment if they meet the same requirements as a tenant, except that the one-year period allowed for renting and occupying a replacement will begin on the later of the following occurrences:

- ~~•~~ The date on which the owners, or their Escrow Agent, receive their right of way payment from the Commission when negotiated settlements are involved.
- ~~•~~ In case of condemnation, the date the court ordered probable Just Compensation, stipulated settlement, or jury award is paid into court, or the date on which they move from the displacement dwelling.

If the displacees later decide to purchase a replacement within the original one-year period, they can do so and claim a replacement housing payment. The amount of any rental subsidy payment previously paid must be deducted from the replacement housing payment, incidental closing costs and increased interest payment.

#### 7.14.4.00     ~~7.14.04.00~~     Payment Computations

7.14.4.1     ~~7.14.04.01~~     Existing Rental Rate. The existing rental rate is determined by using the average monthly rental rate being paid by displacee during the three months

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immediately prior to the month in which the Commission initiated negotiations for the subject property or when the tenant received a Notice of Intent to Acquire and vacated the subject unit prior to the initiation of negotiations, whichever came first. The existing rental rate shall include the any rent supplements supplied by others (such as government subsidies), when, by law, such supplement is to be discontinued upon vacation of the subject property.

A copy of the tenant's lease agreement or rent receipt should be filed in the Case File.

7.14.4.2     ~~7.14.04.02~~     Economic Rental Rate. The term "economic rent" as used herein is the normal monthly rental fee being paid on the open market for similar dwelling units within the area of displacement. If the displacees' existing average monthly rental rate is substantially less than the economic rent applicable to the displacement unit, the economic rent will be used in the rental supplement payment computations in lieu of the "average monthly rental rate." This policy should not be applied if an unfair hardship is placed on the displacee.

7.14.4.3     ~~7.14.04.03~~     Rental Fee Charged for Most Nearly Comparable Unit. Displacees should be offered the same type of replacement unit as that from which they are displaced; however, this not mandatory if it is not practical to do so if the selected replacement is functionally equivalent to the displacement unit.

7.14.4.4     ~~7.14.04.04~~     Utility Services Adjustments. Unless all utilities are provided by the landlord in both the displacement dwelling and in the selected comparable, the estimated average monthly costs of those utilities must be added to the basic monthly cost of the comparable should a comparable be selected which provides the same utilities as the subject dwelling unit.

Utility cost estimates can be determined through one of the following ways:

- ~~•~~ Average of actual utility costs over the past twelve (12) month period, based on bills paid
- ~~•~~ Average utility cost from the utility company based on square footage and number of family members
- ~~•~~ If the annual utility costs are known for another unit, it may be practical to estimate the cost of the utility at the other unit by comparing the two units and adjusting the known costs for difference in unit size, physical features, appliance, etc.

7.14.4.5     ~~7.14.04.05~~     Furniture Provided by Landlord. The general procedures in the preceding subsection relating to utilities also apply when furnishings are provided

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by the landlord in the displacement dwelling, but not in the selected comparable. If possible, comparables should be selected which provide the same furnishings to the displacee.

Furnishings can be provided to the displacees at the replacement site in either of the following two methods that is less costly:

- Rent comparable furnishings and add the monthly rental of the furnishings to the monthly rental of the replacement dwelling when computing the rental supplement offer. Refundable deposits on such rentals are not compensable.
- If rental furnishings are not available, or if the rental procedure is more expensive over a ~~forty-two~~ forty-two (42) month period, add the cost of purchasing comparable used furnishings to the rental subsidy offer.

#### 7.14.4.6

~~7.14.04.06~~ Rental Subsidy Computation Sheet. A Rental Subsidy Computation Sheet shall be developed and used in computing all rental subsidy payment offer.

The computation sheet should be completed during the time appraisals of the subject property are being reviewed or soon after the negotiations are initiated for the property. A written rental subsidy payment offer must be made to eligible displacees within forty (40) days after such negotiations are initiated.

The Relocation Agent should complete the computation sheet. The completed form must be approved by the Right of Way Manager.

The rental subsidy payment offer, not to exceed \$7,200, is computed by subtracting the lesser amount arrived at in any option below, from the total amount necessary to rent the most nearly comparable DS&S replacement dwelling unit for the next ~~forty-two~~ forty-two (42) months. Rental subsidy payment computations are as follows:

- ~~Forty-two~~ Forty-two (42) times the average monthly rental paid plus utilities by the displacee during the last three months
- ~~Forty-two~~ Forty-two (42) times the economic monthly rental rate plus utilities. If the average monthly rental being paid substantially less than the economic rate, or, if an owner elects to rent rather than purchase a replacement
- ~~Forty-two~~ Forty-two (42 times) 30% of the displacees monthly income

If the only comparable DS&S replacement rental unit available required rental subsidy payment in excess of \$7,200 or if there are no acceptable comparables available in the area, the entire payment must be made under the Last Resort

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Housing Program. This program will not be applied to owner-occupants who desire to rent rather than purchase replacement dwellings if comparable DS&S replacement dwellings are available to them for purchase through the replacement housing payments.

If an owner elects to use rental subsidy as a down payment, compute a replacement housing payment. The down payment assistance cannot exceed the computed RHP amount.

7.14.4.7 ~~7.14.04.07~~ Pets or Service Animals. It is preferable that selected comparables also permit pets, however, it is not mandatory if the most nearly comparable does not accept pets.

Service Animals are not considered pets under this policy. Comparables must be selected which will accept ~~displacee's~~ displacees Service Animal.

7.14.4.8 ~~7.14.04.08~~ Disabled Displacee. To meet DS&S requirements, the selected replacement dwelling unit for a disabled person must be free of any barriers which would preclude reasonable ingress, egress and use of the unit by the displacee.

If a suitable replacement cannot be located which will accommodate the displacee, it is permissible to increase the monthly rental of an otherwise comparable replacement unit to compensate the owner for the cost of rearranging the unit as necessary to meet DS&S standards.

7.14.4.9 ~~7.14.04.09~~ Multiple Occupancy of Same Dwelling Unit. If a comparable or better DS&S replacement dwelling unit is available for rent within the maximum \$7,200 rental subsidy payment limitation when two or more eligible individuals or families who do not maintain separate household are displaced from the same single-family dwelling, only one rental subsidy payment will be made.

If comparable or better DS&S unit is not available, each eligible individual and/or family involved will be entitled to a separate rental subsidy payment offer.

7.14.4.10 ~~7.14.04.10~~ Short Term or Subsequent Occupants. If an affordable replacement is not available for a ~~short-term~~ short-term tenant or subsequent occupant, it will be necessary to present the displacees a rental subsidy payment offer if the comparable rent, including utilities, exceeds the monthly rental, including utilities, of the displaced dwelling.

7.14.4.11 ~~7.14.04.11~~ Moves after Original Displacement. A displacees' payment amount will not be recomputed or changed if they move even though they pay a different monthly rental fee, either higher or lower, for the subsequent replacement unit.

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This policy applies regardless as to whether the subsequent move occurs within, or after, the one-year period.

7.14.4.12     ~~7.14.04.12~~     Rental Fee for Replacement Unit Increased by Landlord. If the monthly rental fee for an occupied replacement rental unit is increased after the displacees receive their rental subsidy payment, no additional payment will be made by the Commission to cover the increased monthly rental expenditure. This policy applies regardless of whether the rental fee was increased within the first year after the original displacement or in subsequent years.

7.14.4.13     ~~7.14.04.13~~     Displacee Displaced from Conventional Dwelling or Mobile Home Becomes Occupant of Rest Home. The payment is computed by using the portion of the monthly rest home fee chargeable to basic "room rent" and utilities as the replacement rental fee.

7.14.4.14     ~~7.14.04.14~~     Conversion to Purchase. Displaced tenants and owners who rent their original displacement dwellings can within the one-year time period purchase and occupy a replacement dwelling and claim a down payment assistance, however, the amount of any previously paid rental subsidy must be deducted from the down payment assistance.

Owners who originally rent their replacement dwelling can, within the one-year period, purchase and occupy a replacement dwelling and claim a replacement housing payment. Any previously paid rental subsidy payment will be deducted from the replacement housing payment.

## 7.15.00.00     ~~7.15.00.00~~     DOWN PAYMENT ASSISTANCE

### 7.15.1.00     ~~7.15.01.00~~     General Policy

Displaced tenants and owners who elect to purchase in lieu of renting a DS&S replacement dwelling, and who actually do so, are entitled to a down payment assistance if they meet the eligibility requirements discussed in this section.

The payment amount is equal to their computed rental subsidy payment and can be applied towards a down payment or reimbursable incidental costs, the total of which cannot normally exceed \$7,200.

The payment will be based on the lesser of (1) the amount of the computed rental subsidy plus incidental closing costs, or (2) the amount the displacees actually paid down in the purchase of their replacement dwelling plus eligible incidental closing costs.

Any down payment assistance in excess of \$7,200 must be specifically authorized by Right of Way Manager as a Last Resort Housing Payment.

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7.15.2.00    ~~7.15.02.00~~    **Last Resort Payment Assistance for Tenants**

Last resort down payment assistance is available to displaced tenants only when there are no comparable DS&S replacement rental dwelling units available on the market; or the only comparable DS&S replacement units available would require a rental subsidy payment in excess of \$7,200.

Last resort down payment assistance available to tenants cannot exceed the amount the displacee would be entitled to as a rental subsidy payment based on the monthly rental of the most nearly comparable DS&S replacement dwelling unit available on the market including incidental closing costs.

7.15.3.00    ~~7.15.03.00~~    **Last Resort Payment Assistance for Owners**

Payments made to displaced owners under the provisions of last resort housing cannot exceed the amount to which they would be entitled if they rented the most nearly comparable DS&S replacement dwelling available. Payments may not exceed what the displacee would receive if they were a ninety (90) day owner for a replacement housing payment.

7.15.4.00    ~~7.15.04.00~~    **Payment Eligibility Requirements**

Eligibility requirements include all of those requirements previously stated for rental subsidy payments.

- ~~•~~ Down payment assistance must be applied to purchase price of replacement
- ~~•~~ Replacement dwelling must be acquired and occupied within one year

7.15.5.00    ~~7.15.05.00~~    **Payment Computations**

In order to determine the amount of down payment assistance, compute the rental subsidy payment to determine the maximum rental subsidy payment the displacee could be entitled to. If the computed offer is \$7,200 or less, their down payment assistance will be limited to \$7,200 including incidental expenses.

If the rental subsidy offer exceeds \$7,200, payment may be made under the provision of last resort and will be limited to the computed rental subsidy amount including incidental costs.

7.15.6.00    ~~7.15.06.00~~    **Down Payment Claims**

Down payment claims will not be filed until an eligible displacee has purchased and occupied a DS&S replacement dwelling unless advance payment is approved.

Down payment assistance claims from owners and tenants must be filed no later than six (6) months after the expiration of the one (1) year period.

7.16.00.00    ~~7.16.00.00~~    **REPLACEMENT HOUSING OF LAST RESORT**7.16.1.00    ~~7.16.01.00~~    **General Explanation**

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The Uniform Relocation Regulations establish maximum payment limitations for the various types of relocation housing payments. The regulations also prohibit acquiring agencies from causing residential occupants to move from their dwelling unless comparable DS&S replacement housing has been made available to them.

Without relief from these limitations and prohibitions, it would not be possible to proceed with a project when the only replacement dwelling available requires relocation housing payments in excess of the maximum payment limitations or when there is no existing replacement housing available. Relief is provided in the Uniform Relocation Regulations which authorize Last Resort Housing Payments.

Agencies are given broad latitude in providing replacement housing under this program, provided that the costs are reasonable and the measures taken to provide last resort housing are cost effective.

#### 7.16.2.00     ~~7.16.02.00~~     **Last Resort Determination (49 CFR 24.404(a))**

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the Commission shall provide additional or alternate assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either on a case-by-case basis for good cause, which means that appropriate consideration has been given to the following:

- ~~•~~ The availability of comparable housing in the program or project area
- ~~•~~ The resources available to provide comparable replacement housing
- ~~•~~ The individual circumstances of the displaced person

Or by a determination of the following:

- ~~•~~ There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area and, therefore, last resort housing assistance is necessary for the area as a whole.
- ~~•~~ A program or project cannot be advanced to completion in a timely manner without last resort housing assistance.
- ~~•~~ The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs.

#### 7.16.3.00     ~~7.16.03.00~~     **Tenured Occupants**

Ninety (90) day homeowner-occupants and ninety (90) day occupants are entitled to have last resort housing made available to them when comparable replacement housing is either not available, or available, but the calculated replacement housing payments exceed the

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\$31,000/\$7,200 statutory limits. Note that the \$31,000 limit is the aggregate of the price differential, interest differential and incidental cost payments.

#### 7.16.4.00    ~~7.16.04.00~~    **Short Term and Subsequent Occupants**

Less than ninety (90) day occupants are entitled to have last resort housing made available to them when comparable replacement housing is either not available; or available, but the monthly rental rate, including utilities, of the replacement dwelling exceeds the rent and utilities at the displacement site.

#### 7.16.5.00    ~~7.16.05.00~~    **Made Available**

“Made available” means that displacee exercises independent choice and obtains comparable replacement housing for themselves and has the right of possession to that housing or it means the Commission offers displacee replacement housing that is available for immediate occupancy by the following methods:

- Determining that comparable replacement dwellings are available and informing displacee of their availability and location
- Informing displacee of the monetary entitlements available to help provide such replacement housing
- Providing sufficient time and assistance to negotiate for and obtain possession of the replacement property

The Commission’s obligation to provide replacement housing is met when comparable housing is made available to displacee. The Commission can then proceed to issue notices to vacate.

#### 7.16.6.00    ~~7.16.06.00~~    **Methods of Providing Comparable Replacement Housing**

The methods of providing housing of last resort include, but are not limited to:

- A replacement housing payment in excess of the limits.
- Rehabilitation of and/or additions to an existing replacement dwelling.
- The construction of a new replacement dwelling.
- The provision of a direct loan, which requires regular amortization for deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
- The relocation, and, if necessary, rehabilitation of a dwelling.
- The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.
- The removal of barriers to the handicapped.
- The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

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Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing housing of last resort permit consideration of replacement housing. This shall be based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller, replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced 90-day person be required to move into a dwelling that is not functionally equivalent.

The Commission shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person "financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

#### 7.16.7.00     ~~7.16.07.00~~     **Last Resort Housing Plan**

All last resort relocation housing payments must be approved in advance by the Right of Way Manager.

The Relocation Agent must submit a last resort housing plan to the Right of Way Manager for approval prior to making any commitment to the displacee. The plan can be in the form of a letter outlining the problem and the proposed solution. The amount of the proposed relocation housing payment must be shown as well as the manner in which it was determined. The displacee should be identified by name, occupancy status and parcel number. The plan need not be elaborate but must provide the facts, supporting documentation and a clear picture of the proposal for making a DS&S comparable dwelling available to the displacee.

#### 7.17.00.00     ~~7.17.00.00~~     **APPEALS**

##### 7.17.1.00     ~~7.17.01.00~~     **General (49 CFR 24.10(a))**

"The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part."

Commission staff will review all appeals not later than ~~sixty~~ninety (~~60~~90) days after written notice of appeal is received. All Notices of Appeal shall be addressed as follows:

Riverside County Transportation Commission  
Attention: Right of Way Manager  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92502

##### 7.17.2.00     ~~7.17.02.00~~     **Appealable Actions (49 CFR 24.10(b))**

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~~“An aggravated~~ Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person’s application for assistance under this part. Such assistance may include, but is not limited to, the person’s eligibility for, or the amount of, a payment required under Section 24.106 or Section 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.”

Commission staff shall consider all relocation assistance appeals on their merit, unless a claim is abandoned, either formally, or informally.

#### 7.17.3.00     ~~7.17.03.00~~     **Time Limit (49 CFR 24.10(c))**

“The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency’s determination of the person’s claim.”

If a claimant was not required to relocate, or was determined to not be eligible for relocation benefits, the appeal must be filed within sixty (60) days of receiving notification of the Commission’s initial determination of ineligibility.

If a claimant disagrees with the amount or type of eligibility determination, the appeal must be filed within sixty (60) days of receiving notification of that determination. The Commission may extend the time period for anyone to appeal, upon showing of good cause as determined at the Commission’s sole discretion.

#### 7.17.4.00     ~~7.17.04.00~~     **Right to Representation (49 CFR 24.10(d))**

“A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person’s own expense.”

#### 7.17.5.00     ~~7.17.05.00~~     **Review of Files (49 CFR 24.10(e))**

“The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person’s right to inspect, consistent with applicable laws.”

The Commission will make available for review its relocation file, at Commission offices, as it pertains to the appellant upon request by the appellant. A request to review the file shall be made in writing and must be made at the time the appeal is initiated pursuant to Section 7.17.01.00. The Commission may set a reasonable time limit for appellant to review the file. The Commission may charge reasonable fees for any copied material in accordance with Commission policy. Any materials that are protected from disclosure pursuant to any legal privilege or under the California Public Records Act shall not be made available. These materials are hereby classified confidential by the Commission.

#### 7.17.6.00     ~~7.17.06.00~~     **Scope of Review (49 CFR 24.10(f))**

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“In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.”

All materials that the applicant wishes to have considered at the appeals hearing (see Section 7.17.08.00) must be submitted no later than ten (10) days prior to the date of the hearing to allow the appeals panel sufficient time to consider such materials.

**7.17.7.00     ~~7.17.07.00~~     Agency Official – Commission Executive Director (49 CFR 24.10(h))**

“The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.”

**7.17.8.00     ~~7.17.08.00~~     Appeal Process**

The Right of Way Manager or his or her designee shall respond to the appellant or the appellant’s representative in writing, no later than fourteen (14) days after receipt of Notification pursuant to Section 7.17.01.00.

If the Right of Way Manager is unable to resolve the disputed determination to the appellant’s satisfaction, the Right of Way Manager shall set a hearing for the appeal no later than forty-six (46) days from the date of the initial Notice.

The hearing shall occur before an Appeals Board, which shall be compromised of one or more persons, at the discretion of the Executive Director or his or her designee. ~~The following persons may not be on the Appeals Board:~~

- ~~• Any individual who is employed by a firm that is contracted with the Commission on any active or pending right of way project.~~
- ~~• Any person that has a contract or is a subcontractor with an entity that has a contract with the Commission on any active or pending right of way project.~~
- ~~• Any individual who is holding an elected public office within the Commission’s jurisdiction.~~
- ~~• Any person directly involved in the determination being appealed.~~

The appeal hearing shall be recorded, either through the use of a court reporter or videographer, or both at the Commission’s election and cost. The appellant shall be entitled to obtain a copy of the transcript and/or video at the Commission’s expense. The Commission shall also pay for the cost of a copy and/or video to be provided to the Appeals Board should the matter be taken under submission.

The appeal hearing shall be held at the Commission offices to the greatest extent practicable, unless the Right of Way Manager and the appellant agree otherwise.

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The appeal hearing shall continue day to day until all evidence has been presented and all necessary testimony has been given.

If the appellant is represented by counsel, the Commission shall have the right to be represented by counsel.

The following persons may be on the Appeals Board:

- Any person from a local agency or Caltrans Right of Way Department with right of way and relocation experience.

The following persons may not be on the Appeals Board:

- Any individual who is employed by a firm that is contracted with the Commission on any active or pending right of way project.
- Any person that has a contract or is a subcontractor with an entity that has a contract with the Commission on any active or pending right of way project.
- Any individual who is holding an elected public office within the Commission's jurisdiction.
- Any person directly involved in the determination being appealed.

#### 7.17.9.00     ~~7.17.09.00~~     **Determination and Notification After Appeal (49 CFR 24.10 (g))**

"Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision."

The Commission shall issue a written determination of its final decision no later than thirty (30) days after the conclusion of the appeals hearing. If the appellant is dissatisfied with the determination, the appellant may seek judicial review of the determination within the time limits prescribed by law.

#### 7.17.10.00     ~~7.17.10.00~~     **Additional Rights (Title 25, California Code of Regulations Chapter 6, Article 1, Section 6000 et seq., Section 6158 (a))**

"The public entity shall consider the request for review and shall decide whether a modification of its initial determination is necessary. This review shall be conducted by the head of the public entity or an authorized, impartial designee. (The designee may be a committee). A designee shall have the authority to revise the initial determination or the determination of a previous oral

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presentation. The public entity shall consider every aggrieved person's complaint regardless of form, and shall, if necessary, provide assistance to the claimant in preparing the written claim. When a claimant seeks review, the public entity shall inform him that he has the right to be represented by an attorney, to present his case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross-examination as may be required for a full and true disclosure of facts, and to seek judicial review once he has exhausted administrative appeal."

The appellant has a right to representation by legal counsel or other counsel at his or her expense at any and all stages of the proceedings. The appellant also has the right to present his or her case by oral or documentary evidence. Rebuttal evidence must be submitted at the time of the hearing or within seven (7) calendar days of the date of the hearing, to conduct such cross-examination as may be required for a full and true disclosure of facts and to seek judicial review once he or she has exhausted administrative appeal.

#### 7.18.00.00    ~~7.18.00.00~~    **EVICION FOR DISPLACEES**

##### 7.18.1.00    ~~7.18.01.00~~    **Eviction Timing**

For residential owner-occupants, a 30-Day Notice to Vacate may be issued after sixty (60) days have passed since the 90-Day Information Notice was issued if control of the property is expected within thirty (30) days. Owner-occupants are provided a fifteen (15) day grace period. The Commission will move forward with eviction after the grace period has ended. Revisions can be issued if the anticipated date of control is delayed. Extending the 30-Day Notice to Vacate may affect the validity of any notices preceding an unlawful detainer action.

##### 7.18.2.00    ~~7.18.02.00~~    **Eviction Process**

Once the Commission decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion. Eligible tenants who are evicted by the Commission because of unlawful occupancy must be advised that they retain eligibility for relocation advisory assistance and payments. The Commission will solicit the assistance of legal counsel to proceed with an unlawful detainer (UD) action when displaced tenants do not move from the property after control has been obtained from the owner. Personal property may be moved into storage.

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**8.00.00.00 ~~8.00.00.00~~ PROPERTY MANAGEMENT****8.1.00.00 ~~8.01.00.00~~ GENERAL PROVISIONS**

The Commission acquires real property for rail, highway and other transportation purposes. The Commission strives to manage its real property with the objective of maximizing existing and future public transportation benefits, safety, and financial income by means of professional property management policies and procedures. This includes issuing licenses and rights of entry for authorized third-party uses, as well as investigating and resolving issues regarding uses that are not authorized by the Commission. In certain extraordinary circumstances, the Commission may also grant easements. General maintenance activities and security measures are also part of the property management scope of work on all the Commission properties.

The property management policies established by this Chapter 8 apply to Commission owned properties. All the RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Reserve Management and Monitoring Manager except surplus property as set forth in Section 8.7.00.0.

**8.1.1.00 ~~8.01.01.00~~ Definitions**

Easement. A grant of easement will only be authorized in certain, infrequent circumstances. In most cases, the intended purpose is a public necessity (highway, etc.) and the proposed grantee is a governmental agency, having the right of eminent domain, e.g., the State, etc. The policies and procedures established herein for rights of entry and license agreements can also generally be applied to grants of easement.

Encroachment. A use or trespass of the Commission property that has not been authorized by a right of entry, license agreement, or grant of easement.

Lease. A contract that grants possession of property for a specified period of time in return for specified compensation.

Licensee. An authorized user of the Commission property by virtue of a license agreement, this may also include a lessee under a lease issued by Burlington Northern & Santa Fe (BNSF) prior to 1993.

Rights of Entry. Short-term use of the Commission property, generally less than one (1) ~~to ninety (90) days~~year, may be authorized by a right of entry. These documents are frequently used for construction activities, parking, or other temporary purposes. Other than a one-time processing fee (see application process below), rental amounts may ~~not~~ be assessed, ~~however, the Commission reserves the right to do so for certain special uses~~at the Commission's discretion.

Tenant. Any licensee, lessee, or recipient of a right of entry who is authorized to use the Commission property which includes individuals, corporations, utilities, and governmental agencies.

User. Any entity occupying the Commission property, either authorized or unauthorized.

## 8.2.00.00     ~~8.02.00.00~~     ~~RAIL~~ PROPERTY MANAGEMENT POLICIES

### 8.2.1.00     ~~8.02.01.00~~     Policies for the Management of Property and Resolution of Encroachments

8.2.1.1     ~~8.02.01.01~~     General Information. The Right of Way Staff shall have management responsibilities for all properties acquired for transportation purposes, including the following:

- Manage existing rights of entry, licenses, and leases through periodic field inspections to assure compliance with the terms and conditions of the respective agreement.
- Review the terms and conditions of existing agreements, ensuring annual license rates are based on the property's fair market value and Commission policies.
- Prepare and issue new rights of entry and license agreements for use of the Commission's property in conformity with Commission policies. Easements may be granted in rare circumstances.
- Consult with other railroad and local agencies as appropriate ~~BNSF, Southern California Regional Rail Authority (SCRRA)~~ and Commission personnel, when necessary, to determine the impact of property uses by third parties affecting existing or future transportation projects.
- Consult with legal counsel for approval of changes requested to the standard form right of entry and license agreements.
- Consult with the insurance department for approval of changes to the standard insurance requirements.
- Coordinate with the accounting department in the organization and maintenance of a license revenue collection system designed to operate in conjunction with other Commission systems.
- Manage all properties to minimize maintenance and prevent unauthorized uses.
- Create, organize, and maintain a database of all Commission fee-owned properties, including location, assessor's information, size, fair market value, etc.
- Create, organize, and maintain a database of all Commission license agreements (including licenses and leases assumed from ~~BNSF~~ private companies, other agencies, various railroads and by property acquisition or donation) and rights of entry, providing important terms and conditions, property location, annual rate, etc.
- Identify surplus property that is a candidate for sale and maximize the benefits to be received from the sale.

8.2.1.2      ~~8.02.01.02~~      Use of Property by Third Parties. When the Commission acquires real property in advance of the time it is required for a transportation project, the property may be utilized during the interim period to create revenue and reduce maintenance expenses for the Commission. Such uses may also continue once the transportation project has been completed, so long as the use is compatible with the project.

8.2.1.3      ~~8.02.01.03~~      Availability of Property for a Right of Entry or License. Prior to issuing a right of entry or license, the Right of Way Staff shall make the following decisions concerning a proposed use:

- ~~•~~ It is in the best interest of the Commission to authorize the proposed use.
- ~~•~~ It will not interfere with any present or future BNSF, RCTC or SCRRRA transportation uses.
- ~~•~~ Any required building permits or other authorizations can be obtained by the proposed tenant under the current zoning regulations or with appropriate variances and conditional use permits (to be acquired by the tenant prior to the execution of any document).
- ~~•~~ The proposed use is not illegal, would not constitute a public nuisance, and is not contrary to public or Commission policy, and that the property is in a suitable, safe, and sanitary condition for such use.
- ~~•~~ It does not require the installation of substantial improvements or would otherwise encumber the property to the extent that it would not be available when the need arises for a transportation use.
- ~~•~~ It is not intended to meet any city regulatory code requirements imposed on the occupants of adjoining or nearby property.
- ~~•~~ It is not used for any purpose that poses an environmental risk from hazardous materials.
- ~~•~~ Grading, paving and other work on Commission property, as well as any adjoining property used by the proposed tenant, will not adversely impact any of the Commission property.
- ~~•~~ The proposed tenant understands the property must be restored to its original condition or better once its term of use is completed.

8.2.1.4      ~~8.02.01.04~~      Assigned License Agreements. In some instances, it may be of benefit to the Commission to accept an assignment of an existing license (or BNSF ~~lease~~agreement) upon acquisition of a property, instead of issuing a new license agreement. Prior to acquisition, all such license agreements to be assigned to the Commission shall be reviewed by the appropriate personnel and legal counsel to determine if the tenant is in compliance with the terms and conditions of the agreement. In addition, the terms, conditions and parties to the license shall be verified through an Estoppel Certificate, prepared as part of the escrow process. The original license agreement shall be attached to the Estoppel Certificate for

processing into the Commission's system. Additional terms may be negotiated with the tenant and included in a revised license. Whenever possible, assigned agreements should be converted to conform to the appropriate Commission standard license form. A rental adjustment may be made (upward only) to the annual rate established for the property. All other terms and conditions are reviewed and any changes made, when necessary.

In some cases, the existing agreement to be transferred to the Commission may not accurately reflect the current tenant or use of the property. This provides an opportunity for the Commission to prepare a new license agreement on its standard form.

All assigned license agreements shall be given a Commission agreement number for control purposes. All original documents may be stored off-site for security purposes and a copy of the ~~fully-executed~~fully executed agreement included in the working file. Like other licenses, the Right of Way Staff ensures that the tenant meets the terms and conditions of the agreement through periodic site inspections and review of the agreement.

The written permission of the Commission is required in most licenses/leases transferred ~~by BNSF~~ to RCTC when a licensee/lessee desires to assign its interest to another entity. ~~All new licenses issued by the Commission do not allow for such an assignment; a new license must be issued.~~

~~8.02.01.05     Property Inspection. The Right of Way Staff shall periodically inspect all fee-owned properties (easement properties may also be included) and prepare complete documentation on a property inspection form, including the following:~~

- ~~• Location and assessor's parcel number~~
- ~~• Occupation by an authorized tenant via a right of entry, license or lease~~
- ~~• Description of improvements~~
- ~~• Conformity to an authorized use by any building or occupant~~
- ~~• Description of any available utilities~~
- ~~• Identification of any environmental concerns~~
- ~~• Observation of any unauthorized encroachments~~
- ~~• Any physical changes or issues that need to be addressed~~
- ~~• Other pertinent data related to the property~~

#### 8.2.1.5

~~8.02.01.06~~     Maintaining and Protecting Rail Property. Right of way staff shall endeavor to keep operating railroad rights of way maintained and protected by the Commission or SCRRA against unauthorized use, vandalism, and damage. BNSF or local public agencies (city, county, etc.) may also get involved. The appropriate Shared Use Agreement, as amended, shall dictate responsibilities for the San Jacinto and San Bernardino Subdivisions, in addition, the SCRRA Public Projects Manual shall apply for all railroad rights of way affected by SCRRA

operations. In general, the following maintenance and protection responsibilities shall apply:

- ~~BNSF shall have responsibility for the San Bernardino Subdivision since the Commission only has easement rights for passenger rail service.~~
- ~~SCRRA shall have responsibility for the operating portion of the San Jacinto Subdivision. The operating portion of the right of way is considered to extend outward twenty-five (25) feet on both sides from the centerline of the main track(s). The Commission shall maintain the remaining portion of the right of way.~~
- ~~At certain operating SCRRA grade crossings, SCRRA and the applicable public agency share responsibilities.~~
- ~~The Commission shall have responsibility for all rail station sites and other properties (including excess rail and highway parcels).~~
- ~~When applicable, some security matters shall also be forwarded to the appropriate law enforcement agency.~~
- ~~When a parcel has actually been assigned to a construction project, the security of the construction site, including all materials, equipment, supplies and the off-site area is the responsibility of the construction contractor. The Right of Way Staff shall monitor the contractor's activities throughout the project.~~
- ~~The security of equipment, facilities, or other structures on the Commission's licensed property shall be the sole responsibility of the tenant until the license or right of entry is terminated. The Right of Way Staff is responsible for conducting periodic property inspections to verify that the tenant is securing the property as required by the agreement in a reasonable manner.~~

### 8.3.00.00     ~~8.03.00.00~~     ~~RAIL~~ PROPERTY MANAGEMENT PROCEDURES

#### 8.3.1.00     ~~8.03.01.00~~     Application Process

The website (<http://www.rctc.org>) contains all required information and forms to apply for the use of the Commission's fee-owned property via a right of entry or license agreement. All third-party users must approach the Commission to initiate the application process. The following summary briefly describes each information page and form:

- ~~Application Process for Use of Commission Property ([www.rctc.org](http://www.rctc.org)). Summarizes the general process for both rights of entry and license agreements.~~
- ~~Application Package. Email appropriate application with engineering plans attached to [row@rctc.org](mailto:row@rctc.org). Submit a hard copy of the application, plans, and fee to RCTC, \$1,000 for a right of entry application or \$6,000 for a license application.~~
- ~~Application Package. Describes requirements for the application for each document.~~

- ~~Right of Entry.~~ General Application Form, appropriate Supplemental Application Form, two sets of plans, an electronic copy, \$1,000 application processing fee (non-refundable), and types and amounts of insurance.
- ~~License.~~ General Application Form, appropriate Supplemental Application Form, two sets of plans (additional electronic copy to SCRRRA, if Railroad Property. If proposed use impacts, or can potentially impact, the railroad right of way (within 25 feet of centerline), \$6,000 application processing fee, annual rental fee will be assessed (public agencies are exempt from both fees), and types and amounts of insurance.
- on active rail) an additional application must be submitted to SCRRRA for an encroachment permit in addition to RCTC's application process. Any person working on or near tracks must be certified by ~~BNSF and SCRRRA~~ the appropriate railroad agency for safety, security, etc.
- Insurance Requirements. ~~Railroad related rights~~ Rights of entry and license agreements will require the applicant to carry appropriate insurance. Insurance requirements change from time to time in accordance with the Commission's risk threshold. Applicants will be required to provide the appropriate insurance certificates in effect at the time of their application.
- Forms Information. ~~The various forms used in the application process are the following:~~ General Application Form, Supplemental Application for Pipeline Facilities, Supplemental Application for Wire, Line Facilities, and Supplemental Application for Grade Crossing/Access, Supplemental Application for Private Use, Supplemental Application for Right of Entry, Railroad License Agreement Form, and Right of Entry Agreement Form.

#### 8.3.2.00      ~~8.03.02.00~~      **Authority to Approve a License of Commission Property**

Authority to approve a license on the Commission's property, as well as any special terms and conditions of the agreement, shall be determined based on the specific terms and conditions of each agreement, including annual rate, length of term (~~if other than a thirty (30) day termination period~~), special provisions, etc. Approval by legal counsel is required for all license agreements. After appropriate approvals, processing and execution by the ~~tenant~~ licensee, the Executive Director shall execute all licenses.

#### 8.3.3.00      ~~8.03.03.00~~      **Database for Fee-owned Property**

A database ~~will be developed~~ is maintained for all of the Commission's properties which, among other things, will reflect their current status, e.g., operating, licensed to a third party, or declared surplus. Most properties are initially acquired for rail or highway transportation purposes. Any properties which are subject to a right of entry will be marked as such. The ~~data base~~ database will include most of the same basic information as a license, including term, location, etc. The database will provide specific detailed information for each parcel. It will be available to respond to various departmental and agency information needs including:

- The Commission's reporting requirements, such as budgetary projections and revenue projections
- Regulatory agency information requests
- Identification of surplus land

#### 8.3.4.00      ~~8.03.04.00~~      **Database for License Agreements and Rights of Entry**

To effectively and efficiently manage all of the Commission's licensed properties, as well as those subject to a right of entry, a database has been developed and is maintained by the Commission, and includes, among other things, the following general information for each agreement:

- Agreement number
- Tenant
- Use
- Location (including rail mile post if applicable)
- APN
- Map reference
- Area dimensions
- Agreement terms and conditions
- Insurance coverage
- Date entered into system
- Field survey information
- Additional information ~~if~~ needed

The database also includes properties that are subject to an existing lease(s) or license(s) previously entered into by ~~BNSF~~ previous property owners and assumed by the Commission).

#### 8.3.5.00      ~~8.03.05.00~~      **Property Inspections**

The Right of Way Staff ~~performs the following inspection activities on all of the Commission's~~ shall periodically inspect all fee-owned properties, including those properties where a third party has a right of entry or license agreement (easement properties may also be included). Documentation shall include:

- Location and assessor's parcel number
- Occupation by an authorized tenant via a right of entry, license or lease
- Description of improvements
- Conformity to an authorized use by any building or occupant
- Description of any available utilities
- Identification of any environmental/hazardous concerns
- Observation of any unauthorized encroachments
- Any physical changes or issues that need to be addressed
- Other pertinent data related to the property



- ~~Conducts periodic~~ Periodic inspections will be performed as necessary for operating properties with no third-party use, at least annually for licensed parcels and more frequently for parcels encumbered by rights of entry, as well as those having potential problem conditions.
- Staff will implement ~~Implements~~ any required property and building management activities, including arrangements needing the assistance of ~~BNSF, SCRRRA, the~~ a railroad agency, State, or local agencies, such as locking or boarding up facilities, posting the property, removing debris, and controlling dumping (including contaminated/hazardous materials), removing weeds and reducing fire hazards, inspecting for pest infestation, removing/relocating transients, and notifying local authorities when appropriate.

#### 8.3.6.00      ~~8.03.06.00~~      **Grants of Easement**

For those occasions where a grant of easement is required, the Right of Way Staff prepares an approval report, indicating why a grant of easement is the preferred document, instead of a license agreement. The Board of Commissioners or the Executive Director will make the final approval.

#### 8.3.7.00      ~~8.03.07.00~~      **License Agreements and Rights of Entry**

The Right of Way Staff performs the following activities for third-party uses of fee-owned properties (where appropriate, all references to existing license agreements shall also include licenses and leases which have been assumed by the Commission from BNSF):

- • Determines that a proposed use is compatible with current operations and future plans of the Commission, BNSF, ~~and~~ SCRRRA, and other local agencies.
- • Determines whether proposed use is compatible with surrounding land uses and current zoning designations and all applicable local laws. The third-party user is not entitled to rely on this determination and, at all times, remains responsible for compliance with applicable local laws.
- • For licenses, determines the appropriate annual rate based on market data, valuation analysis and Commission policies. ~~If necessary, requests an appraisal of the property for purposes of determining market value and rates.~~
- • Determines if a right of entry or license agreement is the proper document to accommodate a proposed use, and whether any changes are required to the standard form. In special circumstances only, an easement may be appropriate.
- • Determines if approval from the Board of Commissioners is required and, if necessary, prepares the appropriate approval report.
- • Obtains any required approvals of proposed use, e.g., legal counsel, insurance, SCRRRA, etc.
- • After receiving an application and fee (see Application Process above) from the proposed tenant, Right of Way Staff prepares the appropriate right of entry or license agreement ~~in quadruplicate~~, obtains the appropriate Commission agreement number and sends to third-party user for execution. ~~It is then returned~~ Once it is returned the agreement is then approved as to form and forwarded to the Commission along with any

required insurance certificate(s) and/or initial ~~payment. The agreement is then forwarded to the Commission along with any required insurance certificate(s)~~ payments for execution by the Executive Director on behalf of the Commission.

- After execution, the document is entered into the accounting system and property management database.
- Files original document in original file records depository and returns one original copy to the tenant.
- A file copy should be placed in the file, along with the insurance certificate and any subsequent amendments, address changes, correspondence, etc. Extra copies of the contract should be made for Commission personnel, legal counsel, and SCRRA, as appropriate.

#### 8.3.8.00      ~~8.03.08.00~~      **Notice to Vacate Property**

When a property is needed for operating purposes, or when a tenancy is to be terminated for other than a breach of the applicable agreement, a Thirty-Day (or longer if necessary) Notice to Vacate shall be issued by the Commission. In some cases, the third-party user may be eligible for relocation benefits under federal or state law. In this event, the relocation is coordinated with the Right of Way Manager well ahead of the scheduled vacation date.

#### 8.3.9.00      ~~8.03.09.00~~      **Property Maintenance**

~~All Commission owned property shall be maintained in a safe and hazard free condition. Prior to the commencement of passenger rail service, the responsibility for all maintenance activities on operating property within twenty (20) feet of both sides of the tracks is handled by SCRRA. The Commission assumes responsibility of property owned by the Commission within the right of way located outside of the twenty (20) foot corridor. If a property is covered by a third party agreement, the area covered by the agreement is the responsibility of the third party user. All non-operating properties, rail or highway, shall be maintained by the Commission.~~

All ~~of the Commission's~~ Commission owned property shall be maintained in a safe, hazard-free, clean and orderly condition that does not detract from the general appearance of the neighborhood. If this condition does not exist, the Commission, ~~BNSF or SCRRA, as appropriate,~~ shall implement the appropriate corrective measures to improve the property's appearance. All non-operating properties, rail or highway, shall be maintained by the Commission.

The responsibility for all maintenance activities on operating property within twenty (20) feet of centerline is handled by SCRRA.

#### 8.4.00.00      ~~8.04.00.00~~      **INTERIM PROPERTY MANAGEMENT**

During an acquisition project, at the close of escrow, it is possible that an owner or tenant may occupy the impacted property due to the one of the following:

- The relocation process has not been completed upon close of escrow and the owner or tenant has not yet moved to replacement housing or a business location. In this case the

Commission may prepare a ~~month-to-month~~month-to-month Leaseback Agreement to be executed by the Commission and the owner or tenant;

- A new lease with no relocation benefits has been procured for a vacated property prior to commencement of the project; or
- The occupant is leasing back the property prior to commencement of the project. This leaseback option is available when the project will not commence within two years from transfer of title from the owner to the Commission.

Interim property management will be required for these properties and all of the property management policies and procedures in this chapter will apply.

Properties that have been vacated, including vacant land and vacant structures will also require interim property management. Tasks will include:

- Periodic property inspections
- Removal of accumulated debris
- Maintenance or repair of safety issues
- Weed abatement

#### 8.4.1.00      ~~8.04.01.00~~      Leaseback Agreements

California Code of Civil Procedure, Section 1263.615 states the Commission shall offer a ~~one year~~one-year Leaseback Agreement to the owner of a property to be acquired for that property owner's continued use of the property upon acquisition, subject to the property owner's payment of fair market rent unless the Commission states in writing that the use of the property for its stated public use is scheduled to begin within two years of its acquisition. This will not apply if the Commission states in writing that a leaseback of the property would create a public nuisance.

The lessee must carry adequate insurance coverage.

The Commission may require a security deposit to cover any potential liability arising from the leaseback.

The lessee shall be subject to unlawful detainer proceedings and holdover damages.

A public entity shall offer to renew a leaseback agreement for one-year terms, unless the Commission states in writing that use of the property for its stated public use is scheduled to begin within two years of the termination date of the lease. At least sixty (60) days prior to the lease termination date, the Commission shall either offer a ~~one-year~~one-year renewal of the lease or send a statement declaring that the lease will not be renewed because the use of the property is scheduled to begin within two years of the lease termination date. The lessee shall either accept or reject a lease renewal offer at least thirty (30) days prior to the lease termination date. The lessee's failure to accept a renewal offer in a timely manner shall constitute a rejection of the renewal offer.

8.04.02.00 Property Management Procedures

The following procedures may be used to guide the Right of Way Staff through the process of managing the Commission's property. They are designed to provide specific, more detailed guidelines to supplement most of the general procedures delineated above.

8.04.03.00 Property Inspections

The Right of Way Staff conducts periodic inspections of the Commission's properties, including operating rights of way on which it may only have easement rights.

The Right of Way Staff conducts an inspection, noting property conditions on the appropriate inspection form. The inspection form shall contain relevant information derived from the database, including the location and agreement number of existing license agreements and rights of entry affecting the subject property. As a result of the inspection, one of the six following situations is usually observed:

Property is Clean and is Not Occupied. Property is clean (no extraneous or contaminated materials, etc.) and is not occupied by a third-party user.

- Inspection form is completed in its entirety.
- Database is updated.

Property is Clean and is Occupied by Authorized User. Property is clean (no extraneous or contaminated materials, etc.), but is occupied (has right of entry or license) by authorized user.

- Review terms and conditions of right of entry or license agreement.
- Inspection form is completed in its entirety.
- Inspection form is inserted in file.
- Database is updated.

Property is Clean and is Occupied by Unauthorized User. Property is clean (no extraneous or contaminated materials, etc.), but is occupied by an unauthorized user (has no right of entry or license).

- Inspection form is completed in its entirety.
- Inspection form is inserted in file.
- If the user cannot be located, the Commission staff takes action to remove the unauthorized use/user in accordance with the Removing Encroachments section, set forth below.
- If locatable, the user is questioned regarding the nature of its occupancy. If it is confirmed the user does not have a valid license or right of entry, the user is informed that it is occupying Commission property without benefit of a formal document.
- If the use is acceptable to the Commission, BNSF and SCRRRA, and the user wishes to stay on the property, the Right of Way Staff requests the user to submit a formal application, as described in the Commission website (see Application Process above).
- If the use is unacceptable to the Commission, BNSF, or SCRRRA, the Right of Way Staff takes action in accordance with the Removing Encroachments section set forth to remove the unauthorized user.
- Database is updated.

Property is Not Clean and is Not Occupied. Property is not clean (extraneous or contaminated materials, etc. are discovered) and is not occupied.

- Inspection form is completed in its entirety, noting unacceptable condition of property.
- Inspection form is inserted in file, the form is then updated to include a chronology of each action taken until the issue is resolved.
- The Right of Way Staff takes action to have the unacceptable materials removed in accordance with the Contaminated Materials section, set forth below.
- The Right of Way Staff closely monitors the clean-up process and notes each action in the inspection form.
- The file is closed after all clean-up items are satisfactorily completed.
- Database is updated.

~~Property is Not Clean and is Occupied by an Authorized User.~~ Property is not clean (extraneous or contaminated materials, etc. are discovered) and is occupied by an authorized third-party user.

- Review terms and conditions of right of entry or license agreement.
- Inspection form is completed in its entirety, noting unacceptable condition of property.
- Inspection form is inserted in file, the form is then updated to include a chronology of each action taken until the issue is resolved.
- The Right of Way Staff informs the tenant that action must be immediately taken to have the unacceptable condition rectified in a manner acceptable to the Commission, see Contaminated Materials section, set forth below. The tenant is also informed his right of entry or license agreement is in jeopardy of being terminated with the Commission possibly taking whatever legal measures are available to cure the problem.
- After reviewing the situation with the tenant, the Right of Way Staff confirms in writing the party responsible for the infraction and the proper course of action to be taken.
- The Commission generally takes responsibility for all clean-up activities and bills the tenant for all measures taken.
- The Right of Way Staff takes action to have the unacceptable materials removed in accordance with the Contaminated Materials section, set forth below.
- The Right of Way Staff closely monitors the clean-up process and notes each action in the inspection form.
- The file is closed after all clean-up items are satisfactorily completed. Database is updated.

~~Property is Not Clean, and is Occupied by Unauthorized Third Party.~~ Property is not clean (extraneous or contaminated materials, etc. are discovered) and is occupied by an unauthorized third-party user.

- Inspection form is completed in its entirety, noting unacceptable condition of property and unauthorized use of property.
- Inspection form is inserted in file, the form is then updated to include a chronology of each action taken until the issues are resolved.
- If the user cannot be located, the Commission staff takes action to remove both the unauthorized use/user and unacceptable condition in accordance with the Removing Encroachments and Contaminated Materials sections, as set forth below.

- If locatable, the Commission staff informs user that it is unlawfully occupying Commission property and action must be immediately taken to have the unacceptable condition rectified in a manner acceptable to the Commission (see Removing Encroachments and Contaminated Materials sections, as set forth below).
- If the third-party user agrees to resolve the unacceptable situation (e.g., illegal dumping of concrete) and its primary use of the property (e.g., backyard landscaping) is acceptable to the Commission, BNSF, and SCRRA, a right of entry or license agreement, as appropriate, may be prepared in accordance with the Application Process delineated above.
- After reviewing the situation with the tenant and confirming in writing the proper course of action to be taken, the Right of Way Staff closely monitors the clean-up process and notes each action in the inspection form.
- The file is closed after all clean-up items are satisfactorily completed.
- Database is updated.

#### 8.4.2.00      8.04.04.00      **Preparation of Rights of Entry and License Agreements**

Upon receiving a request from a third party through the Application Process set forth above, the Right of Way Staff takes the following actions to accommodate an existing or proposed use of Commission property.

##### 8.4.2.1      8.04.04.01      Application Review. The Right of Way Staff receives the following:

- Completed ~~General Information~~ Application Form
- Applicable Required Supplemental Application
  - ~~Two sets~~ One set of detailed plans showing proposed use
  - Application fee of \$6,000 (license) or \$1,000 (right of entry). The Right of Way Staff forwards the fee to Finance/Accounting
  - Appropriate certificates of insurance

##### 8.4.2.2      8.04.04.02      Design Review. The Right of Way Staff will perform the following:

- Reviews plans showing proposed use
- Forwards plans to the Commission's engineer ~~(if a railroad right of way)~~ for review if necessary
- Receives plans from the Commission's engineer
- If plans are approved, informs applicant, the status of fees is also mentioned
- If plans are not approved, informs applicant of discrepancies and needed revisions
- If applicant submits revised plans, initiates new design review

##### 8.4.2.3      8.04.04.03      Agreement Preparation. The Right of Way Staff determines if a right of entry or license agreement is the proper document to accommodate the proposed use and whether any changes are required to the standard form. If

changes are required, the Right of Way Staff obtains concurrence from legal counsel, insurance, or other. For licenses, the Right of Way Staff determines the following:

- Appropriate annual rate, see methodology in Rental Amounts section set forth below
- If necessary, requests an appraisal of the property from a Commission-approved appraiser for purposes of determining market value
  - Receives and reviews appraisal
  - Determines if approval from the Board of Commissioners is required

After the appropriate concurrence has been obtained, the Right of Way Staff instructs legal counsel to prepare ~~(in quadruplicate) the~~ the appropriate right of entry or license agreement, including any approved changes, and begin the right of entry or license agreement process as follows:

- Prepares exhibit map
- Prepares any other necessary exhibits and attachments
- Obtains the Commission agreement number
- If necessary, forwards exhibit map and attachments to legal counsel for attachment to document (this may be done prior to, or along with, the request for its preparation)
- Receives right of entry or license agreement from legal counsel
- Attaches exhibit map and attachments (if not done previously) and sends ~~four (4) originals~~ electronic copy to applicant for execution. A copy is retained in file
- Agreement execution
- Receives ~~four (4) executed originals~~ electronic signatures of right of entry or license agreement, along with any additional correspondence and initial annual payment (if a license agreement)
- Forwards ~~four (4) originals~~ electronic executed copy to the Executive Director for execution
- ~~One~~ Send fully-executed ~~original~~ electronic copy to the applicant (now considered a tenant)
- ~~One~~ Send fully-executed ~~original~~ electronic copy to legal counsel
- Send fully-executed electronic copy to Right of Way Department ~~retains remaining copies~~
- Enter document into the property management database
- ~~File one original document in~~ Send fully-executed electronic copy to Commission ~~original file~~ for records depository

- Places a copy of document in the file, along with a copy of the insurance certificate and any subsequent amendments, address changes, correspondence, etc.

Electronic copies and signatures are preferred, but in the event it is required by either party that an original signature is obtained, one will be routed

8.4.2.4 ~~8.04.04.04~~ Construction and Closeout (if applicable). Tenant provides a five-day notice of construction to the Commission. During construction, the Right of Way Staff performs the following:

- Inspects property during construction and upon completion of construction.
- Receives as-built drawings.

8.4.2.5 ~~8.04.04.05~~ Completion of Project. Right of Way Staff performs the following:

- Notifies Finance/Accounting Department of annual fee instructions.
- Processes project close out.

#### 8.5.00.00 ~~8.05.00.00~~ REMOVING ENCROACHMENTS

If the Commission property is encumbered by a use that is not authorized or compatible with existing or future transportation projects (encroachment), it must be removed as soon as possible. The Right of Way Staff takes the following actions:

- Creates working file.
- Makes an effort to locate user.
- Informs appropriate Commission and/or Caltrans, other public agency, SCRRA personnel, including legal counsel, of the encroachment and suggests a course of action to remove the encroachment.
- Course of action is confirmed and documented in writing in file.
- Determines if local law enforcement agency needs to get involved.

If the local law enforcement agency involvement is required, agency makes contact and informs them of proposed course of action and possible future need of their services (the agency may request to be informed of progress of the Commission's efforts).

If user cannot be located, right of way staff shall coordinate with legal counsel to remove encroachments. If contaminated/hazardous materials are involved, right of way staff shall follow the Contaminated Materials section set forth below.

- If necessary, has parcel fenced, posted with a sign, etc., to prevent further encroachments.
- Closes file.



- Database is updated.

If user is located, the Right of Way Staff informs user that the encroachment(s) must be removed. The Commission generally takes responsibility for all clean-up activities in accordance with Contaminated Materials section, set forth below, and bills the tenant for all measures taken.

- If necessary, establishes time schedule for completing removal process.
- If contaminated/hazardous materials are involved, coordinates all efforts with the Commission environmental consultant.
- If necessary, to prevent further encroachments, has parcel fenced, posted with a sign, etc.
- Closes file.
- Database is updated.

If user is uncooperative, the Right of Way Staff will conduct the following:

- Contacts appropriate personnel and legal counsel to develop course of action.
- Implements course of action.
- If necessary, notifies user of the Commission's intended course of action.
- If necessary, notifies local law enforcement agency of the Commission's intended course of action.
- If necessary, to prevent further encroachments, has parcel fenced, posted with a sign, etc.
- Closes files.
- Database is updated.

#### 8.5.1.00     ~~8.05.01.00~~     Resolution of Encroachments

An activity or use which encroaches onto a Commission fee-owned property is usually discovered by a field inspection or notification by a third party, e.g., neighbor, governmental agency, etc. After determining that such use is not covered by an existing right of entry, license, or ~~BNSF~~ lease, the Right of Way Staff shall determine the best course of action to take to resolve the matter, including review by legal counsel, if necessary.

If the use is one that is typically allowed by the Commission and does not interfere with existing or future transportation plans for the property, authorization may be accomplished by requiring the user apply for the appropriate right of entry or license agreement.

If the use or user is unacceptable to the Commission or SCCRA, the appropriate measures must be taken by the Right of Way Staff, including the following:

- Attempt to make a contact with the user, trying to determine all pertinent information including, how long have they been on the parcel and did anyone give them prior permission? If so, was permission given verbally or in writing?
- Consult with legal counsel regarding best course of action to remove user.

- If possible, inform user in writing that they must vacate the premise.
- If user cannot be contacted, have property cleared of encroachment by the Commission or outside contractor.
- Request assistance, if necessary, from the local law enforcement agency.
- If possible, take steps to prevent re-entry or other unauthorized uses, e.g., fence parcel, post signs, etc.
- Create a file to document all activities in writing.
- Input all information into the database.

#### 8.6.00.00     ~~8.06.00.00~~     REMOVING CONTAMINATED MATERIALS

If the Right of Way Staff believes contaminated/hazardous materials or other substances occupy the Commission property, the following course of action should immediately be taken to rectify the problem in a timely manner by the Right of Way Staff:

- Determine which regulatory agency has jurisdiction first starting with the County
- Notifies the California Environmental Protection Agency and Department of Toxic ~~Substance~~Substances Control, ~~to obtain a State identification number for the problem~~ (State EPA ID number is CAL000461207), if needed.
- The County of Riverside, Community Health Agency and Department of Environmental Health should also be notified to determine if its input is required.
- If necessary, coordinates all efforts with the Commission environmental consultant.
- Secures a Commission approved contractor to commence clean-up activities.
- Conducts periodic onsite inspections to monitor activities of contractor.
- After final inspection, verifies satisfactory completion of clean-up activities, files appropriate forms with the California Environmental Protection Agency.
- Database is updated.

#### 8.6.1.00     ~~8.06.01.00~~     Contaminated Materials

The Commission shall use best efforts to assure that its properties do not pose a hazard to public health or the environment. Prompt action is taken when an unsafe situation is discovered. All tenants on the Commission property are responsible for its maintenance and protection, including keeping it free and clear of all debris, litter or contaminated/hazardous materials that may pose a hazard to public health or the environment.

#### 8.6.2.00     ~~8.06.02.00~~     Management of Contaminated Properties

All properties, whether used by third parties or not, are periodically inspected for adverse environmental conditions and such conditions are noted on an inspection form.

If any evidence of contaminated/hazardous materials is detected, the Right of Way Staff will inform the Right of Way Manager, legal counsel, and/or the Commission's environmental consultants, as appropriate. A plan of remediation will be developed in consultation with the environmental consultants and other designated departments.

**8.7.00.00      8.07.00.00      DISPOSAL OF SURPLUS PROPERTIES FOR COMMISSION AND RCA****8.07.01.00      Authority of the Commission to Dispose of Surplus Land and Land Rights****8.7.1.00      Authority; Purpose; Definitions**

Government Code Sections ~~54220-54232~~54220-54234 (“Surplus Land Act”) provide authority and guidelines for the Commission and the RCA to dispose of the majority of its surplus land. In addition, the state Legislature has emphasized certain future uses of surplus government land, placing a priority on low- and moderate-income housing, park and recreation or open space purposes, “enterprise” zones, and development projects near transit stations. The State’s Department of Housing and Community Development (“HCD”) is the agency charged with enforcing the Surplus Land Act and has promulgated Guidelines interpreting and implementing the Surplus Land Act (the “Guidelines”). The Guidelines are available at <https://www.hcd.ca.gov/community-development/public-lands-for-affordable-housing-development.shtml>

The following definitions are taken from the Surplus Land Act:

“Surplus land” is defined as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.”

“Agency’s use,” in turn, is defined by non-exclusive lists of examples of what it is and what is not. For example, “agency’s use” includes “land that is being used, is planned to be used pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.” “Agency’s use” explicitly does not include “commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency’s use.”

When contemplating disposition of land, first consider as a threshold matter whether the Surplus Land Act even applies. In considering how the land will be used by the transferee, first determine whether the land is “surplus” for purposes of the Surplus Land Act.

**8.7.2.00      8.07.02.00      Exemptions**

There are exemptions to the provisions of ~~Government Code Sections 54220-54232~~the Surplus Land Act, which include:

- Surplus land, which is transferred pursuant to Government Code Section 25539.4, which states among other things that a county may sell real property at less than its fair market value "to provide housing affordable to persons or families of low or moderate income."
- Surplus land which is sold to an owner of contiguous land and is:

- ~~• Surplus land which is~~ less than 5,000 square feet in area ~~;~~ or,
- ~~• Surplus land less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less;~~ or,
- ~~• Surplus land which has no record of access and is less than 10,000 square feet in area.~~

The property must not be contiguous to land owned by a state or local agency which is used for park, recreational, open space, or low- and moderate-income housing purposes ~~and is not located within an enterprise zone (a depressed area in which private investment is promoted to stimulate business and industrial growth, as well as employment opportunities) pursuant to Government Code Section 7073, nor a designated program area as defined in Government Code Section 7082 (high priority areas for resources designated by the Office of Criminal Justice Planning).~~ If the land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to the provisions of ~~Sections 54220-54232~~ the Surplus Land Act.

- Surplus land exchanged for another property necessary for the Commission's or RCA's use.
- Surplus land that the Commission or RCA is transferring to another local, state, or federal agency for the transferee agency's use.
- Surplus land that is subject to valid legal restrictions that are not imposed by the Commission or RCA and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site.
- Surplus land that was granted by the State of California in trust to the Commission or RCA or that was acquired by the Commission or RCA for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute.

These exemptions do not apply in certain circumstances, including if the property is located within a coastal zone, or System or eligible for the National Register of Historic Places.

The governing body of the Commission or the RCA must, in an regular meeting, adopt a resolution declaring the subject land "exempt surplus" and must make findings to support that declaration. If it is not clear whether an exemption applies, please consult legal counsel.

#### **8.7.3.00      ~~8.07.03.00~~      Property Advertisement**

~~When~~ Subject to the requirements and restrictions of the Surplus Land Act, when it has been determined that a Commission or the RCA property is available for sale, the Right of Way Manager may utilize staff and Commission approved consultants to advertise properties for sale or may contact local real estate agents/ brokers to market the property when it is determined that a very specialized user is required for the property and the other means of advertising or

solicitations has not yielded a suitable user per Section 8.07.04.00. When a broker is used, the Commission or the RCA shall bear the cost of any commission due to the broker.

#### 8.7.4.00      ~~8.07.04.00~~      Policies for the Disposition and Sale of Surplus Land and Land Rights

8.7.4.1      ~~8.07.04.01~~      Purpose. The purpose is to establish the Commission and the RCA policies and procedures related to the disposition and sale of surplus land. The intent and purpose of the policies and procedures are to assure uniform practices that will provide consistent and equitable treatment of purchasers of surplus land, and helps ensure the Commission ~~receives~~and the RCA receive the highest value for sale of Commission ~~owned~~and the RCA-owned properties while complying with state and federal regulations governing disposal of surplus of agency-owned land. Even though the bulk of the sales will be for fee-owned parcels, the policies and procedures mentioned herein could also be used, wholly or partially, for surplus land rights, e.g., quitclaim of easements.

~~8.07.04.02      Policy. Notwithstanding the provisions of Government Code Sections 54220-54232, it is the policy of the Commission to sell land locked or remnant surplus land at "assemblage value" or based on "across the fence appraisal" when surplus land is sold to private individuals or private entities. All other surplus land will be sold at fair market value.~~

8.7.4.2      ~~8.07.04.03~~      Who Conducts Negotiations. Either the Right of Way Staff or consultant under the direct guidance of the Right of Way Manager is authorized to negotiate the sale of surplus land on the Commission's and RCA's behalf.

- Right of Way Staff—: Negotiations for the sale of surplus land may be conducted by Commission Right of Way Staff. Such personnel must meet the minimum qualifications for the position of Right of Way Manager as outlined in the RCTC Personnel Manual. Other personnel not meeting these minimum qualifications may perform negotiations under the direct guidance of the Right of Way Manager.
- Consultants—: Negotiations may also be conducted by consultants under written agreement with the Commission or the RCA and under the direct guidance of the Right of Way Manager.

8.7.4.3      ~~8.07.04.04~~      Field Inspection. The Right of Way Staff will conduct a field inspection of the subject property, to confirm the land to be disposed of is no longer needed for operating purposes.

8.7.4.4      ~~8.07.04.05~~      Determination of Sales Price. The Right of Way Manager prepares a sales price recommendation which is based on a recent appraisal of the subject property conducted by the Commission-approved appraiser. The appraiser is usually chosen from the Commission's approved list of on call appraisers.

8.7.4.5 ~~8.07.04.06~~ Good Faith Negotiations and Basis of Value. It is the policy of the Commission and the RCA that all negotiations shall be expeditious and result in the Commission or the RCA receiving Just Compensation. Even though it is not required by law, in most cases an appraisal of the surplus land should be conducted to determine its fair market value. Also, the appraisal guards against a low sales price, as well as accusations that the sale was a gift of public funds.

8.7.4.6 ~~8.07.04.07~~ ~~Notice to Selected Public Entities~~ Declaration of Surplus Land; Notice of Availability; Good Faith Negotiations. As delineated in Government Code Section 54222 and HCD's Guidelines, before disposing of any surplus land, the governing body of the Commission or RCA (as applicable) must adopt a resolution declaring the subject land "surplus." The same resolution should also approve the form of written notice of availability required under section 54222 (Notice of Availability) and authorize the Executive Director and his/her designee to comply with all aspects of the Surplus Land Act, including issuance of the Notice of Availability, negotiations with interested developers, and communications with HCD. Immediately after adoption of the resolution, the Commission or the RCA is required to send ~~a written offer to sell surplus property~~ the Notice of Availability to various entities within whose jurisdiction the land is located.

All ~~offers~~ Notices of Availability shall be sent by ~~first class~~ electronic mail, or by certified mail and include the location and a description of the property. Those entities are as follows:

- ~~The local entity that assists in developing low- and moderate-income housing~~
- ~~Housing sponsors who request a written offer~~
  1. Any local public entity (as defined in Health and Safety Code section 50079) within whose jurisdiction the land is located, for developing low- and moderate-income housing.
  2. Housing sponsors, as defined by Health & Safety Code section 50074, who request a written offer to sell or license the surplus land. The most updated list of housing sponsors is available on HCD's Surplus Land Act website at <https://www.hcd.ca.gov/community-development/public-lands-for-affordable-housing-development.shtml>.
  3. A city parks or recreation department within which the surplus land is located, for park and recreation purposes or open space purposes.
  4. A county parks or recreation department within which the surplus land is located, for park and recreation purposes or open space purposes.

5. Any regional park authority having jurisdiction within the area where the surplus land is located, for park and recreation purposes or open space purposes.
- ~~6. The city and/or county park or recreation department, any regional park authority, and the State Resources Agency, or any agency that succeeds it, for park and recreation or open space purposes or open space purposes.~~
7. A school commission in whose commission the surplus land is located, if the property is suitable for school facilities construction or use by a school commission for open-space purposes.
- ~~The local school district (for school facilities construction or open space)~~
- ~~The local non-profit neighborhood enterprise association~~
- ~~The program area agent established by the Economic Employment and Incentive Act~~
8. A nonprofit neighborhood enterprise corporation in which the surplus property is located, for enterprise zone purposes.
9. Any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located, for the purpose of developing the surplus land if the surplus land is located within an infill opportunity zone (pursuant to Government Code section 65088.4) or within an area covered by a transit village plan (pursuant to Government Code section 65460 et seq.).

Any of the entities desiring to purchase surplus land must notify the Commission or the RCA within sixty (60) days of ~~receiving the written notice. The~~ the date of issuance of the Notice of Availability. Thereafter, assuming a qualified notice of interest pursuant to Government Code section 54222.5 (Notice of Interest) is timely received by the Commission or the RCA, the Commission or the RCA must then enter into good-faith negotiations for ninety (90) days to determine ~~the~~ a mutually satisfactory sales price and terms or lease terms. The 90-day good-faith negotiation clock commences on the first day after the 60-day Notice of Availability clock expires – regardless of whether any Notices of Interest were received by the Commission or the RCA during the 60-day Notice of Availability period. In the event the Commission or the RCA receives Notices of Interest from more than one housing developer, it shall give priority to the entity which agrees to at least 25% affordability. If the Commission or the RCA receives offers from more than one entity that agrees to meet the 25% affordability requirement of Section 54222.5, then the Commission or the RCA shall give priority to the entity that proposes to provide the greatest number of units that meet the 25% requirement. In the event that more than one entity proposes the same number of units that meet the 25% requirement, priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units.

The Commission or the RCA may negotiate concurrently with all entities that provide a Notice of Interest for the purpose of developing affordable housing that meets the 25% affordability requirement. If no agreement is reached ~~within a reasonable amount of time~~ during the good-faith negotiation period, the Commission ~~or the RCA~~ may proceed with the general disposition process; ~~there are no other statutory requirements.~~ subject to approval by HCD pursuant to Government Code section 54230.5(b)(1) and the recording of a covenant on the subject surplus land that if more than ten (10) residential units are ever developed on the land, at least 15% of the units must be sold at an affordable cost or leased at an affordable rent.

As previously mentioned, the notice requirements do not apply in certain limited cases, such as small parcels that are sold to the ~~adjacent~~ contiguous property owner, unless one of the following applies:

- ~~Adjoins publicly-owned land used for parks and recreation, open space, or low- and moderate-income housing~~
- ~~Located within a Government Code Section 7073 enterprise zone or a Section 7082 designated program area~~
- ~~Located within 1,000 yards of a historical unit of the State Parks System or property listed on or eligible for the National Register of Historic Places~~

#### 8.7.4.7

Notice to Department of Housing and Community Development. Government Code Section 54230.5(b)(1), prior to disposing of any surplus land, the Commission or the RCA is required to send (i) a copy of the governing body's resolution declaring the land surplus, (ii) a copy of the Notice of Availability, (iii) evidence of delivery of the Notice of Availability to all entities entitled to notice, (iv) a description of negotiations conducted, and (v) a copy of any restrictions to be recorded against the property (including the affordability restrictive covenant described above) to HCD. Commission or the RCA shall submit required documents to HCD via email to: [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov). Commission or the RCA shall submit required documents in accordance with sample HCD forms. In addition, before disposing of any surplus land, the Commission or the RCA must wait at least 30 days for HCD to respond to the Commission's or RCA's required notices as described above in this subsection. If the 30-day period (as shown on HCD's website) has lapsed and no response has been received, the Commission or the RCA may dispose of the surplus properties pursuant to the procedures set forth in Section 8.7.5.00.

#### 8.7.4.8

~~8.07.04.08~~ Yearly Inventory. ~~—Each~~ By December 31 of each year the Commission and the RCA will prepare an inventory of real property that is surplus of its foreseeable needs. The inventory is a matter of public record. To alert entities who develop low- and moderate-income housing, the Commission and the RCA must provide the inventory to any citizen, housing corporation, or non-profit corporation who requests a copy. ~~Most funding agencies also require an~~



~~inventory to be maintained and available for audit. The inventory must note the funding agency.~~

8.7.4.9

~~8.07.04.09~~ Disposition and Management. ~~Properties declared available for sale will be first offered to other public entities in accordance with the above-mentioned Notice to Selected Public Entities. If other public entities have no interest in a property at the terms offered by the Commission~~If the subject land is (i) deemed “not surplus” or (ii) declared “exempt surplus” by resolution or (iii) was declared surplus by resolution and went through the Surplus Land Act process outlined above, the property may be marketed by a real estate marketing firm chosen by the Commission or the RCA. The Commission or the RCA may wish to directly market these and other parcels, especially those of minimal value.

Advertising may be posted on the subject property, in the local and regional newspaper as well as online websites. See section 8.7.3.00 above.

Parties interested in purchasing the Commission or the RCA surplus properties shall submit their formal written offers or proposals directly to the Commission or the RCA. The Right of Way Staff will initially review each offer and proposal and determine if the terms and conditions are in conformance with the Commission's or RCA's plans for the subject parcel.

After initial review by the Right of Way Staff, all offers and proposals to purchase will be reviewed for consideration, with final approval on most parcels granted by the Board of Commissioners or RCA's Board of Directors.

In the event the Commission or the RCA receives offers from more than one of the above-mentioned public entities, it shall give priority to the entity which agrees to use the property for housing for persons or families of low or moderate income, except that first priority shall be given to an entity which agrees to use the property for park or recreational purposes if the land being offered is already being used, and will continue to be used, for park and recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

After all approvals have been obtained and the potential buyer has been informed, a formal escrow will be opened at an approved escrow company.

Any Commission or the RCA surplus properties subject to a license/~~lease~~ agreement will be classified and analyzed in accordance with the above-mentioned policies in order to determine their future potential use at the termination of the license/~~lease~~.

8.7.4.10      ~~8.07.04.10~~      Direct Sales to Adjoining Land Owners. The Commission or the RCA may directly sell any small, odd-shaped surplus parcels to adjacent land owners without going through a competitive bidding process. These parcels usually have no value for development. Only the adjacent owner would have a logical use of the parcel, especially if needed for access to a public street. The minimum sales price will be the parcel's appraised market value, ~~considered as an assemblage value~~. If the adjacent land owner does not wish to purchase the parcel, the Right of Way Staff may proceed to offer it for sale as if it were any other surplus property.

8.7.4.11      ~~8.07.04.11~~      Document Preparation. All documents regarding the sale of surplus land shall be prepared and/or approved by the Commission or the RCA legal counsel and forwarded to the Right of Way Staff or consultants for final review and transmittal to escrow.

8.7.4.12      ~~8.07.04.12~~      Occupation Prior to Closing. No purchaser of surplus land shall be allowed to occupy or take possession of the property prior to the full payment of the purchase price and close of escrow without the prior written consent of the Executive Director.

8.7.5.00      ~~8.07.05.00~~      Procedures for the Disposition and Sale of Surplus Land and Land Rights Outside of the Surplus Land Act

The Commission and the RCA has the power to declare properties that are not needed for public use as "surplus" and approve their disposition and sale. The Executive Director may also perform this function for certain small parcels, e.g., those containing less than 5,000 square feet. In both cases, a memorandum shall be submitted to the Executive Director by the Right of Way Staff requesting approval. Prior to submission to the Executive Director, the memorandum shall be concurred to by the Project Delivery Director and the Right of Way Manager.

~~The~~ Outside of the Surplus Land Act, the property must be offered to the appropriate public entities, in accordance with 8.07.04.07. Their response must be received within sixty (60) days of the notice sent by the Commission or the RCA. Concurrently, the Right of Way Staff will order an appraisal to determine the fair market value of the land and obtain the approval of the Board of Commissioners, the RCA Board of Directors or Executive Director, as appropriate.

If any public entities are interested in purchasing the subject property, agreement must be reached within a reasonable amount of time to sales price and terms and conditions. If no public entities are interested within the ~~sixty days~~ sixty-day (60) time period, the Commission or the RCA may offer the parcel to the general public. Smaller parcels of minimal value may be handled directly by the Right of Way Staff.

All offers to purchase must be reviewed by the Right of Way Staff and ~~the Right of Way Staff and~~ approved by the Board of Commissioners, the RCA Board of Directors or Executive Director, as appropriate. ~~Counter-offers~~ Counteroffers may be necessary if the initial offered price or terms

and conditions are not acceptable to the Commission-

or the RCA. In the event of a tie, the Commission or the RCA will have the sole discretion to award either bidder. Once an offer has been approved and accepted by the Commission or the RCA, the buyer is notified and escrow is opened at an approved escrow company. For smaller parcels with a minimal value, it is allowable to complete the transaction without an escrow, as long as a closure acceptable to the Commission or the RCA can be achieved.

Upon completion of the sale, the Commission personnel notifies the appropriate Commission personnel of the property's sale. The file is then closed and the database revised to reflect the parcel's sale.

#### 8.7.6.00      ~~8.07.06.00~~      **Disposition and Sale Process Checklist**

The following may be used to guide the Right of Way Staff through the process of disposing of surplus land and land rights. It is designed to provide specific, more detailed guidelines to supplement the general procedures mentioned above.

8.7.6.1      ~~8.07.06.01~~      Declaring the Property as Surplus. Right of Way Staff is made aware, either by internal means or notification by a third party, that a parcel could be declared surplus and offered for sale. The Right of Way Staff obtains and reviews relevant information regarding the parcel including the following:

- • Assessor's parcel map
- • Acquisition data, including purchase price, acquisition date, legal description, title policy, etc.
- • Current zoning
- • Available valuation data, including recent Commission or the RCA appraisals for nearby properties

The Right of Way Staff performs the following tasks:

- • Inspects property and completes inspection form, noting any visible encumbrances, hazardous waste, access problems, etc. Also, notes any "for sale" signs in the area.
- • Checks acquisition title policy to determine encumbrance items.
- • Compares encumbrance items delineated in title policy with those observed during property inspection, lists remaining encumbrances, those which no longer occupy parcel and any new ones observed during inspection.
- • Estimates property's fair market value using best means available by reviewing existing appraisals, checking with listing agents having "for sale" signs in area, Assessor's information, etc.
- • An appraisal could be ordered if the property will have substantial value, no other valuation data is available and it is reasonably certain the parcel will be declared surplus (an appraisal will usually be ordered only after the property has been approved for surplus status and sale).

- Obtains internal concurrence to have parcel declared surplus and available for sale.
- Routes for approval through Right of Way Manager, Deputy Executive Director and Executive Director. ~~If necessary, Property is determined to be:~~ (i) not "surplus" for purposes of the Surplus Land Act; (ii) exempt surplus land; or (iii) surplus land that must be put through the Surplus Land Act process. If the property is deemed to be "exempt surplus land" or "non-exempt surplus land," the Board of Commissioners will approve any unusual conditions or if property has significant market value or the RCA Board of Directors must adopt a resolution so declaring and support such a declaration with written findings.
- Receives fully authorized approval.

#### 8.7.6.2

8.07.06.02 The Sale Process. ~~The~~ If the property is declared "non-exempt surplus land," the Right of Way Staff sends notice to each entity ~~requesting response within sixty (60) days~~ statutorily entitled to notice per Government Code 54220, et seq.

~~The~~ During the 60-day period after issuance of the Notice of Availability and as Notices of Interest may arrive, the Right of Way Staff determines property's fair market value, generally by ordering an appraisal. The Right of Way Staff will perform the following functions:

- Receives and reviews each bid
- Awards appraisal contract
- Receives appraisal
- Reviews appraisal
- If necessary (for complex or high market value appraisals), routes for review to be performed by Right of Way Manager, Deputy Executive Director or outside consultants

The Right of Way Staff determines fair market value and obtains approvals from the following:

- Right of Way Manager
- Executive Director or designee
- Board of Commissioners or the RCA Board of Directors, if necessary

After the 60-day Notice of Availability period has expired, the Right of Way Staff may proceed as follows:

~~If appropriate, the Right of Way Staff prepares and sends a Request for Offer, any sales requirements, to any interested public entities. If appropriate, the Right of Way Staff receives responses from interested public entities and proceeds as follows:~~

- ~~Responds~~Respond to any questions from ~~public~~ entities who have responded to the Notice of Availability
- Reviews offer(s), makes recommendation, and submits to the Right of Way Manager
- Informs potential buyer(s) of Committee's decision
- Receives potential buyer(s)' response

If necessary, repeat process until an offer is acceptable for recommendation to the Board of Commissioners or the RCA Board of Directors.

The Right of Way Staff obtains approval from the Board of Commissioners or the RCA Board of Directors and notifies potential buyer of offer's acceptance and verifies sales documents. The Executive Director is authorized to approve sales less than \$100,000 when the bid is 90% or greater of the appraised value. Any unsuccessful bidders should also be notified. The Right of Way Staff then proceeds as follows:

- Requests legal counsel to prepare Purchase and Sale Agreement.
- If the property is "non-exempt surplus land" and is going or has gone through the Surplus Land Act, sends package of information to HCD pursuant to Government Code section 54230.5(b)(1) and wait for thirty (30) days.
- Receives Purchase and Sale Agreement from legal counsel.
- Routes for execution by Executive Director.
- If applicable, opens escrow at an approved escrow company and submits Purchase and Sale Agreement executed by the Commission or the RCA. Escrow officer secures buyer's execution of Purchase and Sale Agreement, as well as other necessary documents.
- If necessary, completes any due diligence items required of the Commission or the RCA e.g., resolution of encroachments, removal of contaminated materials, removal of any tenant, etc.
- Receives all necessary documents, including grant deed, from escrow officer, reviews, and routes for execution by Executive Director.
- Receives executed document(s) from Executive Director.
- Requests RCTC Finance/Accounting to submit any funds into escrow required of the Commission or the RCA, e.g., tax pro-ration, escrow fee, etc.
- Upon close of escrow, the Right of Way Staff will perform the following:
- Receives sale proceeds due the Commission or the RCA and copies of recorded document(s).
- Remits sale proceeds to the Commission or the RCA Finance/Accounting Department.
- Makes copies of all documents, inserts one in file, and distribute other copies to Insurance, Finance/Accounting, Rail/Property, and Legal Counsel (this will serve as their notification of the parcel's sale).

- Forwards original document(s) to the Commission's or RCA's records vault.

When the file is closed, the Right of Way Staff will perform the following:

- Revise database to reflect parcel's sale.
- Receive, complete, and return appropriate assessor's form, requesting sales price information ("Change of Ownership Form" is no longer required).

#### 8.7.7.00 ~~8.07.07.00~~ **Funding Sources**

Before disposing of any property purchased by the Commission or the RCA, the Commission staff should consult the terms of the agreement under which the funding was accepted and the source of funds with the Chief Financial Officer. The Commission ~~is~~ and the RCA are required to follow the rules of the agency that provided the funding which could include reimbursing the agency that contributed funds for the property's original acquisition.

8.7.7.1 FTA Funded Projects. Per FTA Circular 5010.1.D, E if the Commission determines that real property is no longer needed, and FTA funds were used, the FTA may approve the use of the property for other purposes. They may include the use in other federal grant programs or in non-federal programs that have consistent purposes with those authorized for support by FTA.

- Valuation of Property Pending Disposal. For properties no longer needed for transit purposes, the Commission is expected to follow the valuation requirements of 49 CFR part 24 and obtain an appraisal to ascertain the value of the property considered for disposal.
- Disposition Methods. The allowable disposition methods are described in Chapter 4, Section 2(j)(2)(~~eb~~) of the FTA C ~~5010.1D~~ 5010.1E and are as follows:

- Sell and reimburse FTA
- Offset against the cost of a replacement property under the same program
- Sell and use proceeds for other FTA eligible capital projects
- Sell and keep proceeds in project
- Transfer to public agency for non-transit use in accordance with 49 U.S.C., 5334(h)(1)–(h)(3)
- Transfer property to another FTA eligible project
- Retain title with buyout of the FTA's contribution
- ~~Joint development in accordance with FTA circular 7050.1~~
- = Sales Procedure

8.7.7.2 ~~8.07.07.02~~ **FHWA Funded Projects**. The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710. FHWA does not require reimbursement of the federal share of proceeds from the sale of excess real

property as long as the proceeds are used for subsequent highway (US Code Title 23) eligible projects. Selling an excess land property for less than fair market value requires FHWA approval unless the property will be utilized for public utilities, railroads, bikeways or other highway projects.

Sales credits are due to FHWA when right of way bought with federal funds is sold, then subsequently declared to be excess because of an alignment change, modification or termination action.

If the excess right of way results from an alignment change, the excess should be disposed of before final vouchering of the project or no later than two (2) years from the time the highway is opened to traffic, whichever is earlier. If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.

If excess results because the property is no longer needed for the purposes of the highway project and within ten (10) years of the modification or termination action the resulting excess property is neither sold, nor reused on another federal project, then the FHWA must receive credit for the market value of the property at the end of ten (10) years.

8.7.7.3      ~~8.07.07.03~~      California Highway Users Tax Fund. Per Government Code ~~54321~~54231, land acquired by the Commission for highway purposes through the expenditure of funds allocated pursuant to Chapter 3 (commencing with Section 2100) of Division 3 of the Streets and Highways Code may be transferred to another local agency for public park and recreational purposes. Said land shall be developed within ten (10) years and shall be used for at least twenty-five (25) years following such retention or transfer in accordance with the general plan for the appropriate city or county. Otherwise, the land shall be sold by the Commission and the funds received from the sale used for highway purposes. If the land originally had been transferred for such purposes, it shall revert to the original acquiring local agency for such sale. Disposal of excess on State Highway projects should be addressed in the cooperative agreement for design and right of way.

8.7.7.4      ~~8.07.07.04~~      Commission Funded Projects. The Commission may provide funding to cities for capital projects, including acquisition of right of way. The following provisions outline the policies for disposal of excess for Commission funded projects.

In order to protect a city's ability to deliver a project in a timely and cost effective manner, a city may purchase parcels of property in advance of the completion of the project's final design (i.e. Plans, Specifications, and Estimates "PS&E") with

funds received by the Commission. Acquired parcels or remnants purchased in advance of final design may not ultimately be required for the project.

Upon completion of the project's final design, the city shall provide the Commission with a detailed list of all parcels purchased by the city for which it received Commission funds and identify any parcels or remnants thereof which were acquired using Commission funds and are not required for construction of the project. A preliminary list shall be submitted to the Commission thirty (30) days before the issuance of bid documents for construction of the project and a final list shall be submitted to the Commission no later than thirty (30) days following the recording of the Certificate of Completion for the project.

Upon receipt of the city's final list, the Commission shall meet with the city for the purpose of identifying any parcel or reasonably usable remnant of a parcel for which Commission funds were expended that may reasonably be developed for other use by the city and/or sold. The Commission and the city shall agree upon the disposition of such parcels and remnant parcels and their fair market value as of a date agreed to by the parties, but in no event later than or prior to the date of completion of the project.

Following recordation of the Certificate of Completion for the project, the city shall be responsible for promptly reimbursing the Commission for any Commission funds which were used to acquire parcels which are completely unused in the project.

#### **8.7.8.00 SURPLUS REAL PROPERTY POLICY PROVISIONS UNIQUE TO RCA**

In addition to the provisions set forth above disposition of surplus property of the RCA shall adhere to the policy set forth herein.

8.7.8.1 Wildlife Conservation Board (Section 6 Grant Funds). The RCA will follow the procedure outlined in the agreement entered into with the Wildlife Conservation Board.

8.7.8.2 Annual Inventory. The RCA shall list property in its inventory as surplus real property provided the RCA makes all of the following determinations: (i) the biological value of the property is low or marginal in terms of species recovery or sustainability; and (ii) the property is not required to assemble the Reserve.

8.7.8.3 Research Prior to Disposal of Surplus Property. Prior to disposing any surplus real property, the RCA should do the following:

- Determine Biological Need for Land: Prior to disposing of any property acquired by the RCA, the RCA shall perform a habitat assessment to determine the value of the land for conservation purposes. Except in exceptional



circumstances, property may be conveyed only if it is determined that its conservation value is low or marginal or that the property is not required to assemble the Reserve.

- Determine whether there are any conveyance or use restrictions: The RCA should research whether the property in question is subject to covenants or conditions imposed by any original grantees of the property. For example, gifts of real property often involve conditions whereby real property “reverts” back to the grantor if the property is not used for a specific purpose. Such restrictions could also form the basis of an exemption under the Surplus Land Act.
- Determine whether Property was purchased with federal or state grant funds: Prior to disposing of any real property purchased by the RCA with state or federal grant funds, the RCA should consult the terms of the agreement under which the grant funding was accepted. In some cases, disposal of property purchased with grant funds may be prohibited or restricted, or subject to other regulations. Also, upon the sale of surplus property, the RCA may be required to reimburse any federal or state agency that contributed grant funds for the acquisition of the property.
- Determine whether Property is subject to any leases, licenses, or other encumbrances: The RCA should determine whether there are any leases, licenses, or other encumbrances attached to the property.

#### 8.7.8.4

Sale of Property. The procedures of this Section shall govern the disposition of any surplus property once the RCA has fully complied with the procedures set forth above and Chapter 8.07.

- Sale to Prior Owner: If the RCA decides to dispose of a property within three (3) years of acquisition and the RCA paid no more than the appraised value for the property as determined in an appraisal prepared by the RCA at the time of purchase, the RCA shall first offer the property to the person or entity who sold the property to the RCA. The RCA shall not sell the property at a price less than the total of all of the following: (i) amount the RCA paid the seller for the property (including all costs and expenses incurred by the RCA for the purchase), plus interest calculated at the average rate earned by the RCA on invested funding during the time of its ownership and (ii) administration, maintenance and repair costs incurred by the RCA during its ownership of the property.
- Notice to Certain Affected Agencies: Prior to commencing the sale of property to a third party, the RCA should notify and receive the concurrence of the following agencies:
  - The city or county within which the property was located when originally purchased by the RCA; and

- = The city or county within which the property is currently located and/or within which sphere of influence the property is currently located.
- Sale or Trade to Other Parties: If "Sale to Prior Owner", as mentioned above, is not applicable, the RCA may proceed with the sale or trade of the property to any party. The RCA shall conduct an appraisal of the property to determine its fair market value. The RCA shall not sell property below its fair market value unless approved by the Board of Directors. Further, the RCA shall not trade the property for other property below the fair market value of the property to be traded unless approved by the Board of Directors).
- = Limitations: It is anticipated that RCA shall not:
  - = Sell property within five (5) years of acquisition; and
  - = Sell water or mineral rights unless fully compensated therefor.

#### 8.8.00.00     ~~8.08.00.00~~     **RENTAL POLICY**

##### 8.8.1.00     ~~8.08.01.00~~     **No-Re-Rent**

On a per project basis, the Commission or the RCA may decide ~~that no~~ whether to license improvements located on recently vacated property (such as residential units or other types of nonresidential property shall be rented. Vacated structures). If the Commission or the RCA decides not to license, the vacated improvements on such ~~project~~ property should be cleared ~~immediately~~ as quickly as reasonably possible.

##### 8.8.2.00     ~~8.08.02.00~~     **Rental Agreements**

When real property is acquired by the Commission in advance of the time it is required for construction or operation of a transit project, the Commission may ~~lease or~~ license the real property to private or public entities during the interim period to create revenue for the Commission. The following rental agreements shall be used:

- ~~License. All new outside users of Commission-owned vacant land shall enter into a license agreement on the standard license form of agreement.~~
- ~~Lease~~ License. All new outside users of Commission-owned vacant land and facilities (e.g. buildings) shall enter into a ~~lease~~ license agreement on the standard ~~lease~~ license form of agreement.
- ~~Right of Entry~~. All new outside users of Commission property with a definite term between one and ninety days may be authorized by use of a temporary permit prepared on the standard Right of Entry form of agreement.
- ~~Relocation Assistance~~. Eligibility for any relocation benefits should be clearly stated in the agreement.

No revisions or modifications to these agreements will be permitted unless specifically approved by the Right of Way Manager and the Commission's General Counsel.

Please note: Under the Guidelines, *leases* are dispositions of surplus land subject to the Surplus Land Act. However, for purposes of the Surplus Land Act, “leases” do not include a lease of land on which no development or demolition will occur or which has a term that is less than five (5) years (including any extensions, amendments or options). A “lease” and a “license” are two distinct legal instruments. A lease is a contract between a tenant and a landlord that provides the tenant with exclusive interest in the property. A license, on the other hand, is used when the owner gives permission to a licensee to conduct an action on the owner’s property. Licenses may be non-exclusive. The main difference between the two is that leases give an individual the right to control property (i.e. a property interest), while licenses only give an individual the right to act on it (i.e. no property interest). So long as the agreement for a third party to access and use the subject land is clearly a license, and not a lease, the Surplus Land Act will not apply.

#### 8.8.3.00      ~~8.08.03.00~~      **Assignment of Rental Agreements**

In some instances it may be of benefit to the Commission to accept an assignment of an existing tenancy upon acquisition of a property. All such rental agreements to be assigned to the Commission through property acquisitions are subject to the following:

- Review by the Right of Way Manager prior to acquisition to determine if the tenant is in compliance with the terms and conditions of the agreement.
- Verified through an Estoppel Certificate prepared as part of the escrow process by the designated Right of Way Staff.
- The original rental document shall be attached to the Estoppel Certificate for processing into the Commission’s document custody system. Agreements are converted to conform to the appropriate the Commission rental agreement document whenever possible.
- Additional lease/license terms may be negotiated with the owner(s) or representative(s) and included in a new or amended rental agreement. In addition, a rental adjustment may be made (upward only) to equal the fair market rental rate established for the property.

#### 8.8.4.00      ~~8.08.04.00~~      **Rental Amounts**

The Right of Way Staff prepares an analysis of the subject property’s fair market value, based on a market rate survey of comparable or similar properties in the same general area. A current real property appraisal may be utilized, if necessary. In most cases, the annual rental rate (fair market rent) is equivalent to 10% of the fair market value of the property. However, the rate may be adjusted to reflect any special terms and conditions imposed by the Commission.

8.8.4.1      ~~8.08.04.01~~      **Rent Collection for Properties Used by Third Parties.** The Right of Way Staff performs the following actions to assure the proper and timely payment of rent and late charges (ongoing payments are generally applicable to license agreements, but may also apply to certain rights of entry):

- Collection of Rent.— All rents shall be collected in accordance with the terms and conditions of the license agreement. Payments (usually annual) shall be mailed to the Commission Finance/Accounting Department, who prepares and

sends an invoice before the payment is due, reminding a tenant of the amount and due date. A check should not be given directly to the Right of Way Staff, unless it is the first payment prior to the establishment of the account or other special situation. All checks shall be recorded in the Commission's accounting log and posted to the appropriate revenue account.

- ~~Collection Efforts for Delinquent Accounts~~: Any account where the current payment is not received in total by the due date is considered delinquent (usually after thirty (30) days). The Right of Way Staff will work with the tenant to bring the account current. The Right of Way Manager will determine if termination of the license should be commenced. A clear and complete written record of all such actions shall be maintained for each file. Legal counsel may be consulted, if necessary.
- ~~Assessment of Penalties~~: Additional amounts are assessed delinquent tenants based on provisions in the license agreement.
- ~~Three-Day Notice to Quit~~: In the event delinquent rent is not paid immediately after contacting the tenant, a Three-Day Notice to Quit may be served on the tenant. This notice will demand and give the tenant one last opportunity to pay the total delinquent rent within three (3) days or vacate the property. If the month-to-month tenant is habitually delinquent and it is decided to terminate the tenancy, a Thirty-Day Notice of Termination, terminating the tenancy may be sent.

*NOTE:* Serving a Thirty-Day Notice of Termination after a Three-Day Notice to Quit has been served may negate the legal effect of the Three-Day Notice in the event the tenant does not quit (vacate) the site. If necessary, the matter is then turned over to legal counsel for the filing of an Unlawful Detainer Complaint to evict the tenant through the court system and regain possession of the property, as well as to obtain a money judgment for the delinquent amount and any attorney's and related costs. The money judgment may then be turned over to an outside collection agency or, if recommended by legal counsel, the matter may be pursued through legal proceedings against the tenant.

- ~~After all of the above-mentioned proceedings have been completed and the tenant has vacated the property and the license formally terminated, the Right of Way Staff has the option of determining if the property is available for a new license.~~
- ~~If necessary, the Right of Way Staff shall coordinate the storage or removal of any remaining personal property belonging to the former tenant and secure any building to prevent unauthorized entry.~~

#### 8.8.4.2

~~8.08.04.02~~ License Agreements. License agreements may be utilized for long-term uses (usually over ninety (90) days). Where transportation project

schedules permit, and on projects where immediate use of the real property is not required, the Commission may license the property, as well as any improvements thereon, to private or public entities. All new licenses shall be prepared by the Commission on its standard form of agreement. No revisions or modifications will be permitted unless specifically approved by appropriate personnel and legal counsel, on occasion, approval by the Board of Commissioners is required. Also, it may be necessary for SCRRA to review a proposed license if there is a possible adverse impact to an existing or proposed transportation project.

All new license agreements include the Commission's standard provision requiring the tenant to accept the condition that it is not eligible for any relocation assistance upon termination of the agreement.

All license agreements with private entities shall provide for payment to the Commission of a one-time processing fee and an annual fair market rent (public agencies are not required to pay).

#### 8.8.4.3

~~8.08.04.03~~ Utilities. Private Utilities (shareholder owned) and Public Utilities (governmental agencies)

- ~~Utility crossing rental rates will be based on fair market land value per linear foot based on the actual length of the crossing and a standard width of ten (10) feet.~~
- ~~Longitudinal utility rental rates will be based on fair market value per square foot for vacant industrial/commercial land.~~
- ~~An annual administrative base fee of \$200 will be charged for each license in addition to the calculated rent.~~
- ~~Utility facilities will be charged the \$6,000 application fee as well as the annual rental fee.~~

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#### 8.8.4.4

~~8.08.04.04~~ Member and other Exempt Agencies.

- ~~RCTC member and other exempt agencies will~~ not be charged ~~a \$1an~~ annual rent fee, and will not be charged an administrative fee or application fee.
- ~~Agencies will be prohibited from subleasing without written approval from the Commission or for a profit.~~

#### 8.8.4.5

~~8.08.04.05~~ Private Users. (Individuals, businesses, and non-profit organizations)

Private use types include the following:

- Backyard landscaping
- Sprinkler and irrigation systems
- Patios, garages, gazebos, and other permanent structures
- Parking and shade overhangs
- Billboards
- Access roads
- Commercial agricultural uses, including associated irrigation equipment
- Industry spur tracks

Residential Uses. Rental rates will be based on a minimum of 25% of fair market rent, defined in Section 8.08.04.00, for vacant residential land. An annual administrative base fee of \$200 per license is charged ~~one time every five (5) years~~ in addition to the calculated rent.

Commercial Uses. Rental based on 100% of fair market rent for vacant industrial/commercial land. An annual administrative base fee of \$200 per license will be charged in addition to the calculated rent.

Non-Profit Organizations. Rental rates will be based on 25% of fair market rent for vacant industrial/commercial land. An annual administrative base fee of \$200 per license is charged ~~one time every five (5) years~~ in addition to the calculated rent. At it's discretion, the Commission may waive the fees on a case by case basis.

Utility Service and Drainage.

- Rental rates will be based on 25% of the fair market value calculated for private and public utilities.
- An annual administrative base fee of \$200 per license will be charged ~~one time every five (5) years~~ to residential and non-profit users in addition to the calculated rent.
- An annual administrative base fee of \$200 per license will be charged to commercial users in addition to the calculated rent.

Carry-Over Tenants and Owner-Occupants during Interim Period. When a property is purchased for a project from a private owner, and the timing of the project is such that the previous tenant or owner can remain on the property for an interim period, the following policies will apply:

- Carry-Over Tenants may be charged the same contract rent as was paid to the former owner. A comparison will be made between the contract rent and the FMV rent as contained in the approved appraisal to determine if the contract rent is reasonable. An upward adjustment will be made to the rental amount if the contract rent is below the current FMV rent for the property.

- Carry-Over Owner-Occupants' initial rental amount will be the FMV rent contained in the appraisal upon which the value of the property was determined. This amount may be subject to adjustment due to month-to-month occupancy.

#### Other Fees and Considerations.

- Existing licensees will not be required to pay the fee of \$6,000 for license applications, processing fees, or any one-time fees when renewing or making minor revisions to their existing licenses.
- Licenses will be revised to reflect any rental rate change or when there is a need for updated language.
- Land values and rates will be reviewed at least every five (5) years, and more frequently if appropriate, but may not necessarily result in an increase of annual rates.
- Uses of Commission property that have significant liability or impact to the Commission's use of the property, such as spur tracks and billboards, are outside of the scope of this policy and will be valued separately.

#### 8.8.4.6

~~8.08.04.06~~ Outdoor Advertising Signs. License agreements covering various existing signs have been assumed from ~~BNSF~~previous property owners and allowed to remain in effect at fair market value rates. The following policies apply to such agreements, which have subsequently been put on the Commission's standard form.

Before an outdoor advertising sign is installed, the billboard company must obtain all necessary permits from the State, County, or local municipality in which the sign was installed. The license rates for advertising signs were, and will continue to be, based on the size of the sign, its exposure potential to nearby traveled roadways, and the appropriate market rate of return. The determination of the market rate of return may be based on an appraisal, which generally uses the gross license income of private billboard companies, as published by the State of California and the Outdoor Advertiser's Association.

Generally, the Commission will expect to receive a minimum of 25% of the annual gross revenue generated by the signboard. A "base license rate" is established annually based on market data appraisal information. This amount is then increased if the 25% figure exceeds the base license rate.

Existing signboards located on properties acquired by the Commission may be eligible for relocation and/or removal assistance upon termination of the license agreement.

#### 8.8.5.00

#### RCA Right of Entry Policy

RCA's Reserve Management and Monitoring Manager shall determine whether right of entry agreements are allowed on lands owned by the RCA. On a case-by-case basis, right of entry agreements may be charged an application fee determined by the Right of Way Department until a formal policy has been established by RCA's Board of Directors.

#### 8.8.6.00      RCA License/Lease Agreements Policy

RCA's Reserve Management and Monitoring Manager shall determine whether license agreements are allowed on lands owned by the RCA. Generally, RCA's costs involved in preparing and implementing a license agreement should be covered. Licensed/Leased facilities will be charged an application, license, and amendment fee determined by the Right of Way Department until a formal policy has been established by RCA's Board of Directors.

Long-Term Leases: According to a 2006 policy adopted by the RCA Board of Directors, communication facilities may be sited on a case by case basis subject to the provisions of the MSHCP, and in conformance with federal, state and local codes and regulations, and any rules established by the RCA Board of Directors. Two radio towers were allowed to "grandfather" into the MSHCP Conservation Area since accepting the towers were a condition of the purchase of the property.

#### 8.9.00.00      ~~8.09.00.00~~      RENT COLLECTION PROCEDURES

The Right of Way Staff performs the following actions to assure the collection of rent:

- ~~•~~ Assists in the collection of rent. All rents shall be collected in accordance with the terms and conditions of the rental agreement. Rental payment shall be mailed directly to the ~~Commission~~ Accounts Receivables (A/R) Department for posting to the appropriate revenue account.
- ~~•~~ Assists the ~~Commission~~ accounting staff in the creation, organization, and maintenance of a rental collection system.
- ~~•~~ All rental agreements shall be assigned a ~~Commission~~ agreement identification number by A/R staff.
- ~~•~~ Applies periodic rental adjustments per the ~~lease/license~~ agreement.
- ~~•~~ Handles collection efforts for delinquent accounts and rental accounts where the current monthly is not received in total by the due date is considered delinquent.
- ~~•~~ Assesses penalties to delinquent tenants based on provisions in the rental/license agreement.
- ~~•~~ Ensures late charges will be carried in the A/R books and records if delinquent tenants do not pay.
- ~~•~~ Pursues rent collections, including late charges and interest on past-due obligations, if applicable, pursuant to the terms and conditions of the agreement.
- ~~•~~ If tenant payment has not been received ~~by the Commission~~ within 15th calendar days of the date when due, mails a past due notice to tenant.



- If tenant payment has not been received ~~by the Commission~~ by the last day of the month when due, mails a second past due notice to tenant.
- If tenant payment has not been received ~~by the Commission~~ by the 15th calendar day of the following month due, mails a third and final past due notice to tenant.
- If tenant payment has not been received ~~by the Commission~~ by the last day of the following month, coordinates the filing of an Unlawful Detainer Action and seeks a Judgment, if necessary, through General Counsel.

#### 8.9.1.00      ~~8.09.01.00~~      Establishment of License Rental Amounts

License for Carry-over Tenants. Generally, a carry-over tenant will be charged the same contract rent as was paid to the former owner. A comparison will be made between the contract rent and the economic rent, as contained in an appraisal or other market analysis to determine if the contract rent is reasonable. An upward adjustment may be made to the license amount if the contract rent is below the current economic rent for the property and the carry-over tenant will remain in occupancy of the property for more than one month.

All Other Licensed Properties. License amounts for all other Commission owned properties generally shall be 10% of the subject property's fair market value, as established by a current appraisal or survey of comparable licensed properties in the area.

#### 8.10.00.00      ~~8.10.00.00~~      **PROPERTY LIABILITY/LOSS PREVENTION**

##### 8.10.1.00      ~~8.10.01.00~~      Insurance/Indemnity

The Commission will maintain its own insurance coverage on all of its properties. Insurance coverage for acquired property shall take effect at the time of the title transfer to the Commission. All parties using the Commission property under license agreements or rights of entry will be required to maintain adequate liability and property insurance based on the Commission's insurance requirements.

All such insurance shall be primary to any insurance carried by the Commission.

Agreements to use the Commission's property shall include an indemnity provision approved legal counsel.

All users/tenants must accept the Commission's indemnity provisions in their entirety and provide evidence of the required insurance coverage prior to taking possession of the Commission's property.

The Commission will maintain liability insurance coverage on non-leased/licensed properties as determined by the Commission. Insurance coverage for acquired property shall take effect at the time of the title transfer to the Commission. All parties using Commission property under leasing, licensing, or other agreements will be required to maintain adequate liability and property insurance based on the Commission's insurance requirements, unless modified or waived with

the consent of the Commission. Commission staff shall review and approve the liability insurance and indemnification provisions prior to the completion of all property agreements. Upon receipt of insurance documents from new tenants, they shall forward the tenant's insurance documents to the appropriate staff for approval.

The Right of Way Staff monitors the uses permitted under property agreements and the potential risks and liabilities associated with the uses. The Commission determines the steps necessary to reduce risk and the type and amount of insurance required to protect the Commission. The Right of Way Staff will take the following steps to reduce risk:

- Notifies the Commission's ~~Asset Manager~~, Right of Way ~~Manager~~, ~~Facilities~~-Manager, and if necessary, legal counsel, of any unsafe activities or unsafe conditions and provides recommendations for corrective action.
- Periodically reviews the leased/licensed sites to verify compliance with the environmental provisions of the agreement.
- Evaluates the compatibility of the use.
- Ensures that the property's use is legal.
- Insists on adherence to safety policies.
- Reviews the indemnification and hold harmless clauses.
- Researches the insurance requirements.
- Determines the types of insurance policies required, the evidence needed, and the coverage limitations.

#### 8.10.2.00    ~~8.10.02.00~~    **Ensure Risk Management, Hazard Protection and Liability Reduction**

The Right of Way Staff shall monitor the uses permitted under ~~the~~ each right of entry or license agreement affecting the Commission property, as well as the potential risks and liabilities associated with such uses. After consulting with insurance personnel, the Right of Way Staff determines the steps necessary to reduce risk and the type and amount of insurance required to protect the Commission. The Commission staff takes the following steps to reduce risk:

- Conducts regular property inspections
- Evaluates the compatibility of use with adjoining properties
- Reviews the existing and proposed property use with the Commission, BNSF or SCRRA, as appropriate
- Ensures that the property's use is legal
- Insists on adherence to safety policies
- Reviews the indemnification and hold-harmless clauses in the agreement
- Determines the types of insurance policies required, the evidence needed (certificates), and the coverage limitations

If a use is identified as being in non-compliance of an agreement or poses a risk to the Commission, BNSF, or SCRRRA and/or the public, the tenant can be given a Three-Day Notice to Cure Defect or Quit and or terminated similar to the procedures mentioned above.

#### 8.10.3.00     ~~8.10.03.00~~     Security Measures

The Commission is responsible for the following security procedures for Commission-owned property:

- • Responds to safety and security inquiries
- • Determines when security measures are needed
- • Coordinates the proper administration of security with appropriate security providers
- • Coordinates any police activities with the appropriate law enforcement agency

#### 8.10.4.00     ~~8.10.04.00~~     Hazardous Waste and Materials

All properties are to be periodically inspected for adverse environmental conditions. If any evidence of hazardous material or contamination is detected during routine management activities, the Right of Way Manager and Legal Counsel shall be contacted immediately. A plan of remediation will be developed by an approved environmental consultant.

#### 8.10.5.00     ~~8.10.05.00~~     Property Security

The Commission-owned land and improvements that are unoccupied will be protected against unauthorized use, vandalism, and damage under the direction of the Right of Way Staff and coordination with maintenance staff and/or local police agencies, as needed.

When a parcel has been assigned to a construction project, the security of the construction site, including all materials, equipment, supplies, and off-site area is the responsibility of the construction Contractor. The contractor's activities shall be monitored by the Project Manager and staff.

The security of equipment, facilities or other structures on Commission leased and licensed property shall be the sole responsibility of the lessee/licensee until the lease/license is terminated. The Right of Way Staff is responsible for conducting periodic property inspections to verify that the lessee/licensee is securing the property as required by agreement in a reasonable manner.

#### ~~8.10.06.00~~     Property Maintenance

~~All Commission property shall be maintained in a clean and orderly condition. If this condition does not exist, the Right of Way Staff shall request the Commission maintenance staff and/or approved vendor to implement the appropriate corrective measures to improve the property's appearance.~~

## 9.00.00.00 ~~9.00.00.00~~ DEMOLITION, CLEARANCE, AND RIGHT OF WAY CERTIFICATION

### 9.1.00.00 ~~9.01.00.00~~ OVERVIEW

The demolition and clearance of structures and other improvements on acquired property is included in the property management function. The Commission must manage real property acquired for a project until it is required for construction.

Improvements include building structures or any other obstructions within the proposed right of way including the following:

- ~~•~~ Utilities
- ~~•~~ Underground storage tanks
- ~~•~~ Wells
- ~~•~~ Signs
- ~~•~~ Cell towers
- ~~•~~ Outdoor advertising signs
- ~~•~~ Concrete and asphalt
- ~~•~~ Landscaping, including trees

The policies established by this Chapter 9 apply to Commission owned properties. All RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Director of Reserved Management/Monitoring Manager.

#### 9.1.1.00 ~~9.01.01.00~~ Federal Funds

Federal funds may be used to cover costs for the disposal and clearance of real property, pursuant to 23 CFR Subpart B, section 710.203(b)(4). Accounting documentation will be required in order to bill federal participating revenue and expenses accurately.

#### 9.1.2.00 ~~9.01.02.00~~ Initial Clearance

Factors that should be analyzed in determining clearance schedules include:

- ~~•~~ Increased costs - for debris pick-up, weed abatement and dumping as improvements are removed
- ~~•~~ Attractive nuisance - increased exposure to crime, vandalism or personal injury from individuals attracted to the property
- ~~•~~ Rental income balanced against the cost of upkeep of rental units
- ~~•~~ Ability to group multiple demolitions together, therefore reducing per unit demolition costs
- ~~•~~ Environmental impact during nesting periods

#### 9.1.3.00 ~~9.01.03.00~~ Emergency Clearance

Prior to environmental clearance, improvements must not be removed except in cases of emergency. Emergency is defined in the Caltrans Environmental Regulations as “a sudden, unexpected occurrence, ~~involving that poses~~ a clear and imminent danger, ~~demanding requiring~~ immediate action to prevent or mitigate loss or impairment of, ~~or damage to,~~ life, health, property, or essential public services.” Emergencies may include, but are not limited to such occurrences as fire, flood, earthquakes, riots, accidents or sabotage. Notification to the Southern California Air Quality Management District (SCAQMD) is required if the existence of asbestos or lead paint is suspected.

#### 9.1.4.00      ~~9.01.04.00~~      **Historic Structures**

Historic structures will be identified and addressed during the environmental clearance process. If applicable, documentation that details the compliance with the mitigation and/or disposition of the historic structure will be necessary.

#### 9.1.5.00      ~~9.01.05.00~~      **Pre-Demolition Activities**

An inventory of improvements and personal property will be prepared and included in the appraisal report. The acquisition Project Manager will forward the inventory report to Right of Way Staff, along with anticipated vacation dates of the occupants. Right of Way Staff can then determine the best means of clearance based on the type of structure, the right of way requirements, the construction schedule and the personal property that may be included in the inventory.

Demolition of structures shall be scheduled as soon as possible when occupant vacation occurs. Close coordination with the acquisition Project Manager ensures that demolition activities begin on a timely basis. Weekly field inspections shall be performed by Right of Way Staff to ensure that properties are secured immediately upon vacation. Upon contract award, the demolition contractor becomes responsible for securing the property with boarding, fencing, etc.

#### 9.1.6.00      ~~9.01.06.00~~      **Personal Property**

If time allows, movable items that are purchased as a part of the acquisition may be sold by public auction. The property owner may elect to retain an improvement. If owner retention is offered during negotiations, the time frame for removal shall be included in the Purchase and Sale Agreement. Communication with the Relocation Agent should ensure that the owner was not paid to move items that are purchased. Fixtures included in the real estate are generally included for demolition, however the cost of demolition should reflect an offset for salvage value.

#### 9.1.7.00      **Utility Service Disconnect**

Prior to the delivery of a parcel to the demolition contractor, it is the responsibility of the agent to ensure the disconnection of all utility services. Electrical and gas services should be removed at the property line so the improvements can be demolished or moved off-site safely. Water and other supply services should also be terminated, and facilities removed to provide safe access during removal of hazardous materials and demolition. Destruction of wells, storage tanks, and supply and drain lines should be in compliance with the clearance specifications.

The agent shall obtain a “Letter of Disconnect” or similarly named document from the utility provider formally documenting that utilities were terminated and facilities were removed.

**9.1.8.00      ~~9.01.07.00~~      Asbestos and Lead Paint Abatement**

All improvements shall be inspected for the presence of Asbestos Containing Materials (ACMs), and lead paint when applicable, prior to demolition or removal. A qualified and licensed environmental consultant shall perform hazardous materials testing. A report will be prepared that will include testing results and recommendations, which will be forwarded to the abatement contractor. All activities must comply with the Environmental Protection Agency and all state and local government regulations. The Commission shall comply with the SCAQMD guidelines. Air clearance will be monitored by the abatement contractor prior to removal of hazardous materials. Removal of ACMs and lead paint will be performed through the demolition contract by a qualified and licensed abatement contractor and will comply with all applicable laws, regulations, ordinances and recommendations of the inspector.

**9.1.9.00      ~~9.01.08.00~~      Demolition Contract**

Improvement clearance can be scheduled during the acquisition phase of the project using demolition contracts or it can be included as a work item in the construction contract. Certain circumstances, such as inaccessibility to the property improvements, may call for using the latter methodology. A field inspection of the property is necessary to verify that items included in the inventory report are still physically included on the property. The demolition contractor will bid the work based on the items included in the scope of work, the results in the asbestos and lead paint survey and a field review of the property.

The bid package shall be prepared and will include the following:

- Scope of work
- Location of the property
- Ancillary items that shall be included, i.e. trees, fencing, signs, underground storage tanks, etc.
- Contact numbers as applicable
- Anticipated length of time for the demolition

The Commission uses a scope of work for demolition tasks that includes the following:

- Asbestos abatement
- Securing of property
- Order of work
- Applicable standards
- Compliance with regulations and ordinances
- Any additional pertinent information

State of California prevailing wages, as determined by the Department of Industrial Relations, must be paid to all workers employed on public works projects when the public works project is over \$1,000.

Demolition contracts shall be advertised and awarded pursuant to State law and the Commission's Procurement Manual. For larger jobs Right of Way Staff may schedule a site-walk with all on call contractors. As the duration of demolition is generally for a short period, the bid price shall generally be lump sum. The contractor's bid shall include all permits and fees, equipment rental, asbestos abatement, tank removal and subcontract work. Once bids are received and a contractor selected, the task order shall be completed and sent to the contractor for signature on an expedited basis. Once executed, a Notice to Proceed will be issued.

#### 9.1.10.00     ~~9.01.09.00~~     **Clearance**

Prior to commencing demolition Right of Ways Staff shall notify SCAQMD, which requires a ten (10) working day notification prior to asbestos abatement. If an improved property becomes a health and safety hazard, Right of Way Staff can request that the SCAQMD notification period be waived on an emergency basis. During the SCAQMD notification period, the contractor will notify Underground Service Alert for utility location, schedule equipment and secure the property. Prior to demolition, Right of Way Staff must notify utility companies in writing to discontinue service.

Once demolition activities commence, monitoring of the removal shall be documented in writing and maintained in the parcel file. When final clearance is achieved, a written notice shall be forwarded for inclusion in the construction documents.

#### 9.2.00.00     ~~9.02.00.00~~     **RIGHT OF WAY CERTIFICATION**

##### 9.2.1.00     ~~9.02.01.00~~     **Elements and Definition**

The Right of Way Certification procedure identifies the acquisition status of necessary right of way for the purpose of advancing a project to construction. It also addresses the status of any required relocation activities necessary on the project. The key elements are as follows:

- Acquisition of right of way in accordance with laws and requirements
- Relocation of people, businesses or personal property, so that the contractor may enter upon the properties
- Identification of encroachments and acquired structures within the right of way and an explanation of who will remove them
- Identification of hazardous waste that may be present at the site with information on contractor's responsibility for safe disposal
- Identification of all utility conflicts

Definition of Right of Way Certification. Right of Way Certification is a written statement summarizing the status of all right of way related matters pertaining to a proposed construction project. The purpose of the certification is to document the construction project is ready for advertising and states the following:

- Real property interests have been or are being secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project.
- Right of way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

There are ~~three~~four levels of certification recognized by the Federal Highway Administration (FHWA) ~~and four levels recognized, pursuant to 23 CRF 635.309, and~~ by the State. ~~FHWA recognizes~~The four certification levels 1, 2 ~~and~~ 3 ~~and 3W~~ (Work Around). ~~A project~~Under Federal rule, projects can be advertised, bid proposals opened and a construction contract awarded using ~~these~~ certification levels. ~~The State also recognizes a certification 3. This level~~ 1, 2 and 3W. Certification level 3 allows for a project to be advertised only, bids may not be opened until the certification is upgraded.

#### 9.2.2.00      ~~9.02.02.00~~      Requirements

Prior to physical construction, the Right of Way Staff shall prepare a statement that includes the following:

- All right of way is clear, or if not, appropriate notification is given of any work concurrent with construction.
- All people have been relocated to decent, safe, and sanitary housing and one of the following applies:
  - All needed right of way has been acquired and all occupants have moved.
  - Not all needed right of way has been acquired, but a possession and use agreement has been obtained on all parcels and all occupants moved.
  - Acquisition of right of way is not complete and occupants are still on the project (this action requires a full explanation and special assurances about occupant protection).
  - All utilities have been relocated or protected in place.
- Right of way has been acquired in accordance with applicable federal, state and local laws.
- Federal and state relocation assistance and payment rules were followed.

#### 9.2.3.00      ~~9.02.03.00~~      Partial Right of Way Certification

On design/build projects or when required in order to advance the project schedule, right of way may be certified for construction on a partial basis or on parcel groups, provided all of the elements and requirements under Section ~~9.02.02.00~~9.2.2.00, above, are satisfied.



## 10.00.00.00 ~~10.00.00.00~~ ENVIRONMENTAL INSPECTION, INVESTIGATION, AND REMEDIATION

### 10.1.00.00 ~~10.01.00.00~~ GENERAL

#### 10.1.1.00 ~~10.01.01.00~~ General

When acquiring properties for transportation (or transportation-related) projects, it is the Commission's policy to fully consider all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers and the community prior to, during and after construction, and if possible, to avoid all potential aspects of hazardous waste.

The Commission strives to identify, investigate and cleanup sites at the earliest opportunity during the project development process. The process is completed in accordance with applicable governmental hazardous waste requirements.

Every project that includes significant excavation, structure demolition or modification, or the purchase of new right of way, will require an Initial Site Assessment (ISA) to determine if known or potential hazardous waste is present within the project limits. Utility relocations, donations of property, and hardship and protection acquisitions must consider possible hazardous waste/material issues.

A material is hazardous if it poses a threat to human health or the environment. Hazardous substances are substances or combinations of substances as defined in Title 22, California Code of Regulations, Section 66680, Division 20, Health and Safety Code, Sections 25115 and 25117, or those substances defined in 49 CFR 171.8. Hazardous materials may be any of a large group of the products listed below:

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radio-active

The term hazardous waste applies to the storage, deposit, contamination, etc. of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

The RCA's policies for Environmental Inspection, Investigation and Remediation may be found in Chapter 13.6.2.0 and 13.6.3.0, below. The RCA may also use the policies in this Chapter 10 on a case-by-case basis.

#### 10.1.2.00 ~~10.01.02.00~~ Technical Resources

It is the Commission's policy to establish an approved list of on call professional consultants through the procurement process who can be available to assist in resolving hazardous waste

problems. Early and continued involvement by this resource is essential in avoiding unnecessary cost and delays from hazardous waste problems. Legal counsel is another resource that may be consulted regarding documentation for cost recovery.

### 10.1.3.00     ~~10.01.03.00~~     **Permit to Enter**

California Code of Civil Procedure (CCP) Section 1245.010 allows an entity authorized to use eminent domain to enter a property to ~~make~~produce photographs, studies, surveys, examinations, tests, soundings, borings, samplings or appraisals.

CCP Section 1245.020 provides that if the public entity's activities could damage or cause substantial interference with the property, then written consent or a court order is required.

Methods of obtaining entry to properties for testing include the following:

- ~~Entry without permit.~~ If there are non-physical, no "actual damage" surveys, investigations or testing, the Commission's legal counsel has advised that the Commission may choose to access property without written consent or court order. In this case, the Commission shall give reasonable advance notice to the property owners in the event of obstacles such as gated access, animals or problem occupants.
- ~~Permit signed by the owner.~~ For access that will involve physical intrusions such as drillings, borings and monitoring wells, the Commission should first attempt to obtain written consent from the property owner. The Commission should seek consent in all types of physical intrusion situations, even when the Commission and its consultants intend to re-fill/repair any holes or wells and not cause any permanent damage. "Owner" should be given a broad interpretation to include the holder of any interest likely to be affected by the testing, including, for example, a tenant in possession. All parties with an interest in the property should sign the entry form, when possible, however the written consent of one owner is sufficient. CCP Section 1245.060 provides that if the entry and activities upon property cause actual damage to or substantial interference with the possession or use of the property, the owner may recover for such damage or interference. In some cases, it may be appropriate to pay for a voluntary right of entry for environmental purposes. For properties that will incur damage or substantial interference for testing, legal counsel should be consulted.
- ~~A Court order to enter the property.~~ If property owners will not give written consent, it may be necessary to petition the court for a Permit to Enter. CCP Section 1245.030 allows a public entity to petition the court. Section 1245.030(b) provides that at the hearing, the court determines the term and the scope of the entry that will be allowed. The court also determines the probable amount of compensation to be paid for the actual damage to the property and interference with its possession and use.

If the court requires that a deposit of compensation be made in advance, the property owner can only make a claim against that deposit if the public entity's activities have caused actual damage or substantial interference. The request for entry must be for specific testing and must identify exact locations for borings. Any additional testing may

necessitate further court orders which must also be obtained by legal counsel, and must be specific and exact.

Further Legal actions may be compromised if required entry is not specific as to the proposed activity and specific as to location.

#### 10.2.00.00    ~~10.02.00.00~~    HAZARDOUS WASTE PROCESS

##### 10.2.1.00    ~~10.02.01.00~~    Discussion in Project Study Report.

Hazardous waste problems, or potential problems, will generally be discussed in the Environmental ~~Impact Statement (EIS)/Environmental Impact Report (EIR)~~ Documents and must be discussed in the Project Study Report (PSR), along with a recommended action for avoiding or mitigating hazardous waste sites.

##### 10.2.2.00    ~~10.02.02.00~~    Hazardous Waste Activities

Activities during acquisition will include the following:

- •Secure entry approvals from property owners as required for investigations.
- •Identify and track all parcels requiring hazardous material inspections.
- •Prepare and administer hazardous material investigation contracts.
- •Monitor projects and parcels requiring investigations for completion status in accordance with schedule and lead-time requirements.
- •Approve investigation reports on hazardous material and projected remedial actions and costs.
- •Determine and communicate market value inspection needs when they are different from the remediation requirements for project construction.
- •Coordinate with legal counsel as necessary.
- •Identify potential hazardous waste problems for utility relocation easements to be acquired as early as possible so they may be cleared.

##### 10.2.3.00    ~~10.02.03.00~~    Site Investigation

A limited-scale site investigation is intended to identify any potential contamination issues across the project as a whole and to get a general idea of the magnitude of any problem. Site investigations shall include, but are not limited to the following:

- •Characterization of subsurface geologic and hydrologic conditions
- •Identification and extent of contamination
- •Analysis of potential remedial actions

Permits to Enter to gain permission to enter onto the property, if necessary, for the site investigation, should be initiated as soon as possible.

Site investigations can vary in detail, depending on the number of sites to be investigated, the project schedule and the number of project alternatives. After a Preferred Alternative is selected, a more complete site investigation is conducted to fully characterize the site.

If, after completion of the ISA, a potential hazardous waste problem exists, a meeting will be scheduled to discuss alternatives, including avoidance. If avoidance is not prudent or justified by the site assessment information, then a site investigation will be conducted.

#### 10.2.4.00     ~~10.02.04.00~~     **Environmental Site Assessments**

Environmental Site Assessments are generally conducted shortly before acquisition on a parcel specific basis. There are three types of environmental site assessments – transaction screens, Phase 1's and Phase 2's.

10.2.4.1     ~~10.02.04.01~~     Transaction Screen Assessment Reports. Transaction Screen Assessment reports adhere to the American Society of Testing & Materials (ASTM) Standard E-1528-06 for Limited Environmental Due Diligence. The transaction screens are used as an initial screen on low-risk properties. Transaction screen reports are limited in nature and no longer meet the regulations required for the "Landowner's Liability Protection."

10.2.4.2     ~~10.02.04.02~~     Phase I Environmental Site Assessments. Phase I Environmental Site Assessments are required to complete the appraisal process to determine if the condition of the site will have an impact on the fair market value of the parcel. Phase I Environmental Site Assessment shall be in conformance with ASTM International (ASTM) Standard E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. For partial acquisitions the work will be limited to the acquisition areas only and not the entire parcel. The Environmental Site Assessments will be performed under the responsible charge of an environmental professional and will include the following components:

- Historical sources including building department records, historical aerial photographs, local street directories, fire insurance maps, and other credible sources of past uses or occupancies shall be reviewed.
- Regulatory Records including local, state, tribal and federal databases will be reviewed according to the current search distances within ASTM E1527-13.
- Review of Regulatory Files or Interview of state and local government officials conducted in person, by telephone, or in writing to obtain information on permits and compliance history associated with hazardous substances and petroleum products, and information indicating recognized environmental conditions in connection with the property.
- Owner/Occupant Interviews including past and present owners, occupants, neighbors, and/or other persons who are familiar with the property shall be attempted in person, by telephone, or in writing regarding the history,

operations, management, waste management practices, and other environmental considerations for the property as those persons are available and open to an interview.

- Site Reconnaissance including a reasonable observation of the property and structures, the periphery of the property, the interior common areas of structures, and a representative sample of occupant spaces. Items such as current and past uses of the property and adjoining properties; obvious geologic, hydrogeologic, and topographic conditions; structures; roads; potential hazardous substances and petroleum products; storage tanks; odors; pools of liquid; drums; containers; surface waters; suspected fill materials; stained soil or pavement; stressed vegetation; solid waste; waste water; wells; and septic systems shall be noted as reasonably and visibly observed.
- A report summarizing the results and recommendations.

#### 10.2.4.3

~~10.02.04.03~~ Phase II Environmental Site Assessments. Based on the findings of the Phase I Environmental Site Assessment, a Phase II Investigation may be warranted. In general, this may include a number of the following:

- Prepare a site-specific health and safety plan.
- Notify Underground Service Alert (USA) a minimum of 48 hours prior to drilling activities to clear public utilities.
- Secure the necessary Boring Permit from the appropriate regulatory agency. Permit acquisition will involve submitting a completed application and site plan to the agency for review and approval and remitting the necessary fees.
- Notify the applicable regulatory agencies prior to drilling/backfilling activities.
- Perform a geophysical survey on the subject property to identify the location of former on-site ~~tank holds~~ tank holds and/or existing USTs, piping, and/or associated features and to additionally clear boring locations of utilities.
- Advance a number of borings based on the identified recognized environmental conditions for the collection of soil gas, soil, and/or groundwater samples.
- Field-screen each soil sample using a photoionization detector.
- Prepare soil gas samples, soil samples and groundwater samples for laboratory analysis for chemicals of concern as needed.

Sampling procedures will generally conform to the requirements of the appropriate regulatory agencies. A state-certified laboratory will analyze the samples and the project will be performed under the responsible charge of a qualified representative. Based on the results of the investigation, the contractor will compare the analytical results with the applicable requirements regarding regulatory notifications of a release and requirements for additional investigation and or cleanup.

**10.2.5.00     ~~10.02.05.00~~     Notify Owner and Appropriate Regulatory Agencies**

When a site investigation has identified contamination at an actionable level, the property owner and appropriate regulatory agencies will be notified of the results in accordance with regulatory requirements. Notification shall be made to the owner and any other potentially responsible parties of their obligation under the law for mitigation of the contamination. Determination shall be made whether the owner is able to and intends to investigate and remediate the site such that the project schedule can be met. Thorough site investigation records should be maintained separately for potential use in cost recovery actions.

**10.2.6.00     ~~10.02.06.00~~     Hazardous Waste Problems Discussed in Project Report**

Following completion of the site investigation and environmental studies, alternatives to avoid the identified hazardous waste must be identified and evaluated. These problems and the associated alternatives for avoidance or mitigation must be discussed in any project report and environmental document. The reports, as appropriate, must include a discussion of any anticipated site cleanup, including a cost and schedule estimate.

**10.2.7.00     ~~10.02.07.00~~     Hazardous Waste Strategy**

If the property owner has agreed to accept responsibility for the hazardous waste remediation, and after investigation, the owner decides to accept responsibility for both the execution and expense of the cleanup, the Commission shall develop a plan of action that incorporates the owner's intent and specifies a program which shall be followed. It is also possible for the owner to request the Commission clean up the hazardous waste. In this case, a multiple of the cleanup costs (i.e., 200%), as well as any additional investigative work required for the cleanup, would be deducted from the appraised property value, or withheld in escrow.

If the property owner cannot or will not investigate and remediate the site, the Commission shall continue investigating the hazardous waste problem. It will be necessary to determine whether time allows for hazardous waste investigation and remediation prior to construction of the transportation project or whether it will be necessary to perform the clean up during construction. Legal counsel may be requested to oversee cost reimbursement from the owner and/or responsible parties.

**10.2.8.00     ~~10.02.08.00~~     Cleanup by Owner and/or Responsible Party**

When the owner and/or responsible party has accepted cleanup responsibility, the Commission is responsible for monitoring their investigation and cleanup progress and to make appropriate schedule changes. If at any point during the process, the owner's progress is unsatisfactory, Right of Way Staff must determine if the schedule slippage is such that the Commission should take over the investigation and/or remediation process.

The Commission shall prepare an estimate of any cleanup costs incurred and provide a report to the appraiser for inclusion in the appraisal report.

**10.2.9.00     ~~10.02.09.00~~     Remedial Investigation / Feasibility Study**

A comprehensive Remedial Investigation/Feasibility Study (RI/FS) will be required if substantial contamination is present, or if the site is listed as a state or federal Superfund site. The RI/FS will be performed to develop sufficient information to make an informed remedial alternative selection that eliminates, reduces and/or controls the risks to human health and the environment.

The Remedial Investigation is a site investigation adequate to characterize the site's size and the types and quantities of contamination that are present. The Feasibility Study is an evaluation of the types of remediation that will clean up the site's contamination. Remediation strategies range from excavating the contamination for disposal at another site to complex vapor extraction systems or bioremediation techniques.

The RI/FS work will be coordinated with regulatory agencies and is subject to changes pursuant to the requirements of the agencies. Legal counsel must be contacted regarding appropriate hazardous waste investigation records to be retained for cost recovery actions.

#### 10.2.10.00    ~~10.02.10.00~~    **Hazardous Waste Management Plan**

The RI/FS for potential mitigation measures for the hazardous waste site constitutes the Hazardous Waste Management Plan (HWMP). The HWMP is a decision-making document that describes the management of a contaminated site schedule, including cleanup. It summarizes the results of the RI/FS. The RI/FS will include a list of remediation options for cleaning up the site. Typically, the HWMP is developed at the conclusion of the hazardous waste investigation. Involvement of potential responsible parties is advised, so that any cost recovery efforts cannot be challenged on the basis that the parties were excluded from the mitigation decision process.

#### 10.2.11.00    ~~10.02.11.00~~    **Community Involvement Plan**

It is advisable to provide the public with early notification of significant hazardous waste investigations and subsequent cleanup activities. This often defuses potential adverse public reaction that may otherwise occur when the cleanup work begins. The lead regulatory agency is responsible for coordinating the community relations in conjunction with the Commission's Public Affairs Department for all community involvement issues and activities.

#### 10.2.12.00    ~~10.02.12.00~~    **Remedial Action Plan**

Once a cleanup strategy has been selected, a Remedial Action Plan (RAP) needs to be developed to implement the remediation. The RAP specifies the details required to carry out the selected remediation strategy. The RAP will be prepared by an ~~on-call~~on-call consultant firm.

Depending on the type and extent of contamination, the RAP ~~may~~will require approval by appropriate regulatory agencies and necessary public notification. On-site treatments will need permits from various regulatory agencies.

#### 10.2.13.00    ~~10.02.13.00~~    **Recovery Actions**



Whether the contamination is encountered prior to construction or during the construction phase, legal counsel may assist pursuing appropriate cost recovery from potentially responsible parties. The Right of Way Department will provide information for such recovery action.

#### 10.2.14.00    ~~10.02.14.00~~    **Underground Storage Tanks**

Underground tanks should be removed as soon as possible. The contractor must obtain the required permits for operating or closing all existing tanks from the local permitting agency, and this information must be included in the removal contract. Also, any contract for tank removal must include provisions for barricades and cleanup.

Prior to any tank removal, an agreement must be made with the tenant in occupancy and the owner of the property. Non-leaking tanks may have a minor deposit of product under the tank that can be cleaned up during the tank removal.

The State Underground Storage Tank Law is contained in Division 20, Chapter 6.7, Health and Safety Code, and Underground Tank Regulations, Title 23, Chapter 3, Subchapter 16, California Administrative Code.

#### 10.2.15.00    ~~10.02.15.00~~    **Hazardous Materials in Property Improvements**

Asbestos containing materials (ACM) must be fully considered to ensure property with such hazardous material is not acquired without adequate prior investigation, and clearance abatement. Hazardous materials primarily include asbestos, but can include Polychlorinated Biphenyls (PCBs) and lead based paint. Inspections will be performed by licensed, qualified persons. The property owner must give prior written permission before an inspection can be made. The inspection will include a determination of the following:

- The type, extent, location, and quantity of ACM (and any other suspected significant hazardous material), within the structure
- Condition of the ACM - friable, non-friable, stable or deteriorating
- Identification of and cost of appropriate remedial action(s) are removal, other acceptable steps (encapsulation) and cost of restoration

Every improved property will be inspected except those improvements constructed with materials which can be easily determined do not contain hazardous materials (example: all metal storage buildings).

#### 10.3.00.00    ~~10.03.00.00~~    **RESPONSIBILITY FOR CLEAN UP**

##### 10.3.1.00    ~~10.03.01.00~~    **During Acquisition**

If a contaminated site is encountered and unavoidable, the Commission should make every effort to have the owner and/or responsible party investigate and clean up the contamination prior to acquisition. In cases where the Commission must clean up contaminated property, cost reimbursement will be sought from the responsible party. Right of Way Staff will provide the primary source of contact with property owners and operators.



Regardless of who is responsible for performing the cleanup of a contaminated project site, such cleanup should be completed at the earliest opportunity. Only in exceptional cases, (e.g., contamination in areas that must be excavated during construction) will mitigation of the contaminated materials be allowed concurrently with project construction.

Once contamination is known, the property owners shall be advised of their responsibility under the law to clean up all identified hazardous waste. The preferred procedure is to not acquire property in its contaminated state, and all efforts possible should be extended to obtain cleanup prior to acquisition.

Right of Way Staff may elect to proceed with acquisition if it is determined that no significant problem exists, and further investigation is unnecessary. It may be in the best interest of the Commission to acquire property if potential hazardous waste contamination risks and costs are low or the problem can be handled with engineering methods during construction. The decision to acquire must be fully documented in the parcel file and appropriate provisions must be included in the Purchase and Sale Agreement.

If further investigation is necessary, Right of Way Staff will continue contact with owner to advise of the process being pursued and to obtain necessary permits to enter. When testing is complete and cleanup costs are known, the appraisal will reflect the effect that the contamination and required cleanup has on market value.

Settlements, whenever possible, are to be based on cleanup prior to acquisition using the primary appraisal. Settlements made where cleanup occurs after acquisition are to be handled as follows:

- Offers made prior to obtaining a revised appraisal will be made contingent on cleanup and shall be confirmed in writing. When the appraisal has been revised to include an alternate, considering the effect on the market value, the current offer must be withdrawn and a new offer made.
- If settlement is reached based on the Commission or its consultant doing the cleanup based on the primary appraisal, an agreed upon multiple (200%) of the estimated cleanup shall be withheld and the appropriate provisions will be included in the Purchase and Sale Agreement. Appropriate documentation is required.
- If settlement is not reached where money is withheld, it may be necessary to acquire based on the alternate appraisal wherein the Commission is purchasing the property as is, after the consideration of cleanup is reflected in the acquisition offer. Appropriate documentation is required.
- Where settlement cannot be reached and the property owner will not clean up the property, it may be necessary to file a condemnation suit and obtain an Order of Immediate Possession. The appraisal must be revised to include an alternate that reflects the effect of the hazardous waste on market value. The current offer must be withdrawn and a new offer made prior to filing an action.

10.3.2.00    ~~10.03.02.00~~    **Purchase and Sale Agreements for Contaminated Property**

Properties known or suspected to contain hazardous waste should be cleaned up by the owner, to the satisfaction of the Commission, prior to the close of escrow. When this is not feasible or practical, the appropriate provisions listed below with appropriate modification by legal counsel, depending on the situation, will then be included in the contract.

Tested - No Contamination Found. When a decision has been made to proceed with the acquisition and the property has been examined and/or tested and no contamination has been found, the following clause will be included in the Purchase and Sale Agreement:

“The acquisition price of the property being acquired in this transaction reflects the fair-market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which required mitigation under federal or state law, the Commission may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

Tested - Contamination Found. When contamination has been found, the amount of cleanup costs for which the owner is liable shall be deducted from the settlement, and where contamination is found, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement.

“It is understood that the property being acquired has been used for \_\_\_\_ and that there is contamination of the soil and/or groundwater. Therefore funds in the amount of \$\_\_\_\_ have been withheld from the owner by the Commission to be used for cleanup costs. If actual cleanup costs exceed the deducted amount, the owner will reimburse the Commission for the additional costs. If actual cleanup costs are less than the amount withheld from owner, the excess withheld will be refunded to owner.”

Not Tested - Current Owner’s Hazardous Material Use. When a decision has been made to proceed with the acquisition and when the nature of the owner’s current or past operations and hazardous material use is known to all of the parties, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement.

Not Tested - Known Past Hazardous Material Use. When a decision has been made to proceed with the acquisition, the current use/operation has not been contaminated and the owner says they have some knowledge that previous use/operations may have caused contamination, legal counsel will be consulted to determine modifications needed to the Purchase and Sale Agreement.

Not Tested - Unknown Hazardous Material Use. When a decision has been made to proceed with the acquisition and the possibility of hazardous waste is suspected, but the owner indicates no knowledge of present or past operations which could have resulted in contamination, the following clause will be included in the Purchase and Sale Agreement:

“The Grantor hereby represents and warrants that during the period of Grantor’s ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances on, from or under the property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances on, from, or under the property which may have occurred prior to Grantor taking title to the property. The acquisition price of the property being acquired in this transaction reflects the fair-market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under federal or state law, the Commission may elect to recover its cleanup costs from those who caused or contributed to the contamination.”

**10.4.00.00    ~~10.04.00.00~~    APPRAISAL OF CONTAMINATED PROPERTY**

**10.4.1.00    ~~10.04.01.00~~    Hazardous Waste Identification during Appraisal Inspection**

The appraiser may obtain information to assist in identifying possible hazardous waste sites that may have been missed. This includes observing potential problems during the inspection of the subject property. It also includes questioning the owner and lessee about current and past possible hazardous material and possible contamination on the site including underground storage tanks. When previously undiscovered tanks do exist, the appraiser must obtain as much information as possible regarding tank size, age, construction, location and contents.

The appraiser must document observations and discussions with the property owner, lessee or other occupants regarding possible waste problems in the parcel diary. As a general guide, some present and prior land uses where hazardous waste/hazardous material problems may exist are set forth below:

- ~~•~~ Commercial and industrial sites such a service stations, muffler shops, bulk plants, paint manufacturing companies, machine shops, plating works, dry cleaning plants, chemical and fertilizer companies which may use or have used solvents, cleaning compounds, catalysts, cutting oils, plating solutions, dyes, paints or other chemicals
- ~~•~~ Junk yards, auto wrecking yards, dumps or landfills
- ~~•~~ Underground or above ground tanks for storage of liquid hydrocarbons, pesticides or other toxic materials
- ~~•~~ Existing buildings with asbestos siding, roofing, ceiling material, floor tiles, fireproofed doors or insulation on water pipes, heaters, heating ducts, steel framing, etc.
- ~~•~~ Disposal sumps or pits which may contain agricultural chemicals or industrial waste
- ~~•~~ Utility substations or storage/maintenance facilities
- ~~•~~ Sites where contamination may have resulted from an adjacent property owner's operation

**10.4.2.00    ~~10.04.02.00~~    Valuation**

Regardless whether the right of way requirement is fee or easement, the real property will be appraised recognizing the effects of hazardous waste and hazardous material on its market value.

The valuation of property that involves an identified hazardous waste site will include the market value of the property as if it is free and clear of the hazardous waste and the market value of the property considering the effects of the hazardous waste. The opinion of market value of a property in its contaminated condition must consider the following:

- ~~•~~ Local regulatory agency cleanup requirements
- ~~•~~ Estimated cleanup cost furnished by others
- ~~•~~ Market data involving sales, offers or listings of properties with comparable cleanup problems
- ~~•~~ Marketability of parcels with known hazardous waste cleanup problems considering opinions of developers, brokers, lenders, insurers, investors or other informed persons
- ~~•~~ Any other pertinent data and opinions

Adequate comparable data may not be available to directly conclude a fair market opinion of a property in its contaminated condition. In such cases, the alternate appraisal may consider deducting the estimated cleanup cost from the value of the property as if it is free and clear of the hazardous waste. The estimated cleanup cost should reflect what a market value buyer would reasonably expect to pay in order to utilize the property at its highest and best use. This does not necessarily follow the remedial methods, costs or construction schedule associated with the project. Also, the property's highest and best use could change depending on the nature and extent of contamination and alternate remediation options and costs.

Analysis must consider the cleanup requirements, for highest and best use, of the local regulatory agency having jurisdiction. Full cleanup may not be required or can be delayed for a certain period of time. Thus, the cleanup estimate may need to be adjusted or discounted to reflect the market value situation.

Appraisals that result in a negative value (cost of hazardous waste cleanup exceeds market value of cleared property) will be shown as "\$0."

Where possible or confirmed hazardous waste problems do exist, a full discussion will be included in the body of the appraisal. This discussion will describe the nature of the problem or suspected problem, regulatory agency cleanup requirements, status of testing or cleanup plans and any other pertinent information, including the impact on market value, if any.

Appraisals of all improved properties to be acquired will reflect market adjustments for the presence of significant hazardous materials. Evaluation of improved comparable sales data will, at a minimum, include verification of the following:

- ~~•~~ Was an inspection of the buildings for hazardous waste and/or hazardous materials made as a condition of sale? If yes, what were the results of the inspection?
- ~~•~~ Did the transaction price or terms reflect the results and/or the cost of correction or other hazardous waste/hazardous material considerations?

- Was there an indemnification agreement provided by the owner affected the property's sale price by protecting the Commission from liability, risk or exposure associated with a known or possible hazardous waste/hazardous material condition?

Valuation will consider the impact of hazardous material on the property. The market may react to the presence of hazardous materials in an improvement on the subject by adjusting the price/terms of the Purchase and Sale Agreement. Dollar adjustments, if any, may be more, less or equal to the cost of the remedial action to remove, restore or otherwise mitigate the problem.

The effect of hazardous materials on value will vary depending on whether the existing improvements are the highest and best use of the land. Cost of remedial action may change the highest and best use. Further, any remodeling, renovation, repair or modernization which requires disturbance of otherwise dormant hazardous materials in order to achieve or maintain highest and best use must be analyzed. Economic life of improvements may be shortened as a result.

The fact that the Commission will incur cleanup costs as part of the right of way clearance process does not necessarily indicate that the market value of the property is affected. In appraisals where the estimated demolition cost of an improvement is being deducted from the market value of a property as if vacant and ready for development, the estimated demolition cost should include the removal of any hazardous materials. Where hazardous materials are present, the appraisal discussion will include a description of the materials, their location and condition, any regulatory controls applicable, the effect on the property's current or future use, present and/or future remediation actions and costs and the estimated impact on market value.

**11.00.00.00 ~~11.00.00.00~~ UTILITY RELOCATIONS****11.1.00.00 ~~11.01.00.00~~ GENERAL PROVISIONS****11.1.1.00 ~~11.01.01.00~~ Scope**

This section prescribes the policies and standards governing the utility relocation and reimbursement procedures and practices to be used by the Commission on federal, state, and locally funded projects. The section is organized based on the usual sequence of events from project planning to project completion. For projects on the State Highway System, strict adherence to Chapter 13 of the Caltrans Right of Way Manual is mandatory. For federally funded off-system highway projects, utility relocation procedures are contained in Chapter 14 of the Local Assistance Procedures Manual. All federally funded utility relocations must conform to 23 CFR 645.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service facilities and private utility facilities can be handled through acquisition or during construction. Storm drains and drainage channels are not considered utilities as they are not ~~fee-based~~ fee-based services. Drainage facilities are generally handled through construction of a replacement facility.

The policies established by this Chapter 11 apply to Commission owned properties. All the RCA property management activities are generally set forth in Chapter 5 of the MSHCP and directed by RCA's Reserve Management/ Monitoring Manager.

**11.1.2.00 ~~11.01.02.00~~ Utility Coordinator Responsibilities**

The Commission is responsible for the acquisition, relocation or removal of utility facilities that are in physical conflict with a transportation project. This responsibility shall be delegated to the Commission's Right of Way Manager. A Utility Coordinator consultant may be selected through the Commission's procurement process. The designated Utility Coordinator will implement the Commission's policies, including the following:

- Establish files that document actions taken or recommended during the life of a project. Any discussion, meeting, or review of importance that does not generate a document for the file should be recorded in a diary or memorandum. A diary can become critical for maintaining current project status or for documenting past actions and, consequently, should be a part of each file. The Utility Coordinator should evaluate the needs of each project and initiate a procedure for a utility file diary. The author should date and sign or initial all diary entries and notations in the file.
- Prepare estimates for possible relocations on future projects. Update and revise the estimates, when necessary.
- Act as the Commission's primary point of contact with the owners for identifying and verifying all utility facilities lying within the existing and proposed rights of way of planned construction projects.

- Coordinate positive location requirements for all high ~~risk~~priority utility facilities within the project limits.
- Coordinate preparation of and review necessary property right conveyances for owners.
- Obtain and analyze data to allocate cost between the owner and the Commission, for all required utility adjustment work and to clearly document, support, and set forth the basis of this finding in a Report of Investigation.
- Assist in preparing and/or reviewing ~~High/Low-risk~~high priority policy exceptions (deviations), as appropriate.
- Review utility consultant design agreements when required for utility relocation.
- Prepare and issue Report of Investigation, Notices to Owner and Utility Agreements in accordance with delegated authorities.
- Coordinate the utility information needed for the preparation of the Right of Way Certification
- Verify owner's relocation invoices and process for payment when acceptable.
- Coordinate invoicing and refunding funds relating to utility costs pursuant to utility agreement provisions.

### 11.1.3.00     ~~11.01.03.00~~     **Definitions**

11.1.3.1     ~~11.01.03.01~~     **Betterment.** The upgrading (e.g., increase in capacity) of a Utility that is not attributable to construction of a Project and is made solely for the benefit of and at the election of Owner (not including a technological improvement which is able to achieve such upgrade at costs equal to or less than the costs of a "like-for-like" replacement or Relocation). The use of new materials or compliance with Owner's Relocation Standards in the performance of Relocation is not considered a Betterment. (Betterments must be excluded from the utility agreement or contract that includes work eligible for Federal funds.)

11.1.3.2     ~~11.01.03.02~~     **California Public Utility Commission (CPUC or PUC).** The California Public Utilities Commission (CPUC or PUC) is a regulatory agency that regulates privately owned public utilities in the state of California, including electric owner, telecommunications, natural gas and water companies. Some entities, like oil companies that are privately owned, are not a public utility under the PUC's purview. Proper construction for utility companies regulated by the CPUC is controlled by PUC issued General Orders.

11.1.3.3     ~~11.01.03.03~~     **Depreciation Value.** The amount of credit to a Project required for the accrued depreciation of a Utility based upon the ratio between the period of actual length of service and total life expectancy applied to the original cost. For the purposes of Depreciation Value, "Utility" shall not be construed to include a segment of Owner's service, distribution and/or transmission lines.

11.1.3.4 ~~11.01.03.04~~ Exempt Facilities. Facilities exempt from the requirements of this policy include the following:

- Natural gas service lines of two (2) inches or less nominal pipe diameter and with normal operating pressures of 60 p.s.i.g. or less
- Underground electrical service conductors with a potential to ground of 300 volts or less
- Any electrical facility with a potential to ground of 50 volts or less
- Service or private facilities
- Drainage facilities

11.1.3.5 ~~11.01.03.05~~ Facility. Facility is synonymous with utility facility. A facility is any pole, pole line, pipe, pipeline, conduit, cable, aqueduct or other structure or appurtenance used for public or privately owned utility services or used by any mutual organization supplying water or telephone service to its members.

11.1.3.6 ~~11.01.03.06~~ FHWA Specific Authorization. The authorization, received from FHWA or provided by the State on behalf of FHWA, to proceed with a specific utility facility rearrangement for FHWA funded relocations. This authorization also approves the relocation plans, estimate of cost and claim of liability.

11.1.3.7 ~~11.01.03.07~~ High Risk Priority Facilities. The Caltrans ~~Project Development Procedures Manual Appendix L~~ Policy on High Priority Underground Facilities Within Highway Rights of Way defines as high ~~risk any~~ priority facilities conducting the following materials, whether encased or not:

- Petroleum products
- Oxygen
- Chlorine
- Toxic or flammable gases
- Natural gas in pipelines greater than six (6) inch nominal pipe diameter, or pipelines with normal operating pressures greater than sixty (60) p.s.i.g.
- Underground electric supply lines, conductors or cables that have potential to ground more than 300 volts, either directly buried or in duct or conduit, which do not have concentric grounded or other effectively grounded metal shields or sheaths
- Hazardous materials pipelines that are potentially harmful to workers or the public if damaged.

The above definition must be utilized for all projects on the State Highway System. It is strongly recommended, but not required, to follow the above definition for FHWA funded off-system projects. For projects with other funding sources, the above may be used as guidelines and/or adapted as appropriate.



11.1.3.8     ~~11.01.03.08~~     Liability. A financial obligation, as used in this chapter to pay for relocation of utility facilities affected by the Commission's project.

11.1.3.9     ~~11.01.03.09~~     Low ~~Risk~~Priority Facilities. The Caltrans Project Development Procedures Manual ~~Appendix LL~~Chapter 17 defines as low risk any facilities conducting the following materials:

- ~~•~~ Natural gas in pipelines six (6) inch or smaller (nominal pipe diameter) with normal operating pressures sixty (60) p.s.i.g. or less.
- ~~•~~ Underground electric supply lines, conductors or cables with a potential to ground more than 300 volts, either directly buried or in duct or conduit, which have concentric grounded or other effectively grounded metal shield or sheaths, for which the utility owner furnished location information in conformance with the requirements of Article 17.7 "Location Information" of General Order No. 128 of the California Public Utility Commission, or electrical underground conductors with a potential to ground of 300 volts or less.

As noted in the definition of High ~~Risk~~Priority Facilities, the above definition is only required to be used for projects on the State Highway System.

11.1.3.10     ~~11.01.03.10~~     Master Contract. S&H Code Section 707.5 authorized the State to enter into Freeway Master Contracts with utility owners. The Freeway Master Contracts govern apportionment of the cost of rearranging facilities and outline other terms of utility relocation for freeway projects. For projects on the State Highway System, the Master Contracts should be adhered to by the Commission and the utility owner. Master Contract terms should not be applied to any projects other than projects on the State Highway System.

11.1.3.11     ~~11.01.03.11~~     Owner. Owner is synonymous with utility owner. An owner is any private entity or public body (including city, county, state, public corporation or public district) that owns and operates a utility facility.

11.1.3.12     ~~11.01.03.12~~     Positive Location (Test Hole). Positively determining the existence and location of a utility facility to within 0.5 feet both horizontally and vertically through the use of vacuum excavation potholing, probing, electronic detection, certified as-built plans, or combination thereof as deemed acceptable by the Project Manager or assigned Engineer.

11.1.3.13     ~~11.01.03.13~~     Private Utility. A private utility facility is one that provides a utility service for the exclusive use of a privately owned business, farm operation, corporation, etc., or provides an exclusive service to improvements and occupants of an individually owned property.

11.1.3.14 ~~11.01.03.14~~ Public Utility. A public utility is defined as those utilities either publicly, cooperatively or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.

11.1.3.15 ~~11.01.03.15~~ p.s.i.g. Pounds per square inch gauge pressure.

11.1.3.16 ~~11.01.03.16~~ Salvage Value. The amount received from the sale of Utility material that has been removed or the amount at which the recovered material is charged to Owner's accounts if retained by Owner for ~~use~~reuse, in accordance with 23 CFR 645.

11.1.3.17 ~~11.01.03.17~~ Service Facilities/Private Utility Facilities. The facility services installed and maintained on private property with customer permission, including:

- ~~Service disconnects~~
- ~~Removal of meters and meter set assemblies~~
- ~~Utility facility located on a military base, school grounds, manufacturing complex, etc., owned and maintained by the property owner for their exclusive use~~
- ~~Facility interconnecting individually owned but dispersed operating sites providing an exclusive and private service to the site owners~~

Separation of the private utility facility from the public utility facility occurs at the point where the privately owned and maintained facility connects to the public facility. Relocation of all private utility facilities shall be by the usual appraisal/acquisition process rather than by the public utility relocation process.

11.1.3.18 ~~11.01.03.18~~ Utility Coordinator. The terms Utility Coordinator and Utility Consultant are synonymous when a consultant is obtained and authorized for such work. The Utility Coordinator/Consultant is the Commission representative responsible for coordinating the relocation and removal of facilities that are in physical conflict of a Commission's transportation project.

## 11.2.00.00 ~~11.02.00.00~~ **UTILITY RELOCATION POLICIES**

### 11.2.1.00 ~~11.02.01.00~~ **Applicable Utilities Policy**

The following is a selected list of policies that originate from law, state and local directives that shall be uniformly applied in all applicable utility relocation situations.

### 11.2.2.00 ~~11.02.02.00~~ **Utilities on Commission Property**

All utilities within the Commission's rights of way and/or project limits shall be relocated so as to minimize traffic disruption and other hazards to transportation facility users. Facilities shall be relocated as close to the edge of the right of way line as reasonably practicable. Facilities shall be installed to minimize interference with right of way maintenance and operation, and to prevent

impairment of the stability of the rights of way or its appurtenances to the maximum extent practicable.

#### 11.2.3.00     ~~11.02.03.00~~     **Hazardous Waste Affected by Facility Relocations**

Utility relocation work structured within the project limits is a necessary part of project construction. Any hazardous waste encountered within the project limits as a result of the Commission structured utility work is handled in the same manner as hazardous waste encountered by any other part of the project construction. Project Engineering shall be informed of all potential utility adjustments that may affect identified hazardous waste sites so the work is identified as part of project remediation.

Hazardous waste encountered outside the project limits, such as on the grantor's remaining property, other private property, or on local streets and roads beyond the limits of the project, is not the Commission's remediation responsibility. Any extraordinary costs associated with remediation or unusual work requirements due to hazardous waste encountered outside the project right of way are considered part of the owner's necessary relocation effort. The Commission may pay its proportionate share of these costs as part of normal relocation reimbursement in accordance with the usual liability determination process.

All exceptions to this policy shall be processed through the Commission's Right of Way Manager for approval.

#### 11.2.4.00     ~~11.02.04.00~~     **Verification of Utility Facilities**

Pursuant to Government Code Section 4215, the Commission shall make every reasonable effort to locate all existing utility facilities within the right of way of a proposed construction project and to identify the facilities on construction contract plans.

Government Code Section 4216 states that the ~~Commission~~Commission's contractor is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the Commission's contractor has done so, but still damages a facility not shown on the plans, the Commission may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

The facility owner is responsible for Underground Service Alert (USA)/Digalert notification prior to any construction.

#### 11.2.5.00     ~~11.02.05.00~~     **Safety**

The Commission is responsible to provide a safe environment for its employees and contractors, as well as the traveling public. An important element of the safe environment is providing a clear and safe right of way through the proper placement, protection, relocation, or removal of utility facilities that may pose a safety risk to the transportation worker or user when the utility is excavated, cut, or penetrated. Toward this end, the Commission shall establish and enforce mandatory standards and procedures for the placement and protection of underground utility

facilities within the project rights of way and for the safety of transportation workers involved in maintenance or construction operations in proximity of underground utility facilities.

#### 11.2.6.00     ~~11.02.06.00~~     **Advancing Cost of Relocation to Owner**

Funds shall be advanced only after it has been conclusively shown that the owner is financially unable to bear the cost of relocation and is unable to secure other financing for the work. Funds may also be advanced if there is dispute over liability and the resolution of the dispute will jeopardize the timing of the project. When an advancement is made, interest shall be charged in accordance with the terms of an agreement. Funds shall not be advanced to cover any betterment to the facility requested by the owner. All advances requires approval of the Right of Way Manager.

#### 11.2.7.00     ~~11.02.07.00~~     **Communication with Owner**

The Utility Coordinator shall communicate all coordination of utility work, including modification of the scope of work, or the need to have utility work performed on premium or overtime, to the owner in writing. An amended Notice to Owner and Utility Agreement shall cover significant changes.

#### 11.2.8.00     ~~11.02.08.00~~     **Policy on High and Low ~~Risk~~Priority Underground Facilities**

All projects on the State Highway System must conform to the Policy on High and Low ~~Risk~~Priority Underground Facilities within Highway Rights of Way contained in ~~Appendix LL of the Project Development Procedures Manual~~[the Caltrans Policy on High Priority Underground Facilities Within Highway Rights of Way](#) . Conformance with that policy is strongly recommended, but not required, for FHWA funded off-system projects. For projects with other funding sources, the policy may be used as guidelines and/or adapted as appropriate.

### 11.3.00.00     ~~11.03.00.00~~     **PLANNING PHASE**

#### 11.3.1.00     ~~11.03.01.00~~     **Initial Activities**

Duties relating to this phase of the project are normally performed prior to Environmental Clearance and Project Report approval. Activities generally consist of the following:

- ~~Corridor/route preservation~~
- ~~Route estimating~~
- ~~Right of way data sheet preparation~~
- ~~Draft Project Report review~~
- ~~Draft Environmental Document review~~

#### 11.3.2.00     ~~11.03.02.00~~     **Utility Relocation Work in Prior to Environmental Approval**

Federal and State law dictates that environmental clearance must be received prior to commencement of any project. This does not preclude owner performance work critical for inclusion in the environmental document. This work is generally referred to as preliminary engineering and includes such items as follows:

- Updating data sheet, as necessary, [after review of the Project Report.](#)
- Coordinating identification and verification of existing utilities
- Assisting in identification of utility facilities in physical conflict
- Assisting in identification of all utility facilities and coordinate the positive location of identified facilities, as required
- [Owner effort required to determine and identify new utility facility rights of way and resultant environmental impacts.](#)
- If FHWA funded, preparing a Federal Authorization to Proceed (E-76) covering all utility facilities when identified
- Preparing the Notice to Owner, Utility Agreement, and Report of Investigation for owner-conducted positive location
- Preparing the Task Order and Notice to Owner for the Commission's positive location
- Requesting and reviewing owner's relocation plans, claim of liability and estimate of cost
- Preparing the Report of Investigation, Notice to Owner, and Utility Agreement for preliminary engineering
- Preparation of plans in support of the Environmental Document

#### 11.3.3.00     ~~11.03.03.00~~     **Early Project Coordination**

Utility owners require lead-time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, and schedule work during non-peak demand periods when utility facilities may be removed from service and to comply with PUC General Orders [and comply with Buy America requirements.](#)

It is critical that the Utility Coordinator establish early and continuing coordination with all owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with owners within their jurisdictions to discuss planned public works projects in general. The Utility Coordinator is encouraged to discuss the Commission's projects at these meetings or to conduct their own liaison meetings.

#### 11.3.4.00     ~~11.03.04.00~~     **Corridor/ Route Preservation**

On occasion and in an area of development, owners may plan extensions or additions to their utility facilities within the Commission's right of way and/or project area. These new utility facility installations may be affected by planned construction or development. The Utility Coordinator is responsible for notifying the owner of all planned improvement projects within the Commission's project limits to enable the owner to make an informed decision about placement of utility facilities within the project right of way.

If an owner decides to go ahead with new facility construction, the additional cost incurred to install their facilities clear of the Commission's future construction shall be paid by the owner.

Although there is no requirement for the owner to install their facilities to clear Commission's future construction, it will eliminate the possible relocation, at owner's expense, of these new

facilities in the near future, providing less disruption to their services, less cost to their ratepayers and more efficient project delivery for the Commission.

If the owner decides to go ahead with the new facility construction and the installation is in a location where the owner has a right that is superior to the Commission's, the additional cost incurred to install their facilities clear of the Commission's future construction shall be paid by the Commission. A special utility agreement may be entered into with the owner to cover the extra cost of the installation.

#### 11.3.5.00     ~~11.03.05.00~~     **Environmental Document Review**

The draft environmental document must be reviewed to ensure that utility relocation conflicts are addressed, for example, where an underground facility will be relocated across an environmentally sensitive area such as a wetland.

Potential hazardous waste encountered during construction projects are usually addressed in the environmental document. If hazardous waste is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Chapter 10 of the Commission's Right of Way Manual are addressed.

It is also critical to ensure the environmental document does not propose mitigation commitments that may be in conflict with existing laws or current Commission policies. Conflicting commitments must have the Commission's prior approval.

If utility facility relocations are addressed in the environmental document, then the wording below can be used. However, the utility relocation commitments should not be placed in the Mitigation Section of the environmental document.

"All public utility facilities affected by the proposed transportation project will be relocated and/or accommodated in accordance with state law and regulations and the Commission's policies concerning utilities within transportation rights of way."

#### 11.3.6.00     ~~11.03.06.00~~     **Design Phase**

Activities generally performed in the design phase of a project (as well as those above) include the following:

- Coordinating planned placement of utility facilities on structures
- Identifying and submitting utility-related "Special Provisions" to Design Engineer
- [Bill the local agency pursuant to a Cooperative Agreement if applicable](#)
- Coordinating with the Engineer of Record to review exception requests to Commission policies
- Preparing the Report of Investigation, Notice to Owner and Utility Agreement for relocations

#### 11.3.7.00     ~~11.03.07.00~~     **Commencement of Design**

The approved Project Report (and Environmental Clearance) is the final document that authorizes a transportation project to proceed to design. Upon receiving this report, the Utility Coordinator and Engineer of Record commence the detailed utility verification and relocation design process.

To commence, the Utility Coordinator shall arrange a meeting with all affected owners and the Engineer of Record to perform the following:

- Discuss the general project
- Identify utility conflicts
- Discuss alternative solutions to transportation/utility conflicts
- Identify need for owner-provided utility consultants
- Identify potentially required new utility right of way
- Determine a schedule for future coordination meetings

The Utility Coordinator is responsible to take a proactive role to help ensure that all projects are proceeding in a timely manner and that verifications are requested for all projects.

#### 11.3.8.00     ~~11.03.08.00~~     **Utility Estimates**

Right of way estimating usually includes the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Accuracy of any estimate, however, is subject to the quality of plans received and the lead time given. If the plans or lead time are inadequate, the Utility Coordinator shall inform the Commission of such when submitting the estimate. Significant cost contingencies should be specifically identified in the estimate, for example, a potential conflict with a major facility where the project's affect cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

#### 11.3.9.00     ~~11.03.09.00~~     **Special Environmental Reviews for 50KV Electrical Facilities**

Major electric facilities involving power lines and substations operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with the PUC regulated electric utility owner to determine General Order applicability. If an environmental review is necessary, then describing the utility relocation within the environmental document may substantially reduce lead-time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the owner and the PUC.

**11.3.10.00    ~~11.03.10.00~~    Utility Facility Avoidance**

The Engineer of Record should design transportation projects to avoid utility facilities whenever possible and be cost effective. A design-to-miss approach will assist in faster project delivery, particularly where affected utility facilities require complex relocations or special ordered material. As Engineer of Records strive to simplify their projects, one of the most effective ways to prevent project failure is to design around existing utilities at every possible opportunity, ~~just~~ Just as Design Engineers avoid environmentally sensitive areas, e.g., biological, archeological or water quality sites.

**11.3.11.00    ~~11.03.11.00~~    Design of Utility Facility Relocations**

The facility owner shall be responsible for design of all utility facility relocations. The only exception is when the owner has requested the Commission to perform the design and construction to be done as part of the transportation project. The design and construction of the relocation shall be included in a Utility Agreement, and the Utility Coordinator shall remain the primary point of contact for liability and coordination of work activities between the owner and the Commission. Liability is determined using the same methodology as if the owner were conducting the relocation.

**11.3.12.00    ~~11.03.12.00~~    Utility Consultant Design Requirements**

Relocation design is normally done by the owner's employees. If the owner is unable to perform their own design or elects to have design work done by a consultant, and the design costs are to be reimbursed by the Commission, the Utility Coordinator must discuss with the owner the Commission's need to review the owner's consultant costs. If the Commission's Engineer of Record disapproves the owner's consultant cost, the Commission then reserves the right to have the work done by others.

**11.3.13.00    ~~11.03.13.00~~    Utility Verifications**

The Engineer of Record is responsible for determining the identification and location of all existing or abandoned utility facilities that lie within the right of way boundaries of the planned construction project by performing the following:

- Check R/W record maps
- Review old utility file(s) in the project area
- Check the County Recorder's Office
- Check with other agents in the office
- Check with members of the PDT, Is it a Caltrans facility?
- USA or Dig Alert
- Pothole



- UEW electronic database for Utilities within the R/W
- Check with other Federal, State and Local Agencies
- Check with the Local City Engineer or Public Work Departments Engineer
- ~~•~~ A joint field review of the project area by the Engineer of Record and the Utility Coordinator
- ~~•~~ Reviewing Departmental as-built permit records and geographic information systems
- ~~•~~ Asking the Utility Coordinator to verify facilities from each owner that may have facilities within the project area
- ~~•~~ Requesting field surveys to verify utility facilities
- Utilities that remain unidentified will require additional work for the PE or Utility Engineering Workgroup (UEW) in conjunction with the Utility Coordinator

The need for this identification and verification is to identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation and to meet the requirements of California Government Code Section 4215.

#### 11.3.14.00    ~~11.03.14.00~~    **Geometric Base Maps Changed to “Preparation of Verification Maps”**

The Engineer of Record develops geometric base maps that are used as the base for identifying all known existing facilities within the project limits. Identification is a necessity even if proposed construction is entirely within existing rights of way. The Engineer of Record will obtain the initial utility information from the following sources and delineate it on the base maps:

- ~~• As-built~~ State’s as-built construction drawings for prior construction projects ~~with state and local agencies~~
- Ground and aerial surveys
- Encroachment Permit files
- Field review of the project
- ~~Right of way utility files~~

The base maps will also show existing and proposed right of way lines, as well as existing and proposed access control lines, where applicable.

#### 11.3.15.00    ~~11.03.15.00~~    **Utility Verification Request to Owner**

The Utility Coordinator sends the base maps to each owner with known, existing, or potentially existing facilities within the project area. Normally, the owner is allowed thirty (30) days to respond. The Utility Coordinator is responsible for follow-up to ensure timely completion of

verification. (See also CPUC General Order 128, Rule 17.7 for legal requirements for regulated owners to provide facility location information.)

#### **11.03.16.00 Owner's Verification of Facilities**

~~Upon receipt of the owner's verification of facilities lying within the project area, the Utility Coordinator will do the following:~~

- ~~• Transmit owner's verification facility locations to the Engineer of Record in identifying utility facilities in conflict with the Commission's accommodation policy.~~
- ~~• Assist the Engineer of Record in identifying high and low risk facilities, as required~~

~~If no physical conflicts are identified, the Utility Coordinator notifies each owner involved in the verification process of the finding.~~

#### **11.3.16.00 11.03.17.00 Positive Location of Underground Facilities**

To accurately determine the type and location of all potentially affected utility facilities, it is frequently in the Commission's and owner's mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation [hole](#) be made to expose the facility and allow the precise location to be surveyed. The excavation to expose the facility is frequently referred to as "potholing."

The Engineer of Record is responsible to determine when positive location is required, usually whenever facilities are known to exist within the project construction area but cannot be precisely located, particularly as to depth. Without precise location information, physical conflicts within the project cannot be determined nor safe construction assured.

The Utility Coordinator shall provide reasonable notice to the owner to accomplish positive location of underground utility facilities and is responsible for determining liability for costs in accordance with usual liability requirements. The Utility Coordinator shall provide the documentation of the owner's rights or prepare a Notice to owner to request the owner to provide it.

#### **11.3.17.00 11.03.18.00 Utility Coordinator Responsibilities for Positive Location**

The Utility Coordinator is responsible to coordinate all positive location requirements specified in the Notice to Owner and in the positive location request to the contractor. Duties performed generally consist of the following:

- Prepare positive location request and Notice to Owner based on maps prepared by the Engineer of Record.
- Follow up to ensure the positive location work will be done by the date specified in the Notice to Owner.
- Confirm necessary inspections.
- Coordinate with surveys to obtain required horizontal and vertical location data for utility facilities.
- Ensure that survey information is transmitted to the Engineer of Record for inclusion in the contract plans.

When positive location is ordered for an owner, the Utility Coordinator sends either a Notice to Owner or a notification letter advising the owner of the scheduled positive location of their facilities so they may have an inspector present.

Although the responsibility for positive location may be that of the owner, the Commission may determine that the benefit of paying for and performing positive location in an expedited manner may outweigh the expense of the positive location. The Right of Way Manager and Engineer of Record should be consulted to determine whether or not the Commission should perform positive relocation utilizing its own funds and resources.

#### 11.3.18.00    ~~11.03.19.00~~    **Positive Location Agreements on State Highway and Freeway Projects (On-System)**

The State has created and executed a Positive Location Agreement (PLA) with numerous utility owners throughout the state for projects on the State Highway System. The Commission, in partnership with the State, may be able to utilize such agreements for the positive location effort. The Utility Coordinator should determine if the State PLA's apply to the Commission's project and, if so, what the liability provisions are for payment of positive relocation.

#### 11.3.19.00    ~~11.03.20.00~~    **Positive Location Requirements for High ~~Risk~~ Priority Facilities**

All underground ~~high-risk~~ high-priority facilities lying within the construction area of a transportation project shall be positively located. The Engineer of record is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the (i.e. Plans, Specifications, and Estimates "PS&E").

The Engineer of Record will make a written request to the Utility Coordinator to obtain positive location information for all utility owned high ~~risk~~ priority facilities that may be in physical conflict with planned construction or that may be exposed to risk of damage during construction. The request must identify the location where the ~~high-risk~~ high priority facilities are to be positively located.

#### 11.3.20.00    ~~11.03.21.00~~    **Utility Conflicts Identified**

The Engineer of Record is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a request to the Utility Coordinator to obtain affected owner's relocation plans. The Engineer of Record will provide the Utility Coordinator with conflict maps for the owner to use to prepare relocation plans. The Utility Coordinator sends conflict maps to the owner and requests relocation plans, their claim of liability, and estimate of cost.

Some conflicts may not be immediately evident on the plans, such as stage construction requirements, detours, pile-driving operations, signal and lighting facilities, longitudinal encroachments, and encasement exception requirements. The Utility Coordinator shall review all plans with the Engineer of Record for possible conflicts with all facilities within the project.

If after reviewing all utility information, including positive location data, it is determined there are no conflicts with the Commission's proposed transportation project, the Utility Coordinator must notify the owner of such.

#### 11.3.21.00    ~~11.03.22.00~~    **Conflict Maps**

Utility conflict maps are essentially the Commission's preliminary layout sheet for the utility relocation schedule and estimate. They should show any construction feature that may affect the owner's facilities including, but not limited to, the following:

- ~~•~~ Utility location
- ~~•~~ Right of way lines
- ~~•~~ Cross sections
- ~~•~~ Profile
- ~~•~~ Retaining and sound walls
- ~~•~~ Drainage
- ~~•~~ Traffic signals and appurtenances
- ~~•~~ Stage construction
- ~~•~~ Bridge structure
- ~~•~~ Replacement easement areas

#### 11.3.22.00    ~~11.03.23.00~~    **Request for Relocation Plans, Claim of Liability and Estimate of Cost**

Prior to issuing the Notice to Owner and Utility Agreement, the Utility Coordinator must obtain the owner's claim of liability, estimate of cost, and relocation plan. An exception can be made for expedited positive location.

The letter to the owner normally allows the owner sixty (60) to one-hundred and twenty (120) days to respond. Since this is a crucial element in the utility relocation process, the Utility Coordinator must actively follow up with the owner to ensure they maintain a schedule that will allow successful project delivery.

#### 11.3.23.00    ~~11.03.24.00~~    **Receipt of Relocation Plans, Claim of Liability, and Estimate of Cost**

Upon receiving the owner's relocation plans, the Utility Coordinator routes the plans to the Engineer of Record for review and approval and comparison with other owner's plans to assure compatibility (e.g. no conflicts with other relocation plans).

The Utility Coordinator has basic responsibility for reviewing all relocation plans to determine that they provide a ~~cost-effective~~cost-effective functional restoration of the utility facility. Betterments should be identified and all elements of the planned relocation must be necessary and appropriate. The Utility Coordinator may solicit technical engineering support but cannot shift this responsibility to the Engineer of Record – The Coordinator shall make the final call.

Where any portion of the utility work claimed by the owner is to be at the Commission's expense, the Utility Coordinator must review the owner's claim letter that sets forth the basis for the Commission's liability and the estimated cost of relocation.

#### 11.3.24.00    ~~11.03.25.00~~    **Special Provisions**

All utility facilities to be relocated, abandoned, or protected in place during construction, whether done by the Commission's contractor or owner, are to be addressed in the construction contract's "Special Provisions." The Utility Coordinator is responsible to provide the Engineer of Record with the information necessary to prepare these clauses for inclusion in the "Special Provisions". Failure to do so may result in claims by the Commission's contractor for right of way delays.

#### 11.4.00.00    ~~11.04.00.00~~    **ACQUISITION**

##### 11.4.1.00    ~~11.04.01.00~~    **Acquisition of a Utility Facility**

The distinction between public utility facilities and service facilities/private utility facilities is frequently confusing. The distinction between the two may be based on whether severance of the particular improvement directly affects utility service to one customer or several customers.

Public utility facilities affected by transportation projects normally have a functional replacement constructed and are seldom acquired.

An improvement that is determined to be private can be appraised and acquired in accordance with Chapter 6, if known at the time, otherwise it is relocated during construction.

##### 11.4.2.00    ~~11.04.02.00~~    **Acquisition from the Utility Owner**

When the Commission's transportation projects affect properties owned by utilities, in easement or fee, the Commission must acquire the necessary rights from the utility in accordance with Chapter 6. The Utility Coordinator should consult with Right of Way Staff to reach a full understanding about what the property is and how it may be used, now and in the future. Generally, the acquisition agent will handle the acquisition of the property, and the utility coordinator will be responsible for overseeing relocation of utility facilities to connect to the replacement site/facilities. Scenarios include:

Vacant Site owned in Fee. The owner may be holding the site for future use in conjunction with an existing facility, such as for a substation expansion. These properties should be purchased in fee unless obtaining a lesser right proves best for the Commission. There might be opportunities to exchange property rights. Any future liability or unfunded obligations need to be approved by the Commission.

~~Vacant Corridor owned in Fee. Although treatment is similar to a vacant site, the possibility of easement acquisition on the owner's behalf or Joint Use Agreement (JUA)/Consent to Common Use Agreement (CCUA) should be explored.~~

Utility Facility Improved Site Owned in Fee. Generally, most fee-owned property is for substations or pumping plants. Replacement of the site by the utility is usually necessary. Relocation or rearrangement of utility facilities shall be handled by a Utility Agreement. This type of site may also fall into the category of a Functional Replacement. Determination should be made between the Right of Way Manager and the Engineer of Record.

Utility Facility Improved Corridor/Utility Occupied Easement. Occupied easements are usually for transmission or distribution of the owner's product. Replacement right of way is required; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered. Usually the owner's existing easement is quitclaimed to the Commission in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation agreement.

Private Utility /Service Facilities. Acquire via appraisal/acquisition procedures as noted in Chapter 6, if known at the time, otherwise it is relocated during construction.

Utility Non-Occupied Easement. Right of Way Staff is responsible for clearance of vacant easements.

Franchise/Permit Rights. Except as noted, the Commission is not obligated to provide a replacement right of way for utility facilities installed under a franchise or permit.

Most utility facilities within local streets and roads are located under a franchise agreement. As a result, there are limited utility relocation costs to be reimbursed. The primary concern (especially when there is federal funding) lies with ensuring that required utility adjustments are properly planned and coordinated with construction. This requires timely issuance of a Notice that clearly states how the utilities will be adjusted to allow conflict-free construction.

#### 11.4.3.00    ~~11.04.03.00~~    **Acquisition for the Utility Owner (Replacement Right of Way)**

If the utility owner has superior occupancy rights, the Commission can acquire the needed replacement right of way in accordance with Chapter 6. The owner selects the necessary and functional replacement right of way location. Either the Commission or the owner may accomplish the acquisition. If the replacement location crosses a parcel where the Commission is to make a highway acquisition, the preferred acquisition method is to include it in the Commission's acquisition program. The Commission may acquire the replacement right of way by one of the following methods (in order of preference):

- Acquire in the name of the owner, preferably on the owner's own deed form.
- Acquire in the name of the Commission by deed and subsequently convey to the owner by deed.
- Allow the utility to use Commission land if not in conflict with the project. Care must be exercised in making any commitments regarding utility use of Commission land in a project area by using a Right of Entry or License Agreement.

If the utility facility being displaced is not in a superior right status, the Commission may acquire the replacement utility easement as a convenience to and at the expense of the owner, but cannot condemn for it without consent as described below. Where the facility was in an encroachment permit status only (non-prior rights), replacement utility easements must never be acquired at the Commission's expense as this would constitute a gift of public funds.

When a utility acquires their own replacement right of way, the requirements of Chapter 6 do not apply.

#### 11.4.4.00     ~~11.04.04.00~~     **Consent to Condemnation for Exchange Purposes from the Owner**

Condemnation may be necessary if the Commission is unable to acquire the replacement right of way through normal negotiations. A "Consent of Owner to Condemnation for Exchange Purposes" must be obtained from the owner pursuant to Code of Civil Procedure Section 1240.320 to support a "Resolution of Necessity" from the Commission.

#### 11.5.00.00     ~~11.05.00.00~~     **LIABILITY DETERMINATION**

##### 11.5.1.00     ~~11.05.01.00~~     **Process**

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities versus the Commission's rights. Who has the prior or superior right in the area of the affected facility is the basis for the determining responsibility for payment of relocation costs. The burden of establishing prior rights rests with the owner. The Utility Coordinator is responsible for accumulating the data, providing a complete and accurate report, and for confirming and approving the liability. Until the Right of Way Manager approves the liability, the Utility Coordinator is not to provide any determination to the owner.

The owner is responsible for preparing, documenting and submitting a claim for their declared right of occupancy. If the Utility Coordinator investigation confirms the owner has rights prior and superior to those of the Commission, the owner is paid for all or a portion of the relocation work.

##### 11.5.2.00     ~~11.05.02.00~~     **Liability Calculation**

Liability determination is generally based on occupancy rights. Liability for the relocation cost is determined on the basis of who has the subservient right in the area of the existing facility that is affected. If all of the affected facility is within an area of a single type of occupancy right, the party with the lesser right is liable for the entire cost, unless it is a State Highway System freeway project subject to a State Master Contract. If the facility area consists of more than one type of occupancy right, such as utility easement and a permit, then a proration between owner and the Commission of the total cost must be calculated using one of the three methods described under "Methods of Calculating Proration of Costs" below.

It is important to remember that only the affected portion of the existing utility facility that lies within the Commission-owned or controlled project limits is counted or measured, as applicable, for use in the proration formula. The total to be prorated, however, includes the cost of relocated

facilities both within and outside the right of way. This total cost must not include any betterment or other non-reimbursable items of cost.

Property rights are the primary factors in determining who has the superior right of occupancy and will be based on one of the following:

- Fee Ownership
- Expressed Easement (typically recorded)
- Implied Easement (easement by necessity and unrecorded)
- Prescriptive Easement (unrecorded)
- Joint Use Agreement / Consent to Common Use Agreement
- Master Contracts
- Lease
- License
- Franchise
- Encroachment Permit
- Trespass

Typically, the first six (6) bullets above establish prior or superior rights. The Commission may be liable for these relocation costs unless the documents involved contain clauses that reserve the owner's right to order one or more relocations at the project owner's expense.

Occupancy under bullets seven (7) through ten (10) are usually considered inferior rights and require that relocations be at the owner's expense, unless the documents contain clauses providing otherwise. For further clarification of term and policy, please refer to "Methods of Calculating Proration of Costs" below.

#### 11.5.3.00    ~~11.05.03.00~~    **Property Rights**

The owner may submit one or more superior or prior right claims for a facility. Each prior right claim the owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation. The types of property rights in the following sections generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the owner's claim.

When reviewing a superior rights claim on a State Highway System freeway project, the Utility Coordinator must determine if there is a Master Contract with the owner that modifies or supersedes normal occupancy rights or statutes and establish the basis of the owner's claim.

11.5.3.1    ~~11.05.03.01~~    **Fee Ownership.** The Commission is liable for relocation costs any time the facility is on property where the owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify ownership. All fee-owned property must be acquired through the Right of Way Manager. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Right of Way Manager. The



Utility Coordinator must ensure the Utility Agreement covering relocation does not include a double payment for property rights.

11.5.3.2 ~~11.05.03.02~~ Expressed Easement. An expressed easement is recorded. Therefore, the easement document can be obtained and reviewed to determine whether the owner has a valid superior right.

In most cases, when the facility is located within a recorded easement, the Commission is liable for relocation costs. The Utility Coordinator, however, must verify that the easement is valid and does hold a prior or superior right to the Commission's rights. The Utility Coordinator must also verify the location of the easement.

Any owner's relocation obligation or other limitation clauses within the easement document may be passed to the Commission upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the owner's claim. The Commission's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are consistent with the terms of the easement.

11.5.3.3 ~~11.05.03.03~~ Implied Secondary Easement. All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to becoming part of the Commission's transportation project are considered to be installed in the owner's implied easement reservation. All facilities as described above are relocated at Commission expense except when crossing the Commission's railroad right of way. The Utility Coordinator should check permits, "as-built" drawings, and the owner's records to confirm the facilities were installed prior to the date of the project.

After the project, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual licensing process.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

11.5.3.4 ~~11.05.03.04~~ Joint Use Agreement (JUA) and Consent to Common Use Agreements (CCUA). In most cases, the Commission will bear relocation costs for facilities installed within a JUA/CCUA area if the facility is located within the State Highway System. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility

location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the facility owner's rights such as the following:

- ~~A JUA/CCUA based on prescriptive rights where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for an underground four (4) inch gas line but the facility to be relocated is a sixteen (16) inch gas line.~~
- A JUA/CCUA that has an expiration date for the owner's rights.
- JUA/CCUA shall be used only on the State Highway System.
- Local Public Agencies shall use an easement on their local streets or roads to replace prior rights.

An owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of the easement deed. This right extends to a JUA/CCUA granted in recognition of existing easement deeds, but does not extend to prescriptive right claims.

11.5.3.5 ~~11.05.03.05~~ Prescriptive Rights. Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the Commission's liability if the occupancy condition meets the following statutory requirements:

- Established by the open, continuous, hostile and notorious adverse use of another's property.
- Installed on private property with the knowledge or acquiescence of the property owner, or was so open, unequivocal and obvious that the owner must have known about it, but without an expressed grant of right, permit, lease, or other license.
- Continuously maintained in the same location for the prescriptive period of at least five (5) years.

Prescriptive rights cannot be established on publicly owned property.

The extent of the prescriptive easement is measured by the owner's use during the preceding five (5) years. Accordingly, the precise extent of the prescriptive easement, for example, a single line of poles with one cross-arm and eight telephone wires, should be set out in any instrument in which the Commission recognizes the superiority of such rights over those of the Commission.

The owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license or other permissive use should be explored. The owner must submit a claim letter containing the above-mentioned statutory requirements.

[11.5.3.6](#) ~~11.05.03.06~~ Lease. A lease is a right to possess for a specific time period. The term or duration of possession is typically stated in the lease. The Utility Coordinator should investigate the validity of the lease to confirm the lease hasn't expired, review the termination clauses, the parties to the lease, the utility facilities described within the lease, and the location. Any utility owner's relocation obligations or other limitation clauses contained in the lease may be passed to the Commission upon acquisition of the underlying fee and must be investigated to determine if they conflict with the utility owner's claim. Determination of whether the owner or the Commission is liable for relocation costs will depend on the types of termination and relocation clauses contained in the lease.

[11.5.3.7](#) ~~11.05.03.07~~ License. A license is permission from a property owner for another party to use land. A license is not recorded and is revocable upon notice. A license differs from a lease in that it is only between two parties and cannot be transferred unless it is specifically written into the license. When an owner has a license and the Commission acquires the property on which the facility exists, the license is no longer valid and the Commission can require the owner to relocate at owner's expense.

The Utility Coordinator must read the license to determine if the above requirements such as successors or assigns are mentioned in the license. Also notification and revocation requirements, if any, should be reviewed.

When evaluating a license, the Utility Coordinator must take into account the level of title the Commission has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

[11.5.3.8](#) ~~11.05.03.08~~ Franchise. Utility facilities that are placed in public rights of way pursuant to a franchise privilege from a city or county, or pursuant to state law do not convey any property rights and utility owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose

by state or local authorities. Requirements of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed. The Utility Coordinator may need to obtain a letter from the City or County confirming the termination rights if a utility is claiming that a franchise right is a superior right.

[11.5.3.9](#) ~~11.05.03.09~~ Encroachment Permit. An Encroachment Permit is a form of license that provides permission to the owner to install a facility, but does not convey any property rights. The permit also imposes certain restrictions on the owner. The permit contains a relocation clause that states the owner must relocate their facilities upon request at the owner's own expense.

11.5.3.10     ~~11.05.03.10~~     Joint-Pole Agreement. The California Public Utilities Commission has authorized the joint sharing of poles by different utility owners, through a Joint Pole Agreement (JPA) as a means of providing more cost effective service and to reduce “utility pole blight.” The JPA rarely, if ever, will convey property rights to the joint pole user. The lead pole owner’s (owner of the pole) rights must be reviewed to determine the joint pole user’s rights. As with any claim of property right, the owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license or permit with the lead pole owner.

If the utility owner on a State Highway System project has a Freeway Master Contract, liability for the JPA will be determined pursuant to the Freeway Master Contract.

11.5.4.00     ~~11.05.04.00~~     Subsequent Relocations

For projects on the State Highway System, Streets and Highway Code Section 704 provides that if an owner is required to relocate any of their facilities more than once within a period of ten (10) years, the agency shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. For projects that are not on the highway system, the Commission may consider paying the cost of a second relocation in ten (10) years, but it requires the approval of the Right of Way Manager and any funding sources contributing to the cost of utility relocations. This only applies to freeways and expressways, not conventional highways. Master Freeway Contracts include a four-year limit.

11.5.5.00     ~~11.05.05.00~~     Methods of Calculating Proration of Costs

If it is determined that more than one type of liability occurs on a project (for example, a utility facility is partially in easement and partially in franchise), the costs should be pro-rated between the Commission and the owner based on the following methodologies:

11.5.5.1     ~~11.05.05.01~~     Pole Count. Pole count is a normal method used for aerial facilities. The calculation is based exclusively on the number affected poles located within the project limits where the owner has the superior right, divided by the total number of affected poles within the project limits. This calculation produces the Commission’s share of the total relocation cost. Equal weight is normally given to each affected pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The affected poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If affected poles are of a

mixed type, separate costing may be necessary for the dissimilar poles. See “Dollar Weighted” method below.

11.5.5.2     ~~11.05.05.02~~     Facility Length Measurement. Linear length of the affected facilities is normally used for underground facilities such as gas, sewer and water, or for cables either directly buried or within conduits and the facilities on the surface such as ditches or conduits.

The calculation to prorate liability is similar to the pole count method above and is based on the owner’s superior right length of the affected facility lying within the project limits divided by the total affected length within the project limits. The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches and transformers.

11.5.5.3     ~~11.05.05.03~~     Dollar Weighted. This method is used where mixed facilities are to be prorated. This approach requires considerably more effort and documentation as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the owner has the superior right, divided by the total of the installed replacement cost new for all the affected existing facilities within the project limits. This calculation produces the Commission’s share of the total relocation cost.

11.5.6.00     ~~11.05.06.00~~     Abandonment or Removal Costs

Cost for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is prescribed by the transportation project, required for aesthetic or safety reasons or contains hazardous material that cannot safely remain. In most cases it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed transportation project. Underground facilities containing hazardous material, i.e., asbestos or lead, should remain where possible. If required to be removed, the Commission will reimburse owner for normal (non-hazardous) pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the owner requests for project to proceed with the removal, the Commission shall not contribute any more than the salvage value of recovered materials credited to the project.

11.5.7.00     ~~11.05.07.00~~     Disruption of Service Facilities

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The Commission in acquiring the property being served may, as the new property owner, revoke the owner’s permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the Commission is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by a separate notice and agreement, all other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel if known when the property is appraised, or relocated or reconnected during construction.

**11.5.8.00**     ~~**11.05.08.00**~~     **Relocation for Non-Transportation Project Use**

California case law supports the premise that a utility facility under a franchise must be relocated at the owner's expense when required by any proper governmental purpose. Required relocations for construction of maintenance stations, drainage, inspection facilities, functional replacement acquisition sites, for example, are covered under "proper governmental purpose."

**11.5.9.00**     ~~**11.05.09.00**~~     **Liability Undetermined**

Ideally, liability is determined prior to issuance of a Notice to Owner. This cannot always be accomplished, however, as sometimes the owner is unable to provide timely documentation that will allow the Commission to verify the information necessary to determine liability in a reasonable time. In these cases and when time is of the essence, a Notice can be issued without liability being determined to ensure project delivery.

The owner must agree to accept the Notice with liability undetermined and perform the relocation. Preferably this agreement should be in writing. If the owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy.

**11.5.10.00**     ~~**11.05.10.00**~~     **Liability in Dispute**

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations. Utility liability issues are largely based on a factual determination of what is required to produce a functional replacement for the affected utility facility and who has the superior position of a prior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the resultant liability should be. [When a resolution cannot be agreed upon, the Utility Coordinator should draft a "liability in dispute" agreement. With the Owner's concurrence, the Notice may be issued using "liability in dispute" as the liability statement.](#)

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on legal counsel's input as well as right of way functional needs.

**11.5.11.00**     ~~**11.05.11.00**~~     **Agreement to Disagree**

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with the owner. With the owner's concurrence, the Notice may be issued using "liability in dispute"

as the liability states in the Notice. If the owner does not concur with the issuance of a Notice on this basis, a special agreement is required for the advancement of funds, to cover the funds to a separate interest-bearing account.

#### 11.6.00.00    ~~11.06.00.00~~    **REPORT OF INVESTIGATION**

##### 11.6.1.00    ~~11.06.01.00~~    **General**

The Report of Investigation documents facts and circumstances that support the liability determination. All information, documentation, and analysis supporting the liability determination for the required relocation must be included in the Report. The Report of Investigation must be prepared and approved before the Commission is obligated for the cost of relocation. A Report of Investigation is not required for a relocation that is 100% owner liability if the Utility Coordinator has a claim letter from the owner acknowledging 100% liability. The Report of Investigation package (sometimes referred to as the "Liability Package") includes the following mandatory item:

- ~~•~~ Original, signed Report of Investigation
- ~~•~~ Owner's estimate of cost of work to be done
- ~~•~~ Color-coded Report of Investigation plan showing work to be done, or a copy of the Approved Relocation Plan
- ~~•~~ Copy of the owner's claim letter
- ~~•~~ Copy of the owner's documents that support their prior and/or superior rights claim.
- ~~•~~ Copy of the proposed Notice to Owner
- ~~•~~ Copy of the proposed Utility Agreement
- ~~•~~ Copy of the Federal Authorization to Proceed (E-76), if FHWA reimbursement will be utilized
- ~~•~~ The Request for FHWA Specific Authorization, if FHWA reimbursement will be used for the utility relocations
- ~~•~~ Proposed special provisions, if applicable

Additional supporting documentation may be included as deemed necessary by the Utility Reviewer to support the determination.

##### 11.6.2.00    ~~11.06.02.00~~    **Report of Investigation Plan**

The Report of Investigation plan is crucial to determining liability. Like an appraisal map, it shows ownership and depicts the before and after location of improvements and property rights. The plan also provides a visual picture of what the estimate is based on, thus allowing a quick check of the reasonableness of various measurements and quantities listed in the estimate. Since relocation liability is generally based on property rights, accurate plotting of the Commission's and owners' rights of way is essential to an accurate liability determination.

##### 11.6.3.00    ~~11.06.03.00~~    **Report of Investigation Plan Requirements**

A color-coded plan or an Approved Relocation Plan shall be included with every liability package. The plan must accurately and clearly plot the following elements:

- Existing and proposed right of way lines
- Existing and proposed access control lines (if applicable)
- Existing and proposed highway centerline
- Existing, abandoned and proposed utility facility features: location, type, size, and length, access points, and easement
- Owner's easements or other claimed prior right areas
- Proposed property rights the Commission is to supply, if applicable
- Highway geometric features, if the relocation is related to them
- Legend and title block

#### 11.6.4.00     ~~11.06.04.00~~     **Owner's Estimate of Cost**

The owner's estimate of cost serves the following purposes:

- It provides estimate details, the proposed utility relocation plan and allows a preconstruction determination of reasonableness of the planned functional replacement for the affected utility facility.
- It provides support for FHWA Specific Authorization.
- It provides an amount to be used for encumbering capital dollars for utility work.
- It becomes a contract pay amount for lump-sum agreements.

#### 11.6.5.00     ~~11.06.05.00~~     **Standard Estimate Format**

The standard estimate format must contain the following elements:

- Cost of labor
- Cost of materials (include a list of major items)
- Cost of transportation and equipment
- Cost of contracted out work
- Cost of overhead (include a list of major components)
- Cost of new right of way (if required)
- Credits due the Commission shown separately for betterment, depreciation and salvage
- Percentage and dollar amount of the Commission's liability

Each item above must be shown on the estimate. If an item does not apply, it still must be listed with a zero in the cost column. The same format is used for lump-sum estimates, except all costs must be itemized and detailed by category, e.g., labor by number of hours and dollars, materials by quantity and dollars, etc.

The cost estimate for work to be performed or paid for by the owner must come from the owner. If the owner uses broad-gauge units in their estimates, e.g., a per-pole or per-meter cost factor, the broad-gauge units may be substituted for the cost of labor, material, and transportation and equipment (listed above). The owner must provide a statement about the methodology used in arriving at the broad-gauge unit cost, e.g., "based on ~~20~~—costs incurred at a recently completed



[similarly scoped project.](#)” Right of way costs, credits and the Commission’s liability must still be listed separately.

If for timing reasons it is not possible to obtain an adequate estimate from the owner, the Utility Coordinator may prepare an estimate based on the owner’s plan using the owner’s current cost data from similar utility relocation work. Justification for estimates prepared by the Commission must be in the file. The Commission’s estimates shall not be used as a basis for lump-sum agreements. The Utility Coordinator should ensure an owner’s prepared estimate is received as soon as possible, normally within thirty to forty-five (30-45) days of issuing the request for an estimate.

#### [11.7.00.00](#)    ~~11.07.00.00~~    NOTICE TO OWNER

##### [11.7.1.00](#)    ~~11.07.01.00~~    Notice to Owner to Relocate General

Owners must be given formal notice to relocate, remove, abandon, protect, or pothole, their utility facilities to accommodate proposed transportation project. The Notice to Owner also sets forth a schedule for performing proposed utility relocation work and a statement of liability for the cost of relocation.

It is essential that the Notice reflects a true “meeting of the minds” between the Commission and the owner regarding the location and type of facility, the work that is being ordered, the schedule to accomplish it, and the liability for the cost of work. A “meeting of the minds” is necessary to prevent subsequent disagreements about the need for the work, scheduling, liability, etc., that may arise and delay the project. Since issuance of the Notice may obligate the Commission to pay for all or a portion of the cost of relocation, there must be a specific understanding of the required work to which the Commission is obligating itself.

[A Notice is required when the Commission’s contractor is doing facility adjustment and an executed Utility Agreement with the Owner has been obtained prior to right of way certification.](#)

##### [11.7.2.00](#)    ~~11.07.02.00~~    Joint Facility Relocations

When two or more utility owners occupy or are relocating to joint poles or joint trenches, the relocation work normally cannot be performed concurrently. It must instead be performed sequentially. If, after the first owner’s work is completed, the last owner to move does not have sufficient remaining time to perform work as ordered by the Notice, it would be very difficult to hold them responsible for right of way delays if the Commission did not adequately coordinate the work of all owners.

To be fair to all owners involved and to ensure timely utility clearance of the project, the Utility Coordinator must establish the overall relocation time frame and the sequence of operations for each owner involved in the joint relocation. The completion dates set out in each Notice must be specific to each owner and be based on the overall coordinated schedules necessary to complete all work within the project clearance schedule.

**11.7.3.00    11.07.03.00    Preparation**

The Utility Coordinator is responsible for preparing the Notice to Owner in accordance with the following guidelines:

- The Notice will be prepared only after the Utility Coordinator has received relocation plans, the owner's estimate of cost and determined liability. Exceptions to this policy are outlined in section 11.05.

The Notice will be prepared and issued to the owner with sufficient lead time to allow a reasonable relocation schedule. Failure to provide reasonable notice may jeopardize timely project certification or result in the Commission becoming liable for contractor delay caused by unresolved utility conflicts.

- The Notice from the Utility Coordinator should never state how the owner is to perform the relocation work, such as: "Owner shall underground the relocated facility" or "Owner shall temporarily relocate their facilities." The details of the method and conduct of the relocation must be left to the owner's discretion. ~~Including~~ including requirements of this type in the Notice may obligate the Commission to reimburse the owner for any additional costs associated with the work.

A single Notice should be used covering each owner involvement on each project to the extent possible. Multiple Notices are issued when an owner operates multiple utility types, e.g., if a project has relocations for SCE-Electric Transmission, SCE-Electric Distribution and SCE-Communication on a single project, it would require three (3) Notices to Owner.

**11.7.4.00    11.07.04.00    Processing**

All Notices to Owner must be supported with the Report of Investigation package. Upon approval by the Right of Way Manager, the Notice can be transmitted to the owner.

When a Utility Agreement is needed for the required relocation work, it may be transmitted to the owner along with the Notice.

If the replacement location is within Commission right of way, the owner must have a revised license prior to beginning the relocation work.

**11.7.5.00    11.07.05.00    Utility Coordinator Responsibilities**

The Utility Coordinator is responsible to coordinate all activities required to support the Notice to Owner. Duties performed generally consist of the following:

- Ensures Right of Entries, Licenses or Permits have been obtained at the new location, if needed, to work on others property.
- Follow up to ensure relocation is done by the date specified in the Notice.
- Coordinate with construction management team for inspection of the owner's relocation work.

- Coordinate preconstruction meetings with the Project Manager or construction manager, the owner's representative, and the construction management team on utility adjustments planned to take place after award of the contract.
- [Resolve conflicts with newly discovered facilities in coordination with the project engineer of record.](#)
- Obtain approval for all change-in-scope relocation work resulting from project changes and issue Revised Notices to Owner, when necessary.

#### 11.7.6.00     ~~11.07.06.00~~     **Owner Responsibilities**

The owner is responsible for completing all work as specified in the Notice to Owner, License, and Utility Agreement (if required). Upon receipt of Notice to Owner, the owner shall have a minimum of sixty (60) days to complete owner's facilities rearrangement, unless the owner agrees to a shorter time frame. If the owner agrees to a shorter time frame, this agreement must be documented in the utility file/diary. Failure to comply with terms of the Notice may potentially subject the owner to payments for resulting construction delays.

#### 11.7.7.00     ~~11.07.07.00~~     **Relocation Monitoring**

The Project Manager or their designee is responsible for monitoring the owner's relocation of their facilities to ensure compliance with approved relocation plans and documents the relocation activities and issues. The monitoring ensures that all utility facility conflicts within the project limits are resolved and confirms labor, equipment, and materials used to accomplish Commission reimbursed work. The estimate of the amount of materials removed for salvage should also be validated. This information is necessary to provide reasonable verification of the owner's bills.

Under no circumstances is there to be field authorization to deviate from the approved plan of work as ordered in the Notice. A revised Notice is necessary for any changes to the work to be performed.

#### 11.7.8.00     ~~11.07.08.00~~     **Revised Notices**

The Notice to Owner is a legally binding order on the receiving owner to adjust their facilities in a prescribed manner and time. As such, the issued Notice must always agree with the latest plan for adjustment and ordered completion time. The standard Utility Agreement clauses provide that a revised Notice to Owner shall be issued whenever there is a deviation from the agreed plan for adjustment of the facility or whenever the completion date is changed. It may also be necessary to issue a revised or addendum to the Utility Agreement. These changes are comparable to construction change orders and are crucial to establishing a legally binding understanding with the owner.

If the utility relocation is FHWA funded, a supplemental FHWA Specific Authorization will be required and the Federal Authorization to Proceed (E-76) estimate of cost may have to be increased.

#### 11.8.00.00     ~~11.08.00.00~~     **UTILITY AGREEMENTS**

**11.8.1.00     ~~11.08.01.00~~     Utility Agreements General**

In a Utility Agreement, the Commission agrees to comply with all federal and state laws, regulations policies and procedures relative to the design, right of way, acquisition, construction and maintenance of the relocation of facilities necessitated by the transportation project. It is normally processed once per project for every relocation of facilities affected.

**11.8.2.00     ~~11.08.02.00~~     Circumstances Requiring a Utility Agreement**

The Commission and the utility owner must enter into a Utility Agreement whenever the Commission is paying or receiving payment for all or a portion of the cost of relocation of a utility facility, regardless of who performs the work. The number assigned to each Utility Agreement shall be the same number assigned to the corresponding Notice to Owner covering the same facilities. Each Utility Agreement must be submitted with the Report of Investigation package.

A single agreement is used for each owner's involvement on a single construction project to the extent possible. Separate agreements may be necessary for individual purposes such as design, advance of funds, or physical relocation(s). The Utility Coordinator is responsible for preparing the Utility Agreement.

**11.8.3.00     ~~11.08.03.00~~     Standard Clauses**

For highway projects, the Utility Agreement clauses contained in Chapter 13 of the Caltrans Right of Way Manual shall be used whenever possible. For non-highway projects, the State utility agreement can be used as a reference for agreement with the owner at the utility coordinator's discretion. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major utility owners, Caltrans' Headquarters Legal Division as well as the Commission. The standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

FTA does not have specific provisions for utility agreements, but does require the Commission to execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities prescribing the procedures for the relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the project. FTA Circular ~~5010.1D~~[5010.1E](#) indicates that only actual allowable, allocable, and reasonable costs are reimbursable. Where the work is to be performed by the public utility's forces, no profit is allowed; and reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement would not provide for greater capacity, capability, durability, efficiency or function, or other betterments or enhancements to the existing utility system, except for meeting current State and local codes. Prior FTA approval is not required in reaching a utility relocation agreement.

**11.8.4.00     ~~11.08.04.00~~     Processing**

All Utility Agreements must be submitted for approval, along with the Report of Investigation, to the Right of Way Manager for approval.

After the Right of Way Manager has approved, the Utility Coordinator will need to perform the following:

- Obtain a contract number from the contracts group for the Utility Agreement.
- Send the Utility Agreement to RCTC's legal counsel for review and approval. The Commission's legal counsel shall "wet-ink" sign four original Utility Agreements.
- Obtains approval from the Board of Commissioners.
- Forward the Utility Agreements to the utility owners for execution.
- Obtain the executed Utility Agreements from the owners and facilitate execution by the Executive Director.
- Send original Utility Agreements to the owner, Commission legal counsel, Commission contracts department and place one in the utility relocation file.

#### 11.8.5.00    ~~11.08.05.00~~    Amendments to Utility Agreements

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an "Amendment to Utility Agreement." In most cases, Amended Utility Agreements are processed the same as Utility Agreements.

#### 11.8.6.00    ~~11.08.06.00~~    Amendments for Payments in Excess of Original Utility Agreement

Although all efforts should be made to minimize any costs in excess of the estimate contained in the Utility Agreement, the Commission will consider final payment requests for reasonable reimbursement of utility relocation costs not exceeding 125% of the estimated amount as stated in the original Utility Agreement.

The basis for this exception is the Commission has obligated itself to participate in the actual and necessary cost of Commission-ordered relocation of the utility owner's facilities at an estimated cost to the Commission. Since the cost amount shown in the Utility Agreement is an estimate and not a fixed contractual amount, the Commission allows for reasonable adjustments to the estimate.

Amounts in excess of 125% of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested and also requires approval from the Board of Commissioners. In addition, before an Amended Utility Agreement or a bill exceeding 125% of the estimated amount in the original Utility Agreement can be processed, the Utility Coordinator must receive and approve written documentation of the reasons and identification of the basis for the increase.

Amended Utility Agreements are not required when the total billing is less than the original Utility Agreement amount.

#### 11.8.7.00    ~~11.08.07.00~~    Amendments for Change in Scope of Work

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner and a Supplemental FHWA Specific Authorization (if FHWA funding is involved) before work on the proposed changes commences.

Preparing an Amended Utility Agreement and Revised Notice for a change in scope is necessary to:

- Comply with federal requirements for preapproval of relocation plans.
- Calculate Provide for any needed change in the proration of liability.
- Modify Provide for necessary modification to the previously ordered plan of relocation, if necessary.

#### 11.8.8.00    ~~11.08.08.00~~    **Special Utility Agreements**

Occasionally, a special utility agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled or delayed, or where a Utility Agreement does not exist. The special agreement should recite the circumstances (liabilities, incurred costs, etc.) and the agreed course of action and estimated additional costs.

#### 11.8.9.00    ~~11.08.09.00~~    **Utility Agreement to Cover Advance Engineering Effort**

Occasionally, an owner will expend considerable engineering effort on a planned relocation before the Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the owner's costs. The usual Report of Investigation is required to support the Commission's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

#### 11.9.00.00    ~~11.09.00.00~~    **CERTIFICATION PHASE**

Certification is required for all FHWA and State funded projects, as well as projects on the State Highway System. Although a formal certification is not required for other funding agencies or locally funded projects, it is necessary to have formal documentation of utility status prior to putting the project out to bid. The Project Engineer's Certification is required as part of the Right of Way Certification.

#### 11.9.1.00    ~~11.09.01.00~~    **Right of Way Utilities Certification**

The Right of Way Utilities Certification is a written statement summarizing the status of all utility facilities located within the limits of the proposed construction project. The certification identifies all utility facilities found to be within the project area and documents if they are affected and, if so, whether they have been or will be relocated, removed, or protected as required for the construction, operation, and maintenance of the proposed project. The Commission shall certify all projects where a (i.e. Plans, Specifications, and Estimates "PS&E") is prepared or federal funds are involved, prior to the Commission advertising and awarding a construction contract.

In accordance with 23 CFR 635.309(b), utility work should be accomplished during construction only when it is not feasible or practical to complete the work prior to construction due to economic or special coordination features. Utility work that cannot be completed in advance of construction contract award shall have special provisions in the standard specifications portion of the [\(i.e. Plans, Specifications, and Estimates “PS&E”\)](#) identifying the utility work and details of the coordination involved. All facilities not cleared from the project limits before construction commences shall be shown in the project plans to provide the necessary coordination.

In order for the project to be certified, all Utility Agreements must be signed and executed by the appropriate utility owners, and Notice to Owners must also be issued.

#### 11.9.2.00    ~~11.09.02.00~~    **Utility Certification for Design/Build Projects**

Until project design is completed, it is difficult to determine the ultimate effect on utility facilities. A Utility Certification may be delayed, therefore, until design is completed, but before construction commences.

#### 11.10.00.00    ~~11.10.00.00~~    **CONSTRUCTION PHASE**

##### 11.10.1.00    ~~11.10.01.00~~    **General**

Utility Coordinator activities performed during the construction phase of the project generally consist of the following:

- ~~•~~ Coordinating with construction manager and/or construction contractor and owner on compliance with Notice to Owner requirements.
- ~~•~~ Handling utility relocations discovered during construction.
- ~~•~~ Resolving utility relocation work that becomes wasted work.
- ~~•~~ Monitoring construction and document activities for Commission reimbursable utility relocation work.

By the time a project reaches the construction phase, the Utility Coordinator should already have sent copies of all Notices to Owner, approved relocation plans to construction and have executed Utility Agreements, if required. Ideally, most utility relocation work will be finished before project construction commences. However, since this is not always possible, coordinated utility work may be necessary. Coordinated work must be addressed in the “Special Provisions/Obstructions” portion of the Commission’s [\(i.e. Plans, Specifications, and Estimates “PS&E”\)](#) package.

##### 11.10.2.00    ~~11.10.02.00~~    **Pre-Construction Notification/Meeting**

Each owner of affected facilities remaining within the project construction limits shall be provided the contact information for the construction manager and the selected contractor. Arrangements should also be made for a joint field meeting with the owner’s representatives, the Project Manager, the utility coordinator, the construction manager and the construction contractor to work out construction schedules. Early coordination with local jurisdiction regarding street closures, traffic handling plans, night work, etc. is important.



**11.10.3.00   ~~11.10.03.00~~   Positive Location Work During Construction**

Standard special provisions require the contractor to contact a regional notification center (Government Code Section 4216.2) before conducting any excavation on the project, as well as exercise due diligence in working in areas with possible underground facilities. If the utility verification and positive location processes were properly completed during design, any additional positive location demands the Commission's contractor places upon the owner should be at the contractor's sole expense. If additional positive location work was planned by the Utility Coordinator to be done during construction, this work should be included in the original Notice.

**11.10.4.00   ~~11.10.04.00~~   Inspection of Utility Relocation Work**

The Utility Coordinator is responsible for ensuring that relocation work is inspected as required and that adequate records are maintained for Commission reimbursed work. The Utility Coordinator is responsible to notify the construction manager of planned relocation work requiring inspection. The Project Manager is responsible for inspection of such work and maintaining written diaries of the work. Inspection has three major objectives:

- • Ensure owner's work complies with design, construction, and traffic requirements.
- • Ensure proper placement of utilities to clear project construction in accordance with the Notice to Owner, Encroachment Permit, and Utility Agreement.
- • Observe and record the labor, equipment, and materials used to accomplish the work, as well as materials removed for salvage when any work is to be performed at Commission expense by reviewing the inspector's diaries, the Utility Coordinator can make a reasonable verification of the owner's bills.

Proper construction for utility companies may be regulated by the California Public Utilities Commission (CPUC), FERC and/or FCC. Utility construction may be controlled by PUC issued General Orders. Under no circumstances is the Commission to review the engineering adequacy of utility facilities except for those features that may adversely affect project integrity or safety.

**11.10.5.00   ~~11.10.05.00~~   Discovered Work and Emergencies**

Discovered work includes additional unanticipated utility facility adjustments that are required as a result of newly identified facilities, incomplete or inaccurate verification of known facilities, or the discovery of previously unidentified utility conflicts. Emergencies can be a result of storm damage.

The Project Manager or Construction Manager should immediately notify the Utility Coordinator who will notify the owner, when determined, of the newly discovered conflict or emergency requirement. The Project Manager or Construction Manager should provide the location and type of the existing facility and immediately follow up in writing with a suggested plan for conflict resolution. Although the Project Manager or Construction Manager is typically already aware of this responsibility, the Utility Coordinator should request an investigation of other work that the Commission's contractor can do to avoid potential contractor delays.



The Utility Coordinator must expedite liability determination and preparation of a new or revised Notice to Owner and Utility Agreement along with any new license required for the new work. In addition, the Utility Coordinator must ensure that any additional or unanticipated utility work takes place within the original environmental “footprint” described in the environmental document. If environmental reevaluation in the new area is necessary, no work other than studies or positive location should proceed.

#### 11.10.6.00    ~~11.10.06.00~~    **Changes to Planned Relocation Work**

The Utility Coordinator must issue a Revised Notice to Owner under the terms of the Utility Agreement when it is discovered that a planned relocation needs to be changed. The owner must agree to and acknowledge the change as provided on the Revised Notice Form. Work on the change may not be started until the Revised Notice has been agreed to or acknowledged by the owner. Changes in the scope of the work will also require an amendment to the Utility Agreement.

#### 11.10.7.00    ~~11.10.07.00~~    **Wasted Work**

Wasted work occurs when the owner has relocated their facilities in accordance with a Notice to Owner and the Commission subsequently determines that all or a portion of the newly relocated facility must be adjusted again to avoid conflict with planned construction. If the project is a State Highway System freeway project, the Utility Coordinator should consult the Master Contract to determine if wasted work relocations and payments is addressed.

The procedures for handling wasted work are similar to discovered work except that the Commission is liable for the cost of all completed relocation work deemed to be wasted as a result of a change in construction plans. The Project Manager must verify the wasted work resulted from plan changes rather than improper contractor work procedures.

The Revised Notice to Owner shall identify what work in the original Notice was wasted and what new work is to be done. The Revised Notice must also state that liability for wasted work is the Commission’s responsibility. Cost of all new work is based on liability as set forth in the current Agreement or as determined by usual liability procedures.

Note: The Commission’s costs for wasted work are not federal aid reimbursable.

#### 11.11.00.00    ~~11.11.00.00~~    **PAYMENT PHASE**

##### 11.11.1.00    ~~11.11.01.00~~    **General**

Activities performed during this phase generally consist of the following:

- ~~Obtaining~~ bills from owners
- ~~Checking~~ and verifying bills
- ~~Processing~~ bills for payment
- ~~Verifying~~ transactions entered
- ~~Billing~~ or refunding local agencies pursuant to ~~Cooperative~~ Utility Agreements

- Tracking progress payments

#### 11.11.2.00    ~~11.11.02.00~~    **Processing Bills from Owners**

Generally, the Utility Agreement will provide that owners bill the Commission at least quarterly, but not more than monthly, during relocation of their facilities. Immediately after completion of the owner's work, the Utility Coordinator should make a written request to the owner requesting submittal of the final bill within ninety (90) days of the date of the letter.

The Utility Coordinator should follow up with a letter to the owner every sixty (60) days if the bill has not been received. The Utility Coordinator must give the owner a thirty (30) day notice before closing the file. Owners may operate under PUC, FERC or FCC rules and payment should be reviewed according to such rules.

#### 11.11.3.00    ~~11.11.03.00~~    **Review of Owner's Bill**

When the bill is received, the Utility Coordinator shall check to see if it is a partial or final bill. Since consistent format will facilitate review, the bill should be in a format similar to that used for the original estimate of cost. The Utility Coordinator is responsible to check the bill for consistency with the Utility Agreement and the owner's previously submitted and approved relocation plan and estimate of cost and to ensure credit for previously identified betterments has been received. The bill must be on the owner's letterhead with the vendor's full address and contain the date of service, the invoice date, and an itemized description of the services. If the bill is not the original invoice, it must be signed by the appropriate owner representative. All bills must be addressed to the Commission, or the Commission will not pay the bill, and must contain the Utility Agreement number. If the owner's invoice does not contain the Utility Agreement number, the Coordinator must imprint the Utility Agreement number on the invoice or bill.

#### 11.11.4.00    ~~11.11.04.00~~    **Bill Discrepancies**

If discrepancies are discovered in the owner's bill, the Utility Coordinator must return the bill to the owner with a request for correction. The Utility Coordinator must keep a copy of the bill and the form in the utility file for documentation.

#### 11.11.5.00    ~~11.11.05.00~~    **Partial Billings**

Partial bills are usually paid routinely, if the total of the partial bills does not exceed the amount under the Utility Agreement. All partial bills must show an itemization of the charges. A review of partial bills is essential where the Commission is due an unusually large credit (large betterments) or where billing exceeds work actually completed. The procedure for payment is the same as for final bills.

#### 11.11.6.00    ~~11.11.06.00~~    **Final Bills**

Final bills must contain detailed charges in a format similar to that in the original estimate and be fully itemized. They must also contain any depreciation and salvage credits due to the Commission. The final bill must also contain the "start date" of the physical relocation work. The Utility Coordinator must check the start date against the FHWA Specific Authorization date, if

applicable, to ensure proper federal reimbursement. Payment of a final bill may be made up to 125% of the Utility Agreement amount without an amendment.

11.12.00.00   ~~11.12.00.00~~   **PROPERTY RIGHTS CONVEYANCES**

11.12.1.00   ~~11.12.01.00~~   **Requirements for JUA/CCUA**

JUA and CCUA are documents that perpetuate the owner's rights of way that are within the right of way. Both documents place limiting restrictions on the owner's use to ensure the owner's utility use is compatible with the Commission's use. The documents may be entered into only where the owner's original easement possessed prior rights in the right of way acquired by the Commission and did not contain termination or relocation clauses that were enforceable by the Commission.

These documents are used only for the portion of the owner's utility easement that is within the right of way. If the Commission owns the right of way in fee, a JUA or CCUA may be used. If the Commission owns the right of way in easement only a CCUA may be used.

In the case of an easement, the owner's prior rights must be carefully checked for unusual conditions. For example:

- ~~•~~ The owner may have an easement that requires relocation at the owner's expense but obligates the landowner (Commission) to issue a new easement, JUA or CCUA, for the newly relocated facilities.
- ~~•~~ The owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on that same specified date. Following termination, the utility facility is considered as being under a license, which terms should be described.

A JUA cannot be used where the Commission only possesses an easement right of way. The Commission, as an easement holder, has no legal right to grant a utility easement in a new location.

11.12.2.00   ~~11.12.02.00~~   **Joint Use Agreements**

A JUA is used when the owner's facility will remain on lands owned by the State but will be relocated to a position outside, or partly outside, the owner's existing right of way where the owner had prior rights. It is also used where the owner's right of way is not occupied by any existing utility facilities but the owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the right of way and outside the right of way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the right of way. The easement area outside the right of way is covered by acquisition on the owner's easement form or conveyed by the Commission if acquired in the Commission's name.

**11.12.3.00   ~~11.12.03.00~~   Consent to Common Use Agreements**

A CCUA is used when all of the owner's facilities, whether rearranged or not, will remain within the right of way area covered by the owner's existing easement area.

**11.12.4.00   ~~11.12.04.00~~   Prescriptive Rights**

~~It is appropriate to perpetuate the owner's rights established under prescription with a JUA/CCUA. The extent of a prescriptive right, however, must be measured by the owner's use during the period the owner occupied the site under prescriptive right (not less than five (5) years). Granting any rights greater, or specifying a dimension to the easement where none is documented, is a betterment and constitutes a gift of public funds. Accordingly, the precise extent of the prescriptive right (for example, the right to maintain a single line of poles with one cross arm and three 200 pair telephone cables) should be set out in any JUA/CCUA.~~

A Prescriptive right allows someone other than the property owner to gain the rights to use the land. It is done so under adverse possession laws generally by demonstrating that the use has been:

- Open and Notorious: It is obvious that the possession is taking place. This should have given the owner notice that their land is being used.
- Under Claim of Right: The person must possess some claim of right. The claim must be recognized by California Law.
- Hostile to the True Owner: This doesn't mean adversarial. Instead, a trespasser must possess the land in a manner that is hostile to the owner's legal rights.
- For the Statutory Period of Five Years: The elements described above must be for the statutory period of 5 years. Continuous and Uninterrupted: The trespasser has used the land on a continuous and uninterrupted basis.

If a Utility Owner meets these criteria it is said to have a "claim of prescriptive right or easement."

A prescriptive right cannot be established over land owned by any governmental entity. Although rare, the Commission may have acquired land not knowing a prescriptive easement existed prior to the Commission's fee ownership.

**11.12.5.00   ~~11.12.05.00~~   Easement Conveyance Processing**

Conveyance of easements to owners is by deed. To initiate this procedure, the Utility Coordinator may include a clause(s) in the Utility Agreement for property rights to be conveyed and the form of conveyance. The clause(s) should also include credit to the Commission for the owner's share of the cost or market value of easements conveyed, as applicable. The cost of Commission acquired utility easements is part of the cost of relocation and must be apportioned between the Commission and the owner in accordance with the Utility Agreement.

Easements to be conveyed across excess lands must be located so as to minimize possible adverse conflicts to site development. Requests for easements across excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess land procedures.

11.13.00.00   ~~11.13.00.00~~   **BUY AMERICA**

11.13.1.00   ~~11.13.01.00~~   **General**

Implementation of Moving Ahead for Progress in the 21st Century (MAP-21) has broadened how Buy America is applied to federally funded construction projects. MAP-21, section 1518, amended 23 U.S.C. 313, is to apply to all contracts eligible for federal assistance carried out under a NEPA document regardless of funding, if at least one contract has federal funds.

11.13.2.00   ~~11.13.02.00~~   **Buy America Requirements**

For federally funded projects, the Buy America requirements stated in 23 U.S.C. 313 and 23 CFR 635.410 apply to all iron and steel materials, 90% by weight that is permanently incorporated in a project. The provision requires that all manufacturing processes be done domestically. Manufacturing begins with mixing and melting and continues through the coating stages. “Coatings” include epoxy coatings, galvanizing, painting or any other coating that protects or enhances the value of the material.

11.13.3.00   ~~11.13.03.00~~   **Buy America Certification**

The Commission requires that the utility owners provide reasonable assurance that utility materials subject to the Buy America requirements are compliant prior to permanent installation. The Commission will accept either the utility owner’s self-certification or the vendor/manufacturer’s certification.

11.13.4.00   ~~11.13.04.00~~   **Waivers to the Buy America Provisions**

For federally funded projects, the Commission may request a waiver if the Buy America provisions are inconsistent with the public interest or iron and steel are not produced domestically in sufficient quantities and at a satisfactory quality.

Waivers are allowed for specific materials on a ~~project-by-project~~project-by-project basis. There are nationwide waivers, but these are extremely rare and not advisable.

**12.00.00.00 ~~12.00.00.00~~ PROJECT CLOSE OUT**

**12.1.00.00 ~~12.01.00.00~~ PURPOSE**

The purpose of this chapter is to outline the Commission's and RCA's policies and procedures for closing out Commission and the RCA projects. It is critical to the success of the project that all of the necessary right of way activities to complete the project are fully performed.

**12.2.00.00 ~~12.02.00.00~~ FILE REVIEW AND QUALITY CONTROL**

Upon completion of the right of way aspects of the project, the file should be reviewed for quality control purposes and to ensure preparedness for any potential audits.

**12.2.1.00 ~~12.02.01.00~~ General**

Files should be organized and presentable. There should be no post-it notes or ~~loose leaf~~loose-leaf papers. All duplicates in the file should be removed. However, if documents have been revised as part of the right of way process, each version should be kept in the file to show the history of the changes. Return receipts should be attached to the documents to which they pertain.

**12.2.2.00 ~~12.02.02.00~~ Parcel Diaries**

Prior to closing out files, the parcel diaries should be reviewed to ensure they include the following:

- An entry for each meeting, phone call, or written correspondence
- The agent's initials for each entry
- The method of delivering each correspondence (overnight, certified mail, regular mail, etc.)
- Names of individuals involved in each meeting
- Clear conclusions to any questions or concerns raised by the property owner/displacee/utility owner
- A logical thought process that an oversight agency, an attorney, a judge or a jury could understand
- Completed checklist and signature of agent and Right of Way Manager on file close out form
- The final disposition of the file

**12.2.3.00 ~~12.02.03.00~~ Acquisition File Documentation**

All acquisition files should include the following documents:

- Parcel Diary with entries initialed
- Preliminary Title Report

**PROJECT CLOSE OUT**

12.00.00.00

**PROJECT CLOSE OUT**

**CHAPTER ~~12~~ 12.00.00.00**

- ~~•~~ Realty Appraisal(s)
- ~~•~~ Review Appraisal - if applicable
- ~~•~~ Fixture and Equipment Appraisal - if applicable
- ~~•~~ Goodwill Appraisal - if applicable
- ~~•~~ Offer letter(s) with supporting documentation
- ~~•~~ Counteroffers and responses (letters or emails) - if applicable
- ~~•~~ Administrative settlement memo if final agreed amount differs from offer amount
- ~~•~~ Title Policy

Files for voluntary settlements should include the following:

- ~~•~~ Possession and Use Agreement - if applicable
- ~~•~~ Executed Purchase and Sale Agreement
- ~~•~~ Escrow Final Closing Statement
- ~~•~~ Recorded Deeds

Files for court ordered settlements should include the following:

- ~~•~~ Order of Prejudgment Possession
- ~~•~~ Final Order of Condemnation or Stipulated Settlement Judgment

12.2.4.00    ~~12.02.04.00~~    **Relocation File Documentation**

All relocation files should include the following documents:

- ~~•~~ Parcel Diary with entries initialed
- ~~•~~ Notice of Eligibility (NOE)
- ~~•~~ General Information Notice (GIN)
- ~~•~~ Signed claim forms for all applicable areas
- ~~•~~ Explanation memo to the file if displacee did not make a claim for a payment they were eligible for
- ~~•~~ Copies of payment checks for payment
- ~~•~~ Assignment of payment forms - if applicable

12.2.5.00    ~~12.02.05.00~~    **Utility Relocation File Documentation**

All utility relocation files should include the following documents:

- ~~•~~ Parcel Diary with entries initialed
- ~~•~~ Specific Authorization issued prior to the commencement of physical relocation work
- ~~•~~ Report of Investigation package with determination of liability
- ~~•~~ Notice(s) to owners
- ~~•~~ Utility Agreements - if applicable

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- ~~•~~ Copies of any JUA/CCUA's
- ~~•~~ Utility owner's relocation plans
- ~~•~~ Easements - if applicable
- ~~•~~ Copies of invoices and checks for payment

**12.2.6.00    ~~12.02.06.00~~    File Retention**

All files should be scanned and entered into RCTC's records retention system.

**12.3.00.00    ~~12.03.00.00~~    POST RIGHT OF WAY ACTIVITIES**

**12.3.1.00    ~~12.03.01.00~~    Parcel Inventory**

Upon completion of the right of way activities, a complete inventory of properties acquired for the project should be updated and verified. Potential disposition of the properties post-construction should be identified at this stage. Possible future dispositions include:

- ~~•~~ Commission or the RCA to hold and maintain
- ~~•~~ To be conveyed to another agency (City, County, State) or utility owner
- ~~•~~ Mitigation/conservation land
- ~~•~~ Excess land

**12.3.2.00    ~~12.03.02.00~~    Right of Way Terms and Special Provisions**

Upon completion of the right of way activities, a summary of right of way terms and any special provisions should be detailed in a list (construction obligations) to be provided to the construction contractor. At a minimum, the list should include the following:

- ~~•~~ Beginning and ending dates of temporary construction easements
- ~~•~~ Provisions for advance notice of construction start
- ~~•~~ Negotiated terms of construction timing, such as agreed upon times of day, week or year
- ~~•~~ Special conditions granted to the owner such as securing the property perimeter or the safety of pets
- ~~•~~ Agreements as to restoration of a property in the after condition (landscaping, tree relocation driveway modifications, etc.)
- ~~•~~ Construction contract items

**12.3.3.00    ~~12.03.03.00~~    Co-Operative Agreements**

In addition to reviewing prior to commencing right of way activities, upon completion of the right of way portion of a project, all co-operative agreements should be reviewed to determine if the right of way provisions have been met and to determine any further Commission or the RCA obligations upon completion of construction. Co-operative agreements may identify responsibilities for disposal of excess land, as-built maps, record maps, vacations,



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relinquishments, etc. A list of outstanding action items should be identified for post-project completion.

**12.4.00.00    ~~12.04.00.00~~    POST-PROJECT ACTIVITIES**

Upon completion of construction, additional close-out is required to successfully ensure all acquired rights are owned by the appropriate parties. A closure statement or notice of completion should be obtained from the Engineer of Record and kept in the project master file.

**12.4.1.00    ~~12.04.01.00~~    Confirmation of Right of Way Terms and Special Provisions**

To ensure the Commission's and RCA's obligations have been met and protect the Commission and the RCA from risk of potential litigation, the Right of Way Department should confirm the right of way terms and special provisions were satisfied. Any notices sent to the property owner by the construction contractor should be obtained for the file. Any deviations from the right of way agreements should be documented and agreed to in writing by the owner. Depending on the terms of the acquisitions, it may be necessary to quitclaim or file a temporary construction easement termination with the County in order to clear title.

**12.4.2.00    ~~12.04.02.00~~    Land to be Retained by Commission and RCA**

Land that will continue to be owned and maintained by the Commission and the RCA shall be incorporated into the Commission's and RCA's property database. If there has been a change in the Assessor Parcel Number (APN), care should be taken to utilize current APN's for the ownership record while still maintaining a reference to the original APN that was acquired.

**12.4.3.00    ~~12.04.03.00~~    Land Conveyances to Other Agencies**

For some projects, it is intended that the land will be owned and maintained by other agencies after project completion. Examples include highways that will be owned and maintained by the State, local streets that will be owned and maintained by a City or the County, and utility easements/parcels that will be owned and maintained by the utility owners.

**12.4.3.1    ~~12.04.03.01~~    Conveyance Documents.** Language for the conveyance documents will need to be coordinated with the receiving agency, however, in no circumstance can the Commission convey rights it has not acquired. The Right of Way Department must review the acquisition documents prior to conveyance to any other agency to ensure that the rights being conveyed have been acquired. Easements acquired by the Commission must be assigned or quitclaimed as only the underlying fee owner can grant an easement.

**12.4.3.2    ~~12.04.03.02~~    Legals and Plats.** Generally, updated legals and plats are required for conveyances to other agencies. If the full property that was acquired is being conveyed, an updated legal and plat is still generally necessary to update APN's and obtain a current surveyor stamp. For properties where a portion of the

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property is being conveyed, a surveyor will need to utilize the right of way maps to identify the portion that is to be conveyed. The surveyor should also prepare a legal and plat for the remainder property for future excess land disposal.

12.4.3.3     ~~12.04.03.03~~     Reservations. The right of way maps and Engineer of Record should be consulted to determine if any rights need to be retained from the portions being conveyed for future Commission access, drainage or other uses.

12.5.00.00     ~~12.05.00.00~~     **EXCESS LANDS**

Upon completion of the project construction, lands identified as excess land should be disposed of in accordance with Commission and the ~~Commission's~~ RCA policies and procedures as outlined in Chapter 8.

12.6.00.00     ~~12.06.00.00~~     **STREET VACATIONS**

As part of a transportation project, the Commission may eliminate all or a portion of a street. The Commission's Right of Way Department should follow the local City or County procedure required for street vacations.

12.7.00.00     ~~12.07.00.00~~     **RELINQUISHMENTS**

As part of a transportation project, the Commission may eliminate all or a portion of a state highway. The Commission's Right of Way Department should coordinate with the State to relinquish the former highway section to a local agency, or vacate the highway in accordance with the State's policies and procedures.

12.8.00.00     ~~12.08.00.00~~     **RECORD MAPS AND AS-BUILTS**

Record maps should be updated and filed with the County and as-built maps should be generated upon completion of the project.

12.9.00.00     ~~12.09.00.00~~     **UTILITY RELOCATION FILE CLOSE-OUTS**

For utility relocations occurring during construction, the Utility Coordinator must close the files upon completion of the utility relocation which may coincide with the completion of the project construction.

**13.00.00.00 MSHCP LAND ACQUISITION POLICIES****13.1.00.00 GENERAL**

**13.1.1.00** Land acquisition is one of the most important activities of the RCA to reach the reserve goals of the Multiple Species Habitat Conservation Plan (Plan). It is important to maintain policies that are fair and reflect the highest level of integrity.

**13.1.2.00** Land to be acquired to meet the Plan's goals generally will be secured from willing sellers, donations, or by other means. The acquisition process is further described in Section 13.03 below.

**13.1.3.00** Property proposed for acquisition will be evaluated for conservation value under the tenets of the Plan.

**13.1.4.00** Each prospective acquisition will be reviewed for its relationship to existing reserve land, and its value to reserve habitat cores and linkages. The acquisition will also be evaluated for possible conflicts with planned infrastructure or land acquisitions which might be required for other public purposes. The RCA will make all reasonable efforts to work with the appropriate agency or special district which could be affected to insure the goals of the Plan can be attained.

**13.1.5.00** Opening of all negotiations and offers or agreements to purchase land will be authorized by the Right of Way Manager.

**13.1.6.00** All Land acquisition files will be retained and managed by the Right of Way Manager.

**13.1.7.00** The RCA Board will approve all purchases.

**13.1.8.00** For future acquisitions, the RCA will generally not acquire property that includes residential or commercial structure(s) in the absence of compelling circumstances as determined by the Board of Directors; provided, however that the RCA may acquire the property if the structure(s) have been either (1) physically removed, or (2) the property that contains the structure(s) is not part of the acquisition and not counted as additional reserve land.

**13.1.9.00** The RCA prefers to accept land in fee title.

**13.2.00.00 AUTHORITY TO SIGN DOCUMENTS**

Only the Executive Director or Chairman of the RCA Board may sign purchase and conveyance documents. The Vice Chairman of the RCA Board may sign in the absence of the Executive Director or Chairman of the Board. The RCA Board may, from time to time, authorize additional signatories or designees by resolution.

**13.3.00.00 ADMINISTRATIVE SETTLEMENTS**

Administrative settlements, when allowed, are made for the purpose of concluding negotiations for amounts considered reasonable, prudent and in the public interest after reasonable efforts to negotiate agreements for fair market value as defined in section 6.1.1 of the MSHCP, have failed. A written justification shall be prepared which indicates what available information (e.g. appraisals, recent acquisitions, development permit fees or valuation problems) support such a settlement.

Administrative settlements are not to be used for the purpose of correcting errors or omissions in an appraisal. Such errors or omissions should be addressed by correcting the appraisal and making a revised offer.

Administrative settlements are not valid when using federal and state grant as the funding source.

**13.4.00.00 ACQUISITION PROCESS**

The RCA will comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (42 U.S.C. § 4600 et seq. and 49 C.F.R. part 24.), as applicable as further detailed in Chapter 6, above, in this Manual. Specifically, the following will apply to the acquisition process:

**13.4.1.00** The RCA will order an independent appraisal of the property under consideration for purchase.

**13.4.2.00** The RCA will use the appraised value to develop an offer to purchase the property under consideration.

**13.4.3.00** At seller's expense, seller may provide a separate appraisal for consideration.

**13.4.4.00** When the HANS/JPR review process identifies a property for "100% acquisition," land value differences between a seller's appraisal and the RCA appraisal will be resolved in accordance with Section 6 of the MSHCP.

**13.4.5.00** An appraisal summary statement shall be prepared for all appraisals. The summary statement shall include the following information: the appraised value of the property, the date of value, the zoning and general plan designations of the property, the comparable sales used by the appraiser in determining the value of the property and any other information requested by staff.

**13.4.6.00** Policy of appraisal releases:

**13.4.6.1** Full appraisals will not be released to the seller, except in cases where the cost is shared with RCA; provided, however, that the Executive Director may release a full appraisal to a seller when (1) the seller is a public agency that currently owns

the property in fee title working with the RCA to purchase land for the MSHCP Conservation Area, or (2) grant funds are being sought and releasing the full appraisal would facilitate the process to apply for and obtain the grant funds.

13.4.6.2      A copy of the appraisal summary statement will be provided to the seller for acquisitions.

### **13.5.00.00      CONFIDENTIALITY**

To ensure integrity throughout the process, it is important to maintain confidentiality when the RCA considers land purchases.

**13.5.1.00**      Any agreement for real property services with agencies, organizations or individuals who may provide real property services will contain the following provisions to insure confidentiality of prospective acquisitions:

13.5.1.1      Assigned staff will pursue only those acquisitions authorized by the RCA.

13.5.1.2      Investigations, arrangements and transactions will be conducted by assigned staff only.

13.5.1.3      Property information and transactions shall be maintained under the control of the assigned staff.

13.5.1.4      No RCA property information shall be placed in any general electronic or manual data inventory outside of the RCA except as necessary during the acquisition process of a property. All records will be delivered to the RCA at the close of escrow.

### **13.6.00.00      INDEMNIFICATION**

**13.6.1.00**      It is the policy of the RCA to secure the appropriate indemnification from future liability resulting from pre-existing conditions on an acquired property. However, the RCA recognizes that circumstances for each acquisition vary, and the indemnification provision may be modified to reflect the level of risk, the ownership history of the property, the result of the environmental hazards assessment, along with any subsequent testing or other factors.

**13.6.2.00**      A Phase 1 Environmental Hazards Assessment (EHA), in compliance with general real estate practices, will be conducted on each prospective land acquisition, or land donation, not more than six (6) months prior to the close of escrow.

**13.6.3.00**      In the event that a Phase I EHA or visual inspection by the RCA of a prospective property indicates any potential hazard(s) the Executive Director may require a Phase II Environmental Hazard Assessment or additional information relating to the property history of use.

**13.6.4.00**      No conservation easement will be accepted unless the underlying fee title holder fully indemnifies the RCA.

**13.7.00.00**      **POLICIES AND PROCEDURES FOR EXECUTION OF IRS FORM 8283 FOR BARGAIN SALES AND DONATIONS**

The Regional Conservation (RCA) recognizes that it is appropriate to execute an IRS Form 8283 where the property owner has offered to either provide a bargain sale or to donate land to the RCA. The following policies and procedures are intended to establish basic guidelines for the execution and processing of a Form 8283.

**13.7.1.00**      A Bargain Sale shall be defined to be the sale of property to the RCA for less than the appraisal that has been reviewed and approved by the RCA or an independent, qualified appraiser contracted by the RCA.

**13.7.2.00**      If a property owner elects to accept less than the RCA approved appraisal price, the transaction shall be eligible to be considered a Bargain Sale. The Bargain Sale and the execution of the Form 8283 must be documented in the Purchase and Sale Agreement.

**13.7.3.00**      If a property owner elects to donate land to the RCA, the execution of the Form 8283 must be documented in the donation agreement, prior to execution of the form.

**13.7.4.00**      All requests for execution of a Form 8283 shall be reviewed and approved by Legal Counsel prior to execution and may be submitted for either a Bargain Sale as defined in Section 13.7.1.00 above or for a donation of land.

**13.7.5.00**      Only the Chairman of the Board of Directors or the Executive Director, or designee, shall be authorized to execute a Form 8283, provided that the form has been processed consistent with these policies and procedures.

**13.7.6.00**      Staff should notify the property owner of this policy, in writing, at the time of presenting an offer to the property owner, and request a written acknowledgement from the property owner that they have been notified of the policy.

**13.8.00.00**      **POLICIES AND PROCEDURES FOR NEGOTIATION OF DEVELOPMENT HANS AND NON-DEVELOPMENT HANS ACQUISITIONS**

The purpose of these policies and procedures is to establish general guidelines for the negotiation of Habitat Evaluation and Acquisition Negotiation Strategy (HANS) acquisitions, consistent with Section 6.1.1(B)(2)(b) and 6.1.1(C)(2) of the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). This Policy incorporates by reference the Clerical Changes made to page 6-6 of the MSHCP approved by the RCA Board on May 14, 2007. The following policy shall

apply to properties where the County/City and the RCA have concurred with including all or a portion of the property into the MSHCP Conservation Area.

**13.8.1.00      Initiation of the 120-Day Negotiation Period**

The 120-day negotiation period provided under Section 6.1.1(B)(2) and 6.1.1(C)(2) of the MSHCP shall commence:

13.8.1.1      Upon completion of the HANS/JPR process, and

13.8.1.2      Concurrence by the RCA that all or a portion of the property is needed for inclusion within the MSHCP Conservation Area.

**13.8.2.00      During the 120-Day Negotiation Period**

13.8.2.1      The RCA will conduct an appraisal of the property.

13.8.2.2      The RCA and Property Owner, or its designee, will negotiate a purchase and sale agreement.

13.8.2.3      Access to the property for appraisal purposes will be extended to the RCA through the HANS application, or other equivalent application.

13.8.2.4      During this period, appraisal instructions shall be jointly prepared and agreed upon by the RCA and the Property Owner, or its designee. If such joint appraisal instructions are not agreed to by the parties within the first 20 days of the 120-day period, the RCA may proceed to have an appraisal conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice" pursuant to 6.1.1 of the MSHCP.

13.8.2.5      The Property Owner, or its designee, may suspend the negotiating time period, provided that they have submitted a letter to the RCA and the County/city requesting that the negotiations be suspended. In such event, the negotiating time period will only resume upon receipt of a letter to the RCA and the County/city from the Property Owner, or its designee, requesting that the negotiations resume.

**13.8.3.00      After the 120-Day Negotiation Period**

If at the end of this 120-day period, agreement between the parties is not achieved, each party shall submit in writing the party's proposed resolution of terms. Further, the Property Owner, or its designee, along with the RCA and County/city, may agree to extend negotiations for an appropriate period of time if necessary. If either the Property Owner, or its designee, or the RCA and the County/city do not agree to extend negotiations, the Property Owner, or its designee, may (a) elect to withdraw selling the property to the RCA, or (b) commence the Conflict Resolution Process as described in Section 6.1.1 of the MSHCP.

**13.9.00.00**     **CLERICAL CHANGES TO THE MSHCP**

Pursuant to Section 20.1 of the MSHCP Implementing Agreement, the RCA hereby makes the following clerical change to the first full paragraph of Page 6-6 of the MSHCP:

**13.9.1.00**     **(B)(2)(b) Full Inclusion of Property.**

In those instances where all of the property is needed for inclusion in the MSHCP Conservation Area, negotiations will focus on the acquisition of the property including establishing a purchase price and the application of other non-monetary incentives which may compensate the property owner and assist with the acquisition. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee title of property to be conveyed may not be required. The type of ownership to be conveyed will be taken into consideration when conducting the appraisal. Appraisal instructions shall be jointly prepared and agreed upon by the RCA, on behalf of the County or Cities, and the property owner, or if joint appraisal instructions are not agreed upon within the first 20 days of the 120-day negotiation period, the RCA shall proceed to order an appraisal. Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

**13.9.2.00**     **(C)(2)**

Negotiations will focus on establishing a purchase price and other incentives that may be available to assist with the acquisition and compensate the property owner. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee title of property may not be required. The type of ownership to be conveyed will be taken into consideration when appraising the property. Appraisal instructions shall be jointly prepared and agreed upon by the RCA, on behalf of the County or Cities and the property owner, or if joint appraisal instructions are not agreed upon within the first 20 days of the 120-day negotiation period, the RCA shall



proceed to order an appraisal. Appraisal instructions will direct appraisers not to consider the MSHCP Criteria Area as relevant to the appraisal.

NOTE: There are no changes to the 1<sup>st</sup> and 3<sup>rd</sup> paragraphs to (C)(2), only the 2<sup>nd</sup> paragraph as noted above.

**SUPPORTING DOCUMENTATION: The proposed modification clarifies two aspects of the HANS process:**

The existing text indicates that the County and Cities are responsible for preparing joint appraisal instructions. As indicated in the joint exercise of powers agreement, the RCA was created to assume the responsibilities of acquiring property on behalf of the County and Cities, whereas here, all of the property is needed for inclusion in the MSHCP Conservation Area. This clerical modification simply confirms that action for purposes of this section.

The RCA, Local Permittees or other stakeholder groups never intended to delay the 120-day negotiation process due to lack of agreement on joint appraisal instructions. Therefore, this clarifying instruction allows the RCA to proceed to conduct its own appraisal should the RCA and the property owner, or its designee, fail to achieve agreement on joint appraisal instructions.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.

13.9.2.1 Further, the RCA hereby makes the following clerical change to the first full paragraph on Page 6-10 of the MSHCP:

Should a party opt to commence the Conflict Resolution Process as a result of the parties' inability to resolve differences concerning the valuation of property, a second appraisal shall be conducted, at the expense of the **opting party**, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee ownership of property to be conveyed may not be required. The type of ownership to be conveyed shall be taken into consideration when conducting the second appraisal.

**SUPPORTING DOCUMENTATION: In most cases, a property owner will probably be the opting party who seeks to commence the Conflict Resolution Process. In a situation where the RCA opts to commence the Conflict Resolution Process,**

however, the intent of the MSHCP is to have the RCA pay for the second appraisal. Accordingly, this revision to the plan requires the opting party, whether the property owner or the RCA, to pay for the expense of a second appraisal.

Section 20.1 of the Implementing Agreement allows clerical changes to the MSHCP including corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning of the MSHCP. The Board of Directors for the RCA finds this editing revision does not change the intended meaning of the MSHCP.

### **13.10.00.00 POLICIES AND PROCEDURES REGARDING PROPERTIES ENCUMBERED BY PROPERTY ASSESSMENTS FOR WILLING SELLER, AND FULL AND PARTIAL HANS/JPR ACQUISITIONS.**

To assemble the Additional Reserve Lands, the RCA may acquire land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. These properties may be offered by “willing sellers” or as a HANS/JPR full or partial acquisition. The following policies and procedures are intended to establish basic guidelines for the acquisition of property encumbered by existing property assessments:

**13.10.1.00** Staff will order a preliminary title report, with Schedule “B” exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

**13.10.2.00** Staff will contact the Assessor’s office and obtain a list of all known property assessments that may affect the property.

**13.10.3.00** Staff will identify the purpose and annual cost of any property assessments and estimate the cost to “buy out” the assessments.

**13.10.4.00** Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.

**13.10.5.00** The following options should be considered when dealing with property assessments in the order of preference stated below:

**13.10.5.1** Research if the RCA is exempt from payment of the property assessments.

**13.10.5.2** Negotiate with the Seller to eliminate encumbrances from title before close of escrow.

**13.10.5.3** Pursue a buyout of the property assessments by the RCA prior to close of escrow.

13.10.5.4      Defer the buyout of the property assessments by the RCA until after the close of escrow.

13.10.5.5      The RCA to pay the annual fee for the property assessments.

13.10.6.00      Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board's consideration.

13.10.7.00      The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

**13.11.00.00      POLICIES AND PROCEDURES REGARDING PROPERTIES ENCUMBERED BY PROPERTY ASSESSMENTS FOR CONVEYANCES MADE PURSUANT TO REGULATORY PERMITS SUCH AS 404 PERMITS.**

The RCA may be requested to accept land that is encumbered by existing property assessments. This includes Property Owner Association fees as well as assessments by community service and facilities districts. the request will generally come from a property owner that has been required to convey property to the RCA as part of a regulatory permit condition, such as a 404 permit issued by the U.S. Army Corp of Engineers or a 1602 Streambed Alteration Permit issued by the California Department of Fish and Game or State Water Resources Control Board Under Section 401 of the Clean Water Act. The following policies and procedures are intended to establish basic guidelines for the acceptance of property encumbered by property assessments:

13.11.1.00      Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

13.11.2.00      Staff will contact the Assessor's office and obtain a list of all known property assessments that may affect the property.

13.11.3.00      Staff will identify the purpose and annual cost of any property assessments and estimate the cost to buy out the assessments.

13.11.4.00      Once staff has estimated the cost to buy out the assessments, staff will contact the legal entity responsible for the collection and administration of the assessments, to inquire as to whether or not the assessments can be bought out.

13.11.5.00      The following options should be considered when dealing with property assessments in the order of preference stated below:

13.11.5.1      Research if the RCA is exempt from payment of the property assessments.

13.11.5.2      The RCA staff expects that in the majority of cases, the Donor will be required to buy out the property assessments prior to close of escrow.

13.11.5.3      Although unusual, the RCA staff may recommend to the Board that the RCA should defer the buyout of the property assessments by the RCA until after the close of escrow.

13.11.5.4      Likewise, as a last resort, there may be situations where RCA staff may recommend to the Board that RCA should pay the annual fee for the property assessments.

13.11.6.00      Staff reports should identify if the property for proposed acquisition is affected by existing property assessments and should list the annual cost and the estimated buy out cost for the Board's consideration.

13.11.7.00      The owner should be responsible for paying the assessments current before transfer of the property to the RCA.

**13.12.00.00    POLICIES AND PROCEDURES REGARDING PROPERTY ENCUMBERED BY COVENANTS, CONDITIONS, AND RESTRICTIONS.**

The RCA may acquire land that is affected by existing Covenants, Conditions and Restrictions (CCRs). The following policies and procedures are intended to establish basic guidelines for the acquisition of property affected by existing CCRs:

13.12.1.00      Staff will order a preliminary title report, with Schedule "B" exceptions and plotted easements, at the time of ordering an appraisal for a proposed acquisition.

13.12.2.00      Staff will review the nature of the CCRs.

13.12.3.00      Staff will identify if the CCRs potentially affect the use or maintenance of the property.

13.12.4.00      If staff has determined that the CCRs may potentially affect the use or maintenance of the property, staff will contact the legal entity responsible for the enforcement of the CCRs, to inquire as to whether or not the CCRs may be modified.

13.12.5.00      The following options should be considered when dealing with CCRs in the order of preference stated below:

13.12.5.1      Research if the RCA is exempt from the CCRs.

13.12.5.2      Pursue a modification of the CCRs prior to close of escrow.

13.12.5.3      Defer the modification of the CCRs until after the close of escrow.

13.12.5.4 Comply with the terms and obligations of the CCRs (In many cases the CCR's will apply to property improvements only, and will have a negligible impact on the RCA).

13.12.5.5 If the CCR's provide for an assessment, staff will follow either policy section 1.09 or 1.10, as appropriate.

13.12.6.00 Staff reports should identify if the property for proposed acquisition is affected by existing CCRs and if the CCRs affect the use or maintenance of the property.

**13.13.00.00** **POLICY REGARDING NON-MSHCP LAND DONATIONS.**

The RCA may agree to accept land donations outside of the Conservation Area or Criteria Area provided that:

13.13.1.00 Acceptance does not commit the RCA to a management or monitoring program that is different from that embodied in the MSHCP.

13.13.2.00 An endowment is provided that fully covers the costs of long-term management and monitoring of the land and habitat.

**13.14.00.00** **POLICY REGARDING GRANT FUNDED PROPERTIES**

The process for these properties includes staff soliciting a letter from the property owner stating interest in selling the property to the RCA. Once the letter is received, staff orders and appraisal report for the property. An offer is made based on the appraised value and once accepted by the owner, it is forwarded to the granting agency, who then forwards the appraisal to the appropriate reviewing agency to conduct a formal review. Unlike other property acquisitions, grant funded properties cannot be acquired for more than appraised value. If the property owner and/or its representatives do not agree with the appraised value, and if time allows, staff may order a new appraisal report or decide to end the acquisition efforts.

**13.15.00.00** **POLICY FOR ACQUISITIONS OF PROPERTY FOR WHICH A DEVELOPMENT APPLICATION IS NOT INTENDED TO BE FILED (NON-DEVELOPMENT HANS)**

Funding for the acquisition of properties on the priority list will be provided through a separate designated fund. The funding level from Multiple Species Habitat Conservation Plan Local Development Mitigation Fees shall be reviewed annually and established by the RCA Board of Directors.

**13.16.00.00** **POLICY FOR AUTHORITY OF EXECUTIVE DIRECTOR FOR LAND ACQUISITIONS**

**13.16.1.00** **Board Approval Required for Land Acquisition**

Subject to section 13.1.7.00, the acquisition of any interest in real property shall require a majority affirmative vote of the members of the RCA's Board of Directors. The Executive

Director shall be authorized to execute documents on behalf of the Board including, but not limited to, Purchase and Sale Agreements and Deeds, which have been approved by the Board.

### **13.16.2.00      Broader Authority to Accept Gifts, Bequests and Devises**

Notwithstanding the limitations which would otherwise be imposed under Section 13.14.01.00 of this Manual, the RCA authorizes its Executive Director to perform any or all acts necessary, including the execution of a donation agreement and a certificate of acceptance on behalf of the RCA, to approve and accept for the RCA the acquisition of any interest in real property consistent with the MSHCP obtained through gift, bequest, or devise made to or in favor of the RCA for any public purpose without regard to the value of the property so obtained.

### **13.16.3.00      Form of Acquisition Documents**

Standard documents, approved as to form by the RCA's counsel, shall be used to ensure consistency in the RCA's land acquisition process. Counsel must approve any deviation from the standard documents.

### **13.17.00.00      POLICY ON TRIBAL COOPERATION**

The Executive Director, or his or her designee, subject to review and approval by legal counsel, is authorized to enter into cooperative agreements, memorandum of agreements, memorandum of understandings, or other agreements with tribal partners to pursue a common interest in sustaining the integrity of regional biological and natural systems, including historic properties, tribal heritage resources and the historic human and economic values commonly supported by the parties within Western Riverside County. Specifically, the agreement may allow for the cooperation between RCA and its tribal partners to ensure that the historic properties and heritage resources located within MSHCP Conservation Area lands remain protected and preserved in accordance with both the Tribe's customs and traditions, as well as comply with the requirements of the MSHCP and state and federal law; provided, however, that the agreement shall include, without limitation, the following conditions:

- Prohibit the use of any landscaping within the preserved area;
- Prohibit fuel modification areas consistent with Section 6.4 of the MSHCP;
- Management of the preserved area shall be conducted pursuant to Section 5 of the MSHCP;
- No trails will be created nor allowed within the preserved area;
- Financially, RCA will continue to pay for any management expenses it would normally be required to conduct under Section 5 of the MSHCP while any tribal partners shall agree to undertake the preservation and maintenance of its historic properties and heritage resources pursuant to the tribe's customs and traditions.
- Required compliance with applicable State and federal laws and regulations, including, without limitation, those related to confidentiality.

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### **CLOSING STATEMENT**

The Right of Way Manual set forth herein are for guidance only, and deviations there from by the Commission or the RCA shall not provide a Seller, Property Owner, or its designee, with any damage rights or remedies against the Commission or the RCA. If there is a conflict between the Right of Way Manual set forth herein and State or federal law, the conflicting State or federal law will control.

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RCTC ROW AND RCA MSHCP LAND ACQUISITION POLICIES & PROCEDURES

2021

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## **POLICY SECTION REVISIONS**

**No revisions at this time**

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**RCTC ROW AND RCA MSHCP LAND ACQUISITION POLICIES & PROCEDURES**

**2021**

**-198-**



<b>Summary report:</b> <b>Litera Compare for Word 11.1.0.69 Document comparison done on</b> <b>1/25/2022 6:46:51 AM</b>	
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<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> RCTC Policy and Procedure-Final 10-8-2015.docx	
<b>Modified filename:</b> 1-24-21 Final Draft RCTC Right of Way Manual DM redlines.docx	
<b>Changes:</b>	
<u>Add</u>	4036
<del>Delete</del>	3334
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	4
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>7375</b>



**RESOLUTION NO. 22-003**

**RESOLUTION OF THE  
RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
(RCTC)  
APPROVING AND ADOPTING THE RCTC/RCA RIGHT OF WAY POLICIES AND  
PROCEDURES MANUAL**

**WHEREAS**, the RCTC adopted the original Right of Way Policies and Procedures Manual over a period of years in a series of resolutions since 2007; and

**WHEREAS**, the Riverside County Transportation Commission (RCTC) became RCA's managing agency on January 1, 2021; and

**WHEREAS**, Staff have been working to combine both RCTC's right of way policies and RCA's Land Acquisition Policies in order that the policies may be implemented in a consistent manner by both agencies; and

**WHEREAS**, RCTC desires to approve and adopt the combined RCTC Right of Way Manual and RCA Land Acquisition Policies in an updated RCTC/RCA Right of Way Policies and Procedures Manual to ensure compliance with applicable law and regulations and to incorporate best practices for the RCTC's right of way activities.

**NOW, THEREFORE**, the Riverside County Transportation Commission does hereby resolve as follows:

Section 1: The previously adopted RCTC Right of Way Policies and Procedures Manual is hereby replaced in its entirety with the revised RCTC/RCA Right of Way Policies and Procedures Manual (the "Manual"), set forth in Attachment 1, attached hereto and incorporated herein.

Section 2: The Riverside County Transportation Commission hereby approves and adopts the RCTC/RCA Right of Way Policies and Procedures Manual, as may be revised from time to time by RCTC, to be effective immediately.

**APPROVED AND ADOPTED** this 9<sup>th</sup> day of February 2022.

\_\_\_\_\_  
V. Manuel Perez, Chair  
Riverside County Transportation Commission

ATTEST:

\_\_\_\_\_  
Lisa Mobley, Clerk of the Board  
Riverside County Transportation Commission



# **AGENDA ITEM 8**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Jenny Chan, Planning and Programming Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Additional Awards Fiscal Year 2021/22 SB 821 Bicycle and Pedestrian Facilities Program Funding Recommendations

**BUDGET AND IMPLEMENTATION COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Approve additional project awards for the Fiscal Year 2021/22 SB 821 Bicycle and Pedestrian Facilities (SB 821) program for an additional amount of \$1,668,071, and a total amount not to exceed \$5,995,543;
- 2) Direct staff to prepare memorandums of understanding (MOUs) with the project sponsors to outline the project schedules and local funding commitments; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the MOUs with the project sponsors.

**BACKGROUND INFORMATION:**

On June 9, 2021, the Commission awarded SB 821 funding for 15 bicycle and pedestrian projects with scores of 40 and above, totaling \$4,327,472 for the FY 2021/22 SB 821 Call for Projects cycle. Since the initial award, the Commission has approved two revisions to the FY 21/22 Local Transportation Fund (LTF) revenues, which fund the SB 821 program with a two percent allocation. The Commission approved revisions on June 9, 2021, and January 12, 2022, totaling an increase of \$1,086,000. Additionally, following completion of the 2021 LTF financial audit, staff identified \$844,966 in SB 821 unallocated reserves and project savings, bringing the unallocated total available for award to \$1,930,966.

**DISCUSSION:**

Staff reached out to applicants with scores of 38 and 39 from the original FY 2021/22 program to inquire about project status. It was determined that all six projects are still of priority for the cities. Staff recommends awarding \$1,668,071 in SB 821 funding to six unfunded projects from the original FY 2021/22 program. The six projects recommended for award can be viewed in Attachment 1 under “Additional Allocation.” To maintain a healthy SB 821 reserve amount, \$262,895 is reserved to supplement future bicycle and pedestrian-related calls for projects.

A summary of the total allocations and geographic distribution of SB 821 funding is provided in the table below, and a full list of the projects is provided in Attachment 1.

### **Summary of Recommended Allocations**

	Coachella Valley	Western Riverside	Total
# of Recommended Projects	5	16	21
Total SB 821 Recommended Allocations	\$1,806,000	\$4,189,543	\$5,995,543
Recommended Allocations as a % of Total Allocations	30%	70%	100%

Per the Commission's SB 821 adopted policies, jurisdictions receiving an allocation have 36 months to complete approved projects and submit claim forms for reimbursement upon project completion. Staff recommends that the Commission direct staff to prepare MOUs with the sponsor for each project to outline the project schedule, funding plan, and local agency match commitment. Further, staff recommends that the Commission authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the MOUs.

Staff will monitor the progress of the projects to ensure timely implementation and delivery and expenditure reimbursements, as the intent of the SB 821 program is to deliver and expend SB 821 funds within the timeframe of the cycle.

### **FISCAL IMPACT:**

There is no fiscal impact to the current FY 2021/22 budget as the six projects recommended for award of funding will not be completed until FY 2022/23, at the earliest. If this item is approved by the Commission, the FY 2022/23 budget, and subsequent budgets, will include the appropriate budget to reimburse the project sponsors for their completed and invoiced projects.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2022/23+	Amount:	\$1,668,071
Source of Funds:	Local Transportation Funds-SB 821			Budget Adjustment:	N/A
GL/Project Accounting No.:	601 62 86106				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	01/11/2022

Attachment: SB 821 FY 2021/22 Call for Projects Funding Recommendation



*Approved by the Budget and Implementation Committee on January 24, 2022*

In Favor: 11 Abstain: 0 No: 0



RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
SB 821 BICYCLE AND PEDESTRIAN PROGRAM  
FY 2021 CALL FOR PROJECTS  
FUNDING RECOMMENDATIONS

**FY 21/22 SB 821 Call for Projects**

Agency	Project Name	Total Project Cost	Requested Amount	Match Amount	Recommended Allocation	Score
Eastvale	Bicycle and Pedestrian Safety Enhancement on Citrus St, Sumner Ave and River Rd	\$902,453	\$432,500	\$469,953	\$432,500	47
Jurupa Valley	Pacific Avenue Pedestrian and Bicycle Improvements	\$729,760	\$364,880	\$364,880	\$364,880	46
Norco	Master Plan	\$160,000	\$96,000	\$64,000	\$96,000	45
Riverside	Riverside Citywide Pedestrian Crossing Improvements	\$325,000	\$162,500	\$162,500	\$162,500	44
Wildomar	Bundy Canyon Road Sidewalk and Bike Lane Connectivity	\$762,649	\$381,325	\$381,325	\$381,325	44
Wildomar	Palomar Street Sidewalk, Trail and Bike Lane Connectivity	\$1,283,619	\$432,500	\$851,119	\$432,500	44
Rancho Mirage	Class II Bicycle Lane Infill & Roadway Realignment	\$724,506	\$362,253	\$362,253	\$0	44
Rancho Mirage	Bob Hope Drive Access Ramps Retrofit	\$874,000	\$432,500	\$441,500	\$432,500	44
Menifee	Lazy Creek Park	\$176,761	\$88,381	\$88,381	\$88,381	43
Moreno Valley	FY 21/22 ADA Access Ramps Improvements	\$860,000	\$430,000	\$430,000	\$430,000	43
Rancho Mirage	San Jacinto Drive Corridor Walkway & Sidewalk Improvements	\$909,208	\$432,500	\$476,708	\$432,500	42
Riverside County	Carver Tract - PHASE 2, Bataan St., Lingyan Ave. & Luzon St. (Indio)	\$890,679	\$432,500	\$568,591	\$432,500	41
Menifee	Sun City Community - Pedestrian Project	\$367,771	\$183,886	\$183,886	\$183,886	41
Lake Elsinore	SB 821 Chaney Street Bicycle Lanes Improvement Project	\$79,000	\$39,500	\$39,500	\$39,500	40
Palm Springs	Racquet Club/Via Miraleste HAWK Signal	\$337,000	\$168,500	\$168,500	\$168,500	40
Riverside	Bryan St. and Cochran Ave. Sidewalk Improvements	\$500,000	\$250,000	\$250,000	\$250,000	40
<b>ADDITIONAL ALLOCATION</b>						
Lake Elsinore	SB 821 Downtown Sidewalk and Bicycle Improvement Project	\$431,965	\$215,983	\$215,983	\$215,983	39
Menifee	Bell Mountain Middle School	\$446,210	\$223,105	\$223,105	\$223,105	39
Lake Elsinore	SB 821 Lakeshore-Machado Sidewalk Improvement Project	\$416,565	\$208,283	\$208,283	\$208,283	39
Corona	FY21/22 Sidewalk Gap Closure	\$509,000	\$432,500	\$76,500	\$432,500	39
Hemet	State Street Sidewalk Improvements	\$330,933	\$248,200	\$82,733	\$248,200	38
Desert Hot Springs	Wardman Park / 8th Street Sidewalk and ADA Improvement Project	\$455,000	\$340,000	\$115,000	\$340,000	38
<b>UNFUNDED</b>						
Palm Springs	Tamarisk Road Class III Bike Route	\$125,200	\$62,600	\$62,600		37
Jurupa Valley	Citywide Bicycle Facilities	\$267,354	\$213,854	\$53,500		37
La Quinta	Montero Sidewalk Improvements at Avenue 50 and Washington Street	\$284,000	\$142,000	\$142,000		37
Riverside County	Tolton Avenue Sidewalk Safety Improvement Project - Grant St. to Truman St (Corona)	\$385,967	\$273,667	\$112,300		37
Cathedral City	Ocotillo Park Sidewalk Gaps	\$465,000	\$280,000	\$185,000		36
Temecula	Pauba Road Sidewalk Improvements	\$726,657	\$432,500	\$294,157		36
Riverside County	Grand Avenue Sidewalk Safety Improvement Project - Alvarado Street to Withrow Elementary School	\$363,590	\$290,550	\$96,900		36
Corona	Downtown Corona Crosswalk Safety Enhancements	\$432,500	\$432,500	\$0		36
Corona	Bicycle Master Plan	\$432,500	\$432,500	\$0		36
San Jacinto	Lyon Avenue Pedestrian Improvements	\$638,000	\$319,000	\$319,000		36
Perris	Downtown Perris Class III Bike Lane Installation Project	\$119,133	\$105,000	\$14,133		35
Riverside	Riverside & UCR Cycling Safety Classes	\$30,000	\$30,000	\$0		32
Coachella	Frederick Street Pedestrian + Bicyclist Connectivity Project	\$554,347	\$388,043	\$166,304		25



# **AGENDA ITEM 9**



<b><i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i></b>	
<b>DATE:</b>	February 9, 2022
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects Committee Jillian Guizado, Planning and Programming Director
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	County of Riverside Funding Request for Design of the Interstate 10 Bypass Project

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

This item is for the Commission to:

- 1) Approve programming \$8 million of Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds for the County of Riverside's (County) Interstate 10 (I-10) Bypass Project;
- 2) Approve Agreement No. 22-72-048-00 between the Commission and County for the programming of \$6 million of TUMF Regional Arterial funding for the design phase and \$2 million for the right of way phase of the I-10 Bypass Project; and
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement.

**BACKGROUND INFORMATION:**

I-10, between Banning and Cabazon, carries more than 147,000 vehicles and trucks daily. Travelers on this stretch of I-10 are at the mercy of the freeway mainline operating as it is intended to.

The I-10 Bypass Project, a 3.5-mile new two-lane roadway, has been envisioned for at least two decades as a parallel facility to I-10. The project was first included in the Federal Transportation Improvement Plan in 2003 and is included in the 2008 Emergency Response I-10 Closure Plan. Unfortunately, time and again residents and travelers of the area are reminded of the importance of such a facility when something catastrophic happens on I-10. When it does, the California Highway Patrol or California Department of Transportation may shut down the freeway leaving its motorists stuck for hours on end. Many other areas of I-10 have parallel local facilities motorists can use to bypass a major incident. As seen in the project vicinity map (Attachment 2), there is no parallel facility to I-10 in the Banning/Cabazon area.

**DISCUSSION:**

The County completed the environmental phase of the project in December 2021. On December 6, 2021, the County submitted a request to the Commission for assistance funding the next phase of the I-10 Bypass Project in the amount of \$8 million (Attachment 1). Funding is needed to advance the project to the design and right of way phases from Fiscal Year (FY) 2022/23 through FY 25/26. As the design and right of way phases are being completed, funding for the construction phase will be sought. Construction is currently scheduled to begin spring 2026 and will take two-and-a-half years to complete. As shown on the project vicinity map (Attachment 2), the project is located south of I-10 between Hathaway Road in Banning and Apache Trail in Cabazon.

The I-10 Bypass is a project included in the Western Riverside Council of Governments' (WRCOG) TUMF Nexus Study on the backbone network. Before seeking funding from the Commission, the County proposed having the next phases of the project funded through WRCOG's TUMF Zone program. Because many developers in the Pass Zone, where the I-10 Bypass Project is located, opt for credit agreements instead of paying TUMF fees directly, the Pass Zone did not have sufficient funding to accommodate the County's request. WRCOG members of the Pass Zone prioritized available funding for two other priority projects.

The regional nature of the I-10 Bypass Project makes it an ideal candidate for TUMF Regional Arterial funding. As such, staff recommends programming \$8 million of TUMF Regional Arterial funds for the County's I-10 Bypass Project and authorizing Agreement No. 22-72-048-00 between the Commission and the County, to be executed by the Chair or Executive Director upon legal review.

**FISCAL IMPACT:**

The Fiscal Year 2022/23 budget has not been prepared yet. If this item is approved by the Commission, the FY 2022/23 budget, and subsequent budgets, will include \$8 million for design and right of way cost reimbursements to the County.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2022/23 FY 2023/24+	Amount:	\$2,500,000 \$5,500,000
Source of Funds:	TUMF Regional Arterials			Budget Adjustment:	N/A
GL/Project Accounting No.:	005137 81101 00000 0000 210 72 81101 005137 81402 00000 0000 210 72 81402				
Fiscal Procedures Approved:	<i>Matt Wallace</i>			Date:	01/12/2022

**Attachments:**

- 1) County Request Letter dated December 6, 2021



- 2) Project Vicinity Map
- 3) Draft Agreement No. 22-72-048-00

*Approved by the Western Riverside County Programs and Projects Committee on  
January 24, 2022*

In Favor: 10 Abstain: 0 No: 0





**Mark Lancaster**  
Director of Transportation

# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY

*Mojahed Salama, P.E.*  
*Deputy for Transportation/Capital Projects*  
*Richard Lantis, P.L.S.*  
*Deputy for Transportation/Planning and  
Development*

### Transportation Department

December 6, 2021

Anne Mayer, Executive Director  
Riverside County Transportation Commission  
4080 Lemon St., 3<sup>rd</sup> floor  
Riverside, CA 92501

**Subject:** I-10 Bypass, Hargrave Street to Apache Trail, TUMF Regional Arterial Project  
Request to Program Engineering and Right-of-Way Funding

Dear Anne,

The County of Riverside (County) is requesting a total of \$8 million be programmed for the I-10 Bypass TUMF Regional Arterial Project (Project); Engineering (PS&E) \$6 million and Right-of-Way (R/W) \$2 million.

The Project is currently listed on the TUMF Regional System of Highways and Arterials (RSHA) Backbone (Regional) network and is a major component of the I-10 Emergency Action Plan. The Project has County-wide significance, as it provides an alternative to I-10 in the event of disruptions to the freeway through the Pass Area, keeping open a vitally critical international goods movement corridor link between Western Riverside County and the Coachella Valley.

The County proposes to construct a new two-lane roadway extending approximately 3.5 miles from the intersection of Hathaway Street and Westward Avenue in the City of Banning east to the intersection of Bonita Ave and Apache Trail in the unincorporated community of Cabazon. The Project includes Planning (PA&ED), Engineering (PS&E), Right-of Way (R/W), and Construction (CON) phases. PA&ED will be completed in December 2021. Below is the Project schedule.

Phase	Estimated Start Date	Estimated Completion Date
PA&ED	March 2012	December 2021
PS&E	March 2022	September 2025
RIGHT OF WAY	June 2022	June 2025
CONSTRUCTION	March 2026	September 2028

4080 Lemon Street, 8<sup>th</sup> Floor · Riverside, CA 92501 · (951) 955-6740  
P.O. Box 1090 · Riverside, CA 92502-1090 · FAX (951) 955-3198

If you have any questions, please contact me at 951-955-6740 or by email at mlancaster@rivco.org. Thank you for your consideration of this request.

Sincerely,



Mark Lancaster  
Director of Transportation

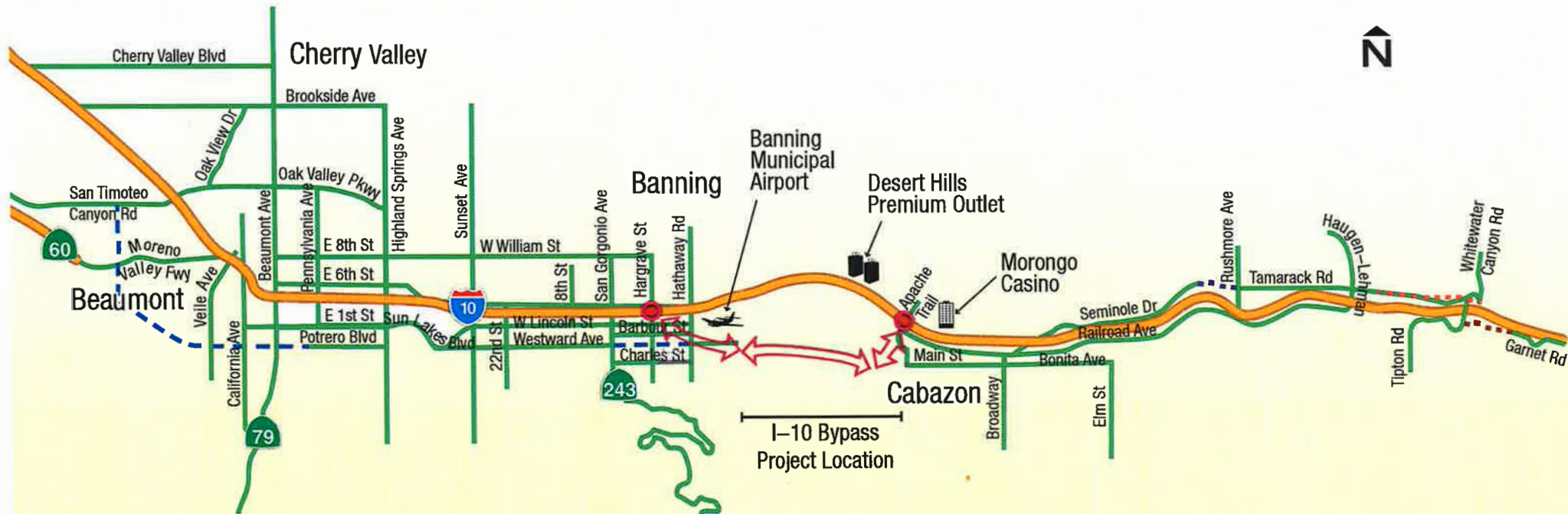
ML: am  
attachment

Cc: file B7-0776

Jillian Guizado, RCTC  
Alvin Medina, RCTD  
Mary Zambon, RCTD  
Khalid Nasim, RCTD

## I-10 Bypass - Banning to Cabazon

## Project Vicinity

**LEGEND:**

- Existing Roads
- ↔ I-10 Bypass

**Planned Projects (Not Part of Bypass Project):**

- Potrero Bypass
- ... Seminole Extension
- ... Tamarack Extension
- ... Garnet Extension



## Agreement No. 22-72-048-00

**AGREEMENT FOR THE FUNDING OF  
TUMF REGIONAL ARTERIAL IMPROVEMENTS  
WITH THE COUNTY OF RIVERSIDE  
For  
INTERSTATE 10 BYPASS PROJECT**

1. Parties and Date.

1.1 This Agreement is executed and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (“RCTC”) and the COUNTY OF RIVERSIDE (“County”). RCTC and County are sometimes collectively referred to herein as the “Parties”.

2. Recitals.

2.1 RCTC is a county transportation commission created and existing pursuant to California Public Utilities Code Sections 130053 and 130053.5.

2.2 On November 5, 2002 the voters of Riverside County approved Measure A authorizing the collection of a one-half percent (1/2%) retail transactions and use tax to fund transportation programs and improvements within the County of Riverside, and adopting the Riverside County Transportation Improvement Plan (the “Plan”).

2.3 The Plan requires cities and the County in western Riverside County to participate in a Transportation Uniform Mitigation Fee (TUMF) Program to be eligible to receive Local Streets and Roads funds generated by Measure A.

2.4 The Western Riverside Council of Governments (WRCOG) has been selected to administer the overall TUMF Program pursuant to applicable state laws including Government Code Sections 66000 *et seq.* and has entered into a Memorandum of Understanding (MOU) with RCTC dated July 10, 2003, and revised on September 10, 2008 regarding the allocation of the TUMF Regional Funds to be made available to RCTC for programming.

2.5 RCTC has adopted a TUMF Regional Arterial Program, which is updated from time to time, and identifies the projects and the maximum funding commitments awarded for specific phases of work.

2.6 RCTC intends, by this Agreement, to distribute TUMF Regional Funds, subject to the conditions provided herein, and to participate in the joint development of the Project, as defined herein.

### 3. Terms.

3.1 Description of Work. This Agreement is intended to distribute TUMF Regional Funds to the County for the Interstate 10 Bypass Project (“the Work”). The Work, including a timetable and a detailed scope of work, is more fully described in Exhibit “A” attached hereto and, pursuant to Section 3.15 below, is subject to modification as requested by the County and approved by RCTC. The Work shall be consistent with one or more of the defined phases detailed herein as follows:

- 1) PS&E – Plans, Specifications and Estimates
- 2) R/W – Right of Way Acquisition and Utility Relocation

The Work phases funded pursuant to this Agreement shall be consistent with the County’s Request Letter submitted to RCTC (“the Project”). The Project is more fully described in Exhibit “A” and depicted in Exhibit “B” attached hereto. It is understood and agreed that the County shall expend TUMF Regional Funds only as set forth in this Agreement and only for the Work. To this end, any use of funds provided pursuant to this Agreement shall be subject to the review and approval of RCTC.

3.2 RCTC Funding Amount. RCTC hereby agrees to distribute to the County, on the terms and conditions set forth herein, a sum not to exceed EIGHT MILLION DOLLARS (\$8,000,000), to be used exclusively for reimbursing the County for eligible Work expenses as described herein (“Funding Amount”). The County acknowledges and agrees that the Funding Amount may be less than the actual cost of the Work, and that RCTC shall not contribute TUMF Regional Funds in excess of the maximum TUMF share for the phase/project identified in the current TUMF Nexus Study.

3.2.1 Eligible Work Costs. The total Work costs (“Total Work Cost”) may include the following items, provided that such items are included in the scope of work attached as Exhibit “A”: (1) County and/or consultant costs associated with direct Work coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Work; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the County, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by County or consultants; (7) County costs associated with bidding, advertising and awarding of the Work contracts; (8) construction costs, including change orders to construction contract approved by the County; and (9) construction management, field inspection and material testing costs.

3.2.1.1 Right-of-Way Acquisition. The Parties acknowledge that in order to protect the County’s ability to deliver the Project in a timely cost effective manner, the County may purchase parcels of property in advance of the completion of the Project’s final design (PS&E). The Parties acknowledge that acquired parcels or remnants purchased in advance of final design may not ultimately be required for the Project. Upon completion of the Project’s final design, the County shall provide RCTC with a detailed list of all parcels purchased by the County



for which it received TUMF Regional Funds pursuant to this Agreement. The County shall identify any parcels or remnants thereof which were acquired using TUMF Regional Funds and are not required for construction of the Project. A preliminary list shall be submitted to the RCTC 30 days before the issuance of bid documents for construction of the Project and a final list shall be submitted to the RCTC no later than 30 days following the recording of the Certificate of Completion for the Project.

3.2.1.2 Valuation and Repayment of Any Property Remnants. Upon receipt of the County's final list, RCTC shall meet with the County for the purpose of identifying any parcel or reasonably usable remnant of a parcel for which TUMF Regional Funds were expended that may reasonably be developed for other use by the County and/or sold. The Parties shall confer in good faith to agree upon the disposition of such parcels and remnant parcels and their fair market value as of a date agreed to by the parties, but in no event later than the date of completion of the Project. "Fair Market Value" shall have the definition set forth in Code of Civil Procedure Section 1263.320 and "remnant" shall have the definition set forth in Code of Civil Procedure Section 1240.410. Nothing herein shall preclude the County and RCTC from beginning the meetings earlier in the event both parties agree that the parcel or remnant will not be used for the Project.

3.2.1.3 Reimbursement for Unused Parcels. Following recordation of the Certificate of Completion for the Project, the County shall be responsible for promptly reimbursing RCTC for any TUMF Regional Funds which were used to acquire parcels which are completely unused in the Project. If County funds other than TUMF were used to purchase the Parcel, those local funds shall be considered in determining the reimbursement amount.

3.2.1.4 Appeal to RCTC. In the event of a disagreement between the Parties regarding the reimbursement of TUMF Regional Funds under this section 3.2.1, either party may appeal, in writing, to the RCTC Board. The RCTC Board's determination regarding excess right-of-way and value pursuant to this section shall be final.

3.2.2 Ineligible Work Costs. The Total Work Cost shall not include the following items which shall be borne solely by the County without reimbursement: (1) County administrative costs; (2) County costs attributed to the preparation of invoices, billings and payments; (3) any County fees attributed to the processing of the Work; and (4) expenses for items of work not included within the scope of work in Exhibit "A".

3.2.3 Increases in Work Funding. The Funding Amount may, in RCTC's sole discretion, be augmented with additional TUMF Regional Funds if the Project is eligible to receive additional TUMF Regional Funds under the TUMF Nexus Study. Any such increase in the Funding Amount must be approved in writing by RCTC's Executive Director. In no case shall the amount of TUMF Regional Funds allocated to the County exceed the then-current maximum eligible TUMF share for the Work. No such increased funding shall be expended to pay for any Work already completed. For purposes of this Agreement, the Work or any portion thereof shall be deemed complete upon its acceptance by RCTC's Executive Director.

3.2.4 Cost Savings. In the event that bids for the Work are lower than anticipated, or there are cost savings for any other reason, the Funding Amount shall be reduced dollar for

dollar in an amount proportional to the savings on the Work. The County shall inform RCTC of any cost savings.

3.2.5 No Funding for Temporary Improvements. Only segments or components of the Work that are intended to form part of or be integrated into the Work may be funded by TUMF Regional Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, or drainage facilities, shall be funded with TUMF Regional Funds except as needed for staged construction of the Work.

3.3 County's Funding Obligation to Complete the Work. In the event that the TUMF Regional Funds allocated to the Work represent less than the total cost of the Work, the County shall be responsible for identifying such additional funds as may be required to complete the Work as described in Exhibit "A".

3.3.1 County's Obligation to Repay TUMF Regional Funds to RCTC. In the event that: (i) the County, for any reason, determines not to proceed with or complete the Work; or (ii) the Work is not timely completed, subject to any extension of time granted by RCTC pursuant to Section 3.15; the County agrees that any TUMF Regional Funds that were distributed to the County for the Work shall be repaid in full to RCTC. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism which may include, but is not limited to, withholding of Measure A Local Streets and Roads revenues. The County acknowledges and agrees that RCTC shall have the right to withhold any Measure A Local Streets and Roads revenues due the County, in an amount not to exceed the total of the funds distributed to the County, and/or initiate legal action to compel repayment, if the County fails to repay RCTC within a reasonable time period not to exceed 180 days from receipt of written notification from RCTC that repayment is required.

~~3.3.2 County's Local Match Contribution. The County shall utilize the [\_\_INSERT DOLLAR AMOUNT\_\_] of identified funding toward the Work, as shown in Exhibit "A". These other funds, for the applicable phase, shall be drawn down in full before TUMF Regional Funds are invoiced.~~

3.4 Work Responsibilities of the County. The County shall be responsible for the following aspects of the Work, in compliance with state and federal law provided that such items are included in the Project scope of work attached as Exhibit "A": (i) development and approval of plans, specifications and engineer's estimate (PS&E), environmental clearance, right of way acquisition, and obtaining all permits required by impacted agencies prior to commencement of the Work ; (ii) all aspects of bidding, awarding, and administration of the contracts for the Work; (iii) all construction management of any construction activities undertaken in connection with the Work, including survey and material testing; and (iv) development of a budget for the Work prior to award of any contract for the Work, taking into consideration available funding, including TUMF Regional Funds.

3.5 Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (i) the date RCTC formally accepts the Work as complete, pursuant to Section 3.2.3; (ii) termination of this Agreement pursuant to Section 3.9; or (iii) the County has fully satisfied its obligations under this Agreement, (Note: If this Agreement is for Phase I work

do not include the following text) “including full repayment of TUMF Regional Funds to RCTC as provided herein”. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

3.6 Representatives of the Parties. RCTC’s Executive Director, or his or her designee, shall serve as RCTC’s representative and shall have the authority to act on behalf of RCTC for all purposes under this Agreement. The County hereby designates Mark Lancaster, Director of Transportation, or his or her designee, as the County’s representative to RCTC. The County’s representative shall have the authority to act on behalf of the County for all purposes under this Agreement and shall coordinate all activities of the Work under the County’s responsibility. The County shall work closely and cooperate fully with RCTC’s representative and any other agencies which may have jurisdiction over or an interest in the Work.

3.7 Expenditure of Funds by County Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the County from expending funds on the Work prior to the execution of the Agreement, or from being reimbursed by RCTC for such expenditures. However, the County understands and acknowledges that any expenditure of funds on the Work prior to the execution of the Agreement is made at the County’s sole risk, and that some expenditures by the County may not be eligible for reimbursement under this Agreement.

3.8 Review of Services. The County shall allow RCTC’s Representative to inspect or review the progress of the Work at any reasonable time in order to determine whether the terms of this Agreement are being met.

3.9 Termination. This Agreement may be terminated for cause or convenience as further specified below.

3.9.1 Termination for Convenience.

3.9.1.1 Notice. Either RCTC or the County may, by written notice to the other party, terminate this Agreement, in whole or in part, for convenience by giving thirty (30) days' written notice to the other party of such termination and specifying the effective date thereof.

3.9.1.2 Effect of Termination for Convenience. In the event that the County terminates this Agreement for convenience, the County shall, within 180 days, repay to RCTC in full all TUMF Regional Funds provided to the County under this Agreement. In the event that RCTC terminates this Agreement for convenience, RCTC shall, within 90 days, distribute to the County TUMF Regional Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the County regarding the Work at the time of the notice of termination; provided, however, that RCTC shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating party of the amounts due it under this Section 3.9.1.2.

### 3.9.2 Termination for Cause.

3.9.2.1 Notice. Either RCTC or the County may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30 day period to cure any alleged breach. During the 30 day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

3.9.2.2 Effect of Termination for Cause. In the event that the County terminates this Agreement in response to RCTC's uncured material breach hereof, RCTC shall, within 90 days, distribute to the County TUMF Regional Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the County regarding the Work at the time of the notice of termination. In the event that RCTC terminates this Agreement in response to the County's uncured material breach hereof, the County shall, within 180 days, repay to RCTC in full all TUMF Regional Funds provided to the County under this Agreement. Notwithstanding termination of this Agreement by RCTC pursuant to this Section 3.9.2.2, RCTC shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the terminating party of the amounts due it under this Section 3.9.2.2.

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

3.10 Prevailing Wages. The County and any other person or entity hired to perform services on the Work are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The County shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Work. The County shall defend, indemnify, and hold harmless RCTC, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys' fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

3.11 Progress Reports. RCTC may request the County to provide RCTC with progress reports concerning the status of the Work.

### 3.12 Indemnification.

3.12.1 County Responsibilities. In addition to the indemnification required under Section 3.10, the County agrees to indemnify and hold harmless RCTC, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability ("Claims") arising from or connected with all activities governed by this Agreement including all design and construction activities, due to acts, errors or omissions or willful misconduct of the County or its contractors. The County will reimburse RCTC for any expenditures, including reasonable attorneys' fees, incurred by RCTC, in defending against Claims ultimately determined to be due to acts, errors or omissions or willful misconduct of the County or its contractors. The indemnity herein shall not apply to Claims caused by the sole negligence of RCTC.

3.12.2 Effect of Acceptance. The County shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Work. RCTC's review, acceptance or funding of any services performed by the County or any other person or entity under this agreement shall not be construed to operate as a waiver of any rights RCTC may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the County shall be and remain liable to RCTC, in accordance with applicable law, for all damages to RCTC caused by the County's performance of this Agreement or supervision of any services provided to complete the Work.

3.13 Insurance. The County shall require, at a minimum, all persons or entities hired to perform the Work to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the County and RCTC. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Work, whichever occurs last.

3.13.1 Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Work or be no less than two times the occurrence limit. Such insurance shall:

3.13.1.1 Name RCTC and County, and their respective officials, officers, employees, agents, and consultants as additional insureds with respect to performance of the services on the Work and shall contain no special limitations on the scope of coverage or the protection afforded to these additional insured;

3.13.1.2 Be primary with respect to any insurance or self-insurance programs covering RCTC and County, and/or their respective officials, officers, employees, agents, and consultants; and

3.13.1.3 Contain standard separation of insured provisions.

3.13.2 Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

3.13.3 Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00 Professional liability insurance shall only be required of design or engineering professionals.

3.13.4 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

### 3.14 Procedures for Distribution of TUMF Regional Funds to County.

3.14.1 Initial Payment by the County. The County shall be responsible for initial payment of all the Work costs as they are incurred. Following payment of such Work costs, and after all other funding sources identified in Exhibit “A” have been expended, for the applicable phase, the County shall submit invoices to RCTC requesting reimbursement of eligible Work costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the County, and documents evidencing the County’s payment of the invoices or demands for payment. The County shall submit invoices not more often than monthly and not less often than quarterly.

3.14.2 Review and Reimbursement by RCTC. Upon receipt of an invoice from the County, RCTC may request additional documentation or explanation of the Work costs for which reimbursement is sought. Undisputed amounts shall be paid by RCTC to the County within thirty (30) days. In the event that RCTC disputes the eligibility of the County for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the County may appeal RCTC’s decision as to the eligibility of one or more invoices to RCTC’s Executive Director. The County may appeal the decision of the Executive Director to the full RCTC Board, the decision of which shall be final. Additional details concerning the procedure for the County’s submittal of invoices to RCTC and RCTC’s consideration and payment of submitted invoices are set forth in Exhibit “C”, attached hereto.

3.14.3 Funding Amount/Adjustment. If a post Work audit or review indicates that RCTC has provided reimbursement to the County in an amount in excess of the maximum eligible TUMF share of the Work, as determined by the TUMF Nexus Study, or has provided reimbursement of ineligible Work costs, the County shall reimburse RCTC for the excess or ineligible payments within 30 days of notification by RCTC.

3.15 Work Amendments. Changes to the characteristics of the Work, including the deadline for Work completion, and any responsibilities of the County or RCTC may be requested in writing by the County and are subject to the approval of RCTC’s Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Work shall be approved in the sole discretion of RCTC’s Representative. Nothing in this Agreement shall be construed to require or allow completion of the Work without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; “CEQA”), and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*) as applicable, but the necessity of compliance with CEQA, and NEPA as applicable, shall not justify, excuse, or permit a delay in completion of the Work.

3.16 Conflict of Interest. For the term of this Agreement, no member, officer or employee of the County or RCTC, during the term of his or her service with the County or RCTC, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.17 Limited Scope of Duties. RCTC’s and the County’s duties and obligations under this Agreement are limited to those described herein. RCTC has no obligation with respect to the

safety of any Work performed at a job site. In addition, RCTC shall not be liable for any action of County or its contractors relating to the condemnation of property undertaken by County or construction related to the Work.

3.18 Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Work under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least three (3) years following termination of this Agreement, and they shall have access to such information during the three-year period for the purposes of examination or audit.

3.19 Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

3.21 Attorneys' Fees. If either party commences an action against the other party 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 costs of suit.

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

3.23 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.

3.24 Notification. All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**COUNTY OF RIVERSIDE**

Transportation Department  
4080 Lemon Street, 9<sup>th</sup> Floor  
Riverside, CA 92501

ATTN: Director of Transportation

**RCTC**

Riverside County Transportation Commission  
4080 Lemon, 3<sup>rd</sup> Floor  
Mailing address: P.O. Box 12008  
Riverside, CA 92501

ATTN: Executive Director

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, 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.

3.25 Conflicting Provisions. In the event that provisions of any attached appendices or 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 Work.

3.26 Contract Amendment. In the event that the Parties determine that the provisions of this Agreement should be altered, the Parties may execute a contract amendment to add any provision to this Agreement, or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.

3.27 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any previous agreements or understandings.

3.28 No Waiver. Failure of RCTC 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.

3.29 Validity of Agreement. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

3.30 Independent Contractors. Any person or entities retained by the County or any contractor shall be retained on an independent contractor basis and shall not be employees of RCTC. Any personnel performing services on the Work shall at all times be under the exclusive direction and control of the County or contractor, whichever is applicable. The County or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Work and as required by law. The County or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

3.31 Survival. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

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



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

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

**[Signatures on following page]**

SIGNATURE PAGE  
TO  
AGREEMENT FOR THE FUNDING OF  
TUMF REGIONAL ARTERIAL IMPROVEMENTS

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**COUNTY OF RIVERSIDE**

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

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

ATTEST:

By: \_\_\_\_\_  
County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
County Attorney

## EXHIBIT “A”

### SCOPE OF WORK, FUNDING AND TIMETABLE

**PROJECT OVERVIEW:** The proposed Project would construct two (2) lanes of new roadway from Hathaway Street in City of Banning to Apache Trail in the unincorporated community of Cabazon. A portion of this Project will be constructed on the Morongo Indian Reservation. The proposed Project would provide an alternate roadway to Interstate 10 that would connect these two communities.

**SCOPE OF WORK:** The Phases of Work to be performed under this Agreement include:

- PS&E – Design (Plans, Specifications & Estimates for Alternative 12)
- R/W – Right of way for Alternative 12

This project consists of preparing the PS&E package for the construction of the Interstate 10 Bypass Project (Project).

#### FUNDING:

Phase	TUMF	Federal	Local	Total
PS&E	\$6,000,000	\$	\$	\$6,000,000
RIGHT OF WAY	\$2,000,000	\$	\$	\$2,000,000
TOTAL	\$8,000,000	\$	\$	\$8,000,000

#### TIMETABLE:

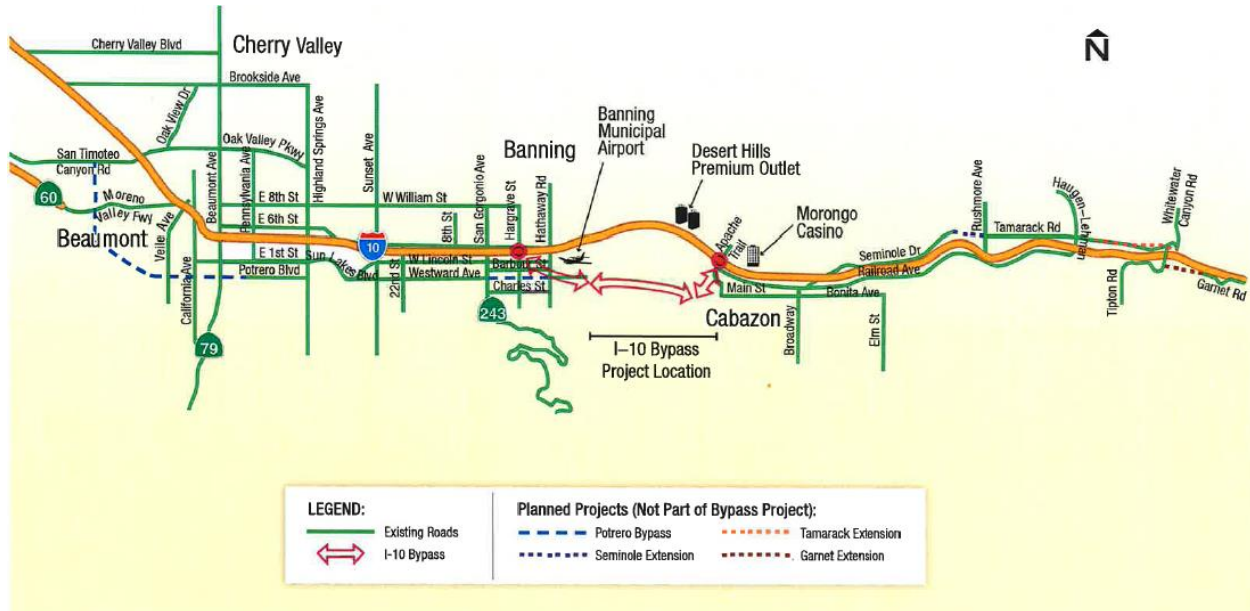
Phase	Start Date	End Date	Comments
Design (PS&E)	7/2022	7/2025	750 Working Days
Right of Way (R/W)	7/2022	7/2025	750 Working Days

EXHIBIT A

17336.02600\34700205.1

## EXHIBIT “B”

### PROJECT VICINITY MAP



## EXHIBIT B

17336.02600\34700205.1

## EXHIBIT “C”

### PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. RCTC recommends that the County incorporate Exhibit “C-1” into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the County and ultimately to RCTC for reimbursement of County contractor costs.
2. Each month the County shall submit an invoice for eligible Work costs incurred during the preceding month. The original invoice shall be submitted to RCTC’s Executive Director with a copy to RCTC’s Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit “C-2”.
3. Each invoice shall include documentation from each contractor used by the County for the Work, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or consultant for the month and for the entire Work to date. A sample of an acceptable progress report is attached as Exhibits “C-4”. All documentation from the County’s contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit “C-3”.
4. If the County is seeking reimbursement for direct expenses incurred by County staff for eligible Work costs, the County shall detail the same level of information for its labor and any expenses in the same level of detail as required of contractors pursuant to Exhibit “C” and its attachments.
5. Charges for each task and milestone listed in Exhibit “A” shall be listed separately in the invoice.
6. Each invoice shall include a certification signed by the County Representative or his or her designee which reads as follows:

“I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the consultants or contractors listed.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Invoice No. \_\_\_\_\_

EXHIBIT C

7. RCTC will pay the County within 30 days after receipt by RCTC of an invoice. If RCTC disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute, but the uncontested balance will be paid.
8. The final payment under this Agreement will be made only after: (i) the County has obtained a Release and Certificate of Final Payment from each contractor or consultant used on the Work; (ii) the County has executed a Release and Certificate of Final Payment; and (iii) the County has provided copies of each such Release to RCTC.

DRAFT

EXHIBIT C

**EXHIBIT “C-1”**  
**ELEMENTS OF COMPENSATION**

For the satisfactory performance and completion of the Work under this Agreement, County will pay the Consultant compensation as set forth herein. The total compensation for this service shall not exceed (\_\_\_\_INSERT WRITTEN DOLLAR AMOUNT\_\_\_\_) (\$\_\_\_\_INSERT NUMERICAL DOLLAR AMOUNT\_\_\_\_) without written approval of County’s Engineer (“Total Compensation”).

**1. ELEMENTS OF COMPENSATION.**

Compensation for the Work will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

**1.1 DIRECT LABOR COSTS.**

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

**1.1.1 DIRECT SALARY COSTS**

Direct Salary Costs are the base salaries and wages actually paid to the Consultant's personnel directly engaged in performance of the Work under the Agreement. (The range of hourly rates paid to the Consultant's personnel appears in Section 2 below.)

**1.1.2 MULTIPLIER**

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is \_\_\_\_\_, and is the sum of the following components:

1.1.2.1 Direct Salary Costs \_\_\_\_\_

1.1.2.2 Payroll Additives \_\_\_\_\_

*The Decimal Ratio of Payroll Additives to Direct Salary Costs.* Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

### 1.1.2.3 Overhead Costs

*The Decimal ratio of Allowable Overhead Costs to the Consultant Firm's Total Direct Salary Costs.* Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier  
(sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)

## 1.2 **FIXED FEE.**

- 1.2.1 A Fixed Fee of \_\_\_\_\_ shall be paid to Consultant for Consultant's complete and satisfactory performance of this Agreement and all Services required. The Fixed Fee shall be paid in monthly installments based upon the percentage of the Services completed at the end of each billing period, as determined in the sole discretion of the County. Consultant shall not be entitled to and shall forfeit any portion of the Fixed Fee not earned as provided herein.
- 1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each month, and shall be included on each monthly invoice.

## 1.3 **ADDITIONAL DIRECT COSTS.**

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
	[ <u>insert charges</u> ]
Per Diem	\$ /day
Car mileage	\$ /mile
Travel	\$ /trip
Computer Charges	\$ /hour
Photocopies	\$ /copy
Blueline	\$ /sheet
LD Telephone	\$ /call
Fax	\$ /sheet
Photographs	\$ /sheet

Travel by air and travel in excess of 100 miles from the Consultant's office nearest to County's office must have County's prior written approval to be reimbursed under this Agreement.

Exhibit "C-1"



## 2. DIRECT SALARY RATES

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- 2.2 Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Consultant's adjustments to individual compensation. The Consultant shall notify County in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

<u>POSITION OR CLASSIFICATION</u>	<u>RANGE OF HOURLY RATES</u>
-----------------------------------	------------------------------

[sample]

Principal	\$ .00 - \$ .00/hour
Project Manager	\$ .00 - \$ .00/hour
Sr. Engineer/Planner	\$ .00 - \$ .00/hour
Project Engineer/Planner	\$ .00 - \$ .00/hour
Assoc. Engineer/Planner	\$ .00 - \$ .00/hour
Technician	\$ .00 - \$ .00/hour
Drafter/CADD Operator	\$ .00 - \$ .00/hour
Word Processor	\$ .00 - \$ .00/hour

- 2.3 The above rates are for the Consultant only. All rates for subconsultants to the Consultant will be in accordance with the Consultant's cost proposal.

## 3. INVOICING.

- 3.1 Each month the Consultant shall submit an invoice for Work performed during the preceding month. The original invoice shall be submitted to County's Engineer with two (2) copies to County's Project Coordinator.
- 3.2 Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by County's Representative.

Exhibit "C-1"

- 3.3 Base Work and Extra Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Work, shall be listed separately. The charges for each individual assigned by the Consultant under this Agreement shall be listed separately on an attachment to the invoice.
- 3.4 A charge of \$500 or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to County such as invoices, telephone logs, etc.
- 3.5 Each copy of each invoice shall be accompanied by a Monthly Progress Report and spreadsheets showing hours expended by task for each month and total project to date.
- 3.6 Each invoice shall indicate payments to DBE subconsultants or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 Each invoice shall include a certification signed by the Consultant's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Invoice No. \_\_\_\_\_

#### **4. PAYMENT**

- 4.1 County shall pay the Consultant within four to six weeks after receipt by County of an original invoice. Should County contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.

The final payment for Work under this Agreement will be made only after the Consultant has executed a Release and Certificate of Final Payment.

**EXHIBIT "C-2"**  
**Sample Cover Letter to RCTC**

Date

Ms. Anne Mayer  
Executive Director  
Riverside County Transportation Commission  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92501  
ATTN: Accounts Payable

Re: Project Title - Invoice #\_\_

Enclosed for your review and payment approval is the County of \_\_\_\_\_'s invoice for professional and technical services that was rendered by our contractors in connection with the \_\_\_\_\_ Agreement No. \_\_\_\_\_ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

<b>Amount due this Invoice:</b>	<b>\$0,000,000.00</b> =====
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I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors listed.

By: \_\_\_\_\_  
Name  
Title

cc:

Exhibit "C-2"

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## EXHIBIT "C-3"

### Sample Letter from Contractor to City/County

Month/Date/Year

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Accounts Payable  
# \_\_\_\_\_

Invoice

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For **[type of services]** rendered by **[contractor name]** in connection with **[name of project]** This is per agreement No. XX-XX-XXX effective Month/Date/Year.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Base Contract Amount: \$000,000.00

Authorized Extra Work (if Applicable) \$000,000.00

TOTAL AUTHORIZED CONTRACT AMOUNT: \$000,000.00

Total Invoice to Date: \$000,000.00

Total Previously Billed: \$000,000.00

Balance Remaining: \$000,000.00

Amount Due this Invoice: \$000,000.00

=====

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed,

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

Name

Title

Exhibit "C-3"

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**EXHIBIT C-4**  
**Sample Progress Report**

REPORTING PERIOD:      Month/Date/Year to Month/Date/Year  
PROGRESS REPORT:      #1

A. Activities and Work Completed during Current Work Periods

TASK 01 – 100% PS&E SUBMITTAL

1.      Responded to Segment 1 comments from Department of Transportation
2.      Completed and submitted Segment 1 final PS&E

B. Current/Potential Problems Encountered & Corrective Action

Problems	Corrective Action
None	None

C. Work Planned Next Period

TASK 01 – 100% PS&E SUBMITTAL

1. Completing and to submit Traffic Signal and Electrical Design plans
2. Responding to review comments

Exhibit “C-4”

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