



MEETING AGENDA

Western Riverside County Programs and Projects Committee

Time: 1:30 p.m.
Date: May 22, 2023
Location: BOARD ROOM - County of Riverside Administration Center
4080 Lemon St, First Floor, Riverside, CA 92501
TELECONFERENCE SITE
LARGE CONFERENCE ROOM – French Valley Airport
37600 Sky Canyon Drive, Murrieta, CA 92563

COMMITTEE MEMBERS

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

STAFF

Anne Mayer, Executive Director
Aaron Hake, Deputy Executive Director

AREAS OF RESPONSIBILITY

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

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

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

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AGENDA*

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

1:30 p.m.

Monday, May 22, 2023

BOARD ROOM

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

TELECONFERENCE SITE

LARGE CONFERENCE ROOM

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

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

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

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

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

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

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

6A. **APPROVAL OF MINUTES – APRIL 24, 2023**

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7. **2023 WESTERN RIVERSIDE COUNTY REGIONAL ARTERIALS CALL FOR PROJECTS FUNDING RECOMMENDATIONS**

Page 11

Overview

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

- 1) Approve the funding recommendations in Attachment 1 for 2009 Western Riverside County Measure A Regional Arterial (MARA) and Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds;
- 2) Direct staff to prepare and execute funding agreements with the project sponsors to outline the project schedule and local funding commitments; and
- 3) Authorize the Executive Director to execute the funding agreements with the project sponsors, pursuant to legal counsel review.

8. AGREEMENTS FOR ON-CALL CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING, AND CONSTRUCTION SURVEYING SERVICES FOR THE CONSTRUCTION OF COMMUTER RAIL STATION CAPITAL IMPROVEMENT PROJECTS

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Overview

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

- 1) Award the following agreements to provide on-call construction management services, materials testing, and construction surveying services (collectively, CM services) for the construction of commuter rail station capital improvement projects for a three-year term, and one, two-year option to extend the agreements, in an amount not to exceed an aggregate value of \$8 million;
 - a. Agreement No. 23-33-047-00 to AECOM Technical Services, Inc.;
 - b. Agreement No. 23-33-069-00 to Jacobs Project Management Co.;
 - c. Agreement No. 23-33-070-00 to Kleinfelder Construction Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

9. FISCAL YEAR 2022/23 LOW CARBON TRANSIT OPERATIONS PROGRAM RESOLUTION

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Overview

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

- 1) Adopt Resolution No. 23-003 *“Authorization for the Execution of the Certifications and Assurances and Authorized Agent Forms for the Low Carbon Transit Operations Program for the Riverside County Free Rail Pass Program in the amount of \$1,007,009”*.

10. EXECUTIVE DIRECTOR REPORT

11. COMMISSIONER COMMENTS

Overview

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

12. ADJOURNMENT

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, June 26, 2023**.

AGENDA ITEM 6A

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, April 24, 2023

MINUTES

1. CALL TO ORDER

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

2. ROLL CALL

Members/Alternates Present

Brian Berkson
Chuck Conder
Berwin Hanna
Linda Krupa
Clint Lorimore
Joseph Morabito
Wes Speake
Karen Spiegel
Michael Vargas
Bill Zimmerman*

Members Absent

Sheri Flynn
Kevin Jeffries

*Joined the meeting at the French Valley teleconference location.

3. PLEDGE OF ALLEGIANCE

Commissioner Berwin Hanna led the Western Riverside County Programs and Projects Committee in a flag salute.

4. PUBLIC COMMENTS

Arnold San Miguel, Southern California Association of Governments (SCAG) announced SCAG is receiving public comments on the development of the SCAG Regional Transportation Plan Sustainable Communities Strategy (RTP SCS). This is done every four years, there are workshops being held, and there is a survey out for primarily the elected officials. A popup event being held on May 5 from 5:00 p.m. to 8:00 p.m. at the Temecula Rod Run at Temecula Community Services.

5. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

M/S/C (Speake/Spiegel) to approve the minutes as submitted.

6. APPROVAL OF MINUTES – MARCH 27, 2023

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

Sri Srirajan, Senior Capital Projects Manager, noted that Michelle Cooper and Angie Shana from Parsons are available if there are any questions. He then presented the State Route 91 Eastbound Corridor Operations Project update, highlighting the following:

- Background/project location
 - 91 Corridor Improvement Project
 - Initial phase/future phases
 - 91 Implementation Plan
 - Alternative Analysis study
- Project limits and scope
 - Adding a sixth general purpose (GP) lane from the 241/91 eastbound (EB) GP connector 71/91 connector and adding an auxiliary lane and second lane to the EB 91 Green River Road off-ramp
 - Total lane length – 3.2 miles
 - Lead agency for National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) – Caltrans
 - Traffic modeling and impacts of project alternatives – RCTC consultant Stantec
- Procurement process
- Pre-award audit

Vice Chair Wes Speake thanked Sri Srirajan for the presentation as he is excited to see this project move forward. He asked about those changes to Green River Road as currently the EB off-ramp is a single lane and if part of the project go to the two lanes at Green River Road.

Sri Srirajan replied that is still an option and as he mentioned, there will be traffic impact modeling and the impact from the project will be studied so there will be more modifications to the design.

In response to Vice Chair Speake's clarification if Green River Road is the extent of the changes, Sri Srirajan replied that the traffic studies from the project impact for any local streets and that includes Green River Road and Foothill Parkway.

Commissioner Karen Spiegel concurred with Vice Chair Speake as this is a strongly needed project. She made the motion to approve staff recommendation but wanted to make sure that this is being forwarded to the Commission for final approval.

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

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

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

Bryce Johnston, Senior Capital Projects Manager, presented the agreement for on-call railway flagging services for RCTC's highway and expressway projects encroaching in Burlington Northern Santa Fe (BNSF), highlighting the following areas:

- Background
- Railway flagging requirements
- BNSF notification
- Potential projects/operations covered by this agreement
- Funding sources

Commissioner Clint Lorimore clarified that BNSF used RailPros, Inc. as their sole source and BNSF is not going to provide this flagging service anymore, they are only going to allow this sole source contract to work to do the flagging services even though RCTC has to pay for it. Bryce Johnston replied yes.

In response to Commissioner Lorimore's question if there are other companies that provide this service, Bryce Johnston replied yes but not approved by BNSF.

Vice Chair Speake stated in the past when BNSF provided this service he asked if they back charged RCTC for that service.

Bryce Johnston replied those scope of services were usually included in the construction and maintenance agreements the agency would always enter into with their services. In those agreements it would also include their coordination and submittal reviews and

flagging was usually one part of it, but flagging was the biggest cost in those agreements. He is uncertain why BNSF decided to do this, but it is a nationwide action on their part.

Vice Chair Speake clarified if Railpros, Inc. is doing work with RCTC they would have to adhere to RCTC's policies regarding negotiated rates and all the things that come with state and federal contracting. Bryce Johnston replied yes.

In response to Vice Chair Speake's question if staff did a comparison to what RCTC was getting billed before, Bryce Johnston replied they did a review of some of the agreements in their place and the only thing where it gets complicated is if they are prevailing wage or non-prevailing wage.

Chair Berkson clarified RCTC is paying the same amount that BNSF would have charged versus whatever the RailPros, Inc. is going to charge. Bryce Johnston replied yes.

Anne Mayer, Executive Director, replied that BNSF were using RailPros, Inc. the only difference here is in previous contracts RCTC would sign an agreement with BNSF and they would take an action to pay BNSF the money for flagging and BNSF would hire RailPros, Inc. to do the flagging. Now it is just straight RCTC to RailPros, Inc.

Chair Berkson asked if potentially with RCTC's relationship with RailPros, Inc. could they get a better rate than they have been paying.

Bryce Johnston replied most of the projects they deal with are tied to prevailing wage that pretty much dictates the very lowest starting point so usually the end result is very similar within five percent between any contracts, because there is not much negotiating away from the prevailing wage.

Vice Chair Speake stated that the Commission probably did not have to pay whatever BNSF was charging to administer the contract, so it is a little bit better or the same.

Commissioner Joseph Morabito asked what the benefit or the point of the change is.

Bryce Johnston replied that the point of the change is when they work in the right of way, and they need flagging in the field for that day before they would go to BNSF and provide those dates. BNSF is not going to do that and RCTC cannot work in the right of way without a flagger present if BNSF is not providing it RCTC needs a contractual mechanism to be able to pay a flagger to come and be in the right of way.

In response to Commissioner Morabito's clarification, Bryce Johnston replied he has no insight as to BNSF's nationwide policy change.

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

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

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

Brian Cunanan, Commuter & Motorist Assistance Manager, presented the VanClub Vanpool Program subsidy recommendation, highlighting the following:

- Federal Transit Administration (FTA) recognizes Vanpool as transit
 - Sponsored by a public agency
 - 7 to 15 passenger vehicles
 - Routes marketed to and open to the public
 - ADA accessible
 - Vanpools compliment traditional transit modes
- VanClub provides \$400 monthly subsidy
 - Western Riverside County worksite destination
 - Five participants to start
 - 30+ miles roundtrip/day
 - Commute 12+ days/month
 - Approved vanpool lease providers
 - Extra \$100 subsidy for EV vehicles
- Vanpool is a highly productive transit mode
 - Averages 4.7 riders per trip
 - 44.8 miles per trip
 - 19.8 days per month
- Average Fiscal Year 2023 Vanpool lease = \$1,252
 - Includes: Vehicle, insurance, maintenance, and roadside assistance
- Average monthly lease increased \$315 over the past five years
- Vanpool monthly fare increased 59 percent over the past five years
 - Individual fare equals all out-of-pocket costs including: Vehicle lease, non-vehicle lease expenses – Fuel, washes, tolls, and miscellaneous
- Strategies for increased Vanpool adoption
 - Expand Commuter Assistance to Eastern Riverside County
 - Engage more small/mid-sized businesses

- Merge IE ridership database with Los Angeles/Orange Counties ridership database
- Increase monthly VanClub vanpool subsidy from \$400 to \$600

In response to Commissioner Morabito's question when the \$400 subsidy was set, Brian Cunanan replied that it goes back as far as the '90s, but RCTC did not start their Vanpool Program until 2018.

Commissioner Morabito clarified that there have been no adjustments.

Brian Cunanan replied correct and just the past year or so some of the other agencies have started increasing that to the \$600 amount.

In response to Vice Chair Speake's question who covers the remaining amount, Brian Cunanan replied it depends on which employer the vanpoolers are heading to. An employer may choose to provide an additional subsidy on top of what RCTC is providing and it can be either the groups paying for the remainder of the costs, or they could get additional subsidies from their employer.

In response to Vice Chair Speake's clarification the lease is through RCTC, and the remaining vanpoolers picks up the rest of the tab, Brian Cunanan replied yes and RCTC provides the subsidized amount directly to the lease provider.

In response to Vice Chair Speake's question on who signs the lease, Brian Cunanan replied that it would be a coordinator within the vanpool group.

Vice Chair Speake suggested that this would be a perfect vehicle miles traveled (VMT) mitigation tool and he is aware that is something being worked on, but has the Commission proposed this for projects and how they use the Vanpool Program for VMT.

Anne Mayer replied RCTC has not had a project that has needed to make proposals yet, but this could be an option. RCTC is working with Western Riverside Council of Governments (WRCOG) and the members of WRCOG to look at how they might form a VMT mitigation bank for possible use by member agencies as well as for RCTC and this could potentially be one of the VMT mitigation options.

In response to Vice Chair Speake's question could an agency, a developer, or someone else provide funding for this as mitigation for VMT, Anne Mayer replied it is possible. She stated Brian Cunanan showed the slide that presented the VMT benefits so they do have data that could back up the fact this is a mitigation factor. The question will be how RCTC could set up a mitigation bank so that it is easily used.

Vice Chair Speake stated they know they could measure for those 40 vans and if someone had to mitigate for so many miles of VMT they would write a check to RCTC for that amount. They do it now for the Riverside Transit Agency (RTA).

Anne Mayer replied they do and that part of the issue with anything that is VMT mitigation is in many cases especially transportation projects will have significant VMT numbers so the question will be what the benefit cost ratio is. She stated how many VMT does that project generate and could they possibly buy enough vanpool subsidy bonus points to be able to mitigate. Those are the kind of questions staff is asking and this is one they have data and can back it up so those conversations are ongoing about how to quantify it, how it could be set up, and how to demonstrate benefit cost. One of the biggest issues here and hopefully the \$600 will make a difference is how can they encourage people to go back to vanpools. RCTC's goal should be to do everything they can to increase their use of vanpools, and this is one of the many different items they could plug into a VMT mitigation bank.

Vice Chair Speake stated if there was a development project that has to mitigate for just maybe a few tens of thousands of VMT that they say they would fund 100 percent of the vanpools and then the Commission is actually lowering the barrier for people to subscribe to the program, which will allow the Commission to grow it more.

In response to Commissioner Spiegel's clarification the vanpool has to end the trip in Western Riverside County, Brian Cunanan replied correct.

Commissioner Spiegel clarified there is no limit on the distance it just has to end here and where would it begin.

Brian Cunanan replied correct and that it can begin anywhere in Southern California.

Commissioner Spiegel stated regarding VMT would the person who leased the vehicle be responsible for the VMT.

Anne Mayer replied that staff would have to come up with a way of demonstrating that every vanpool creates a reduction of a certain amount of VMT and RCTC would get credit for that and that could be whether it is a development project, or a transportation project is that the VMT that is created would be mitigated by however many vanpools they buy down the monthly rates for. The agency that would get the credit for the VMT reduction would be either RCTC and/or the entity that paid to buy it down. The challenge with VMT mitigation in many areas including the RTA where agencies like RCTC have to be able to spend the money to actually implement it so that is where the benefit cost discussion has to come in. Every development in Western Riverside County cannot pay for vanpool subsidies there are not enough. The goal would be to be able to have programs like this subsidized in part by developers or agencies with transportation projects that need to mitigate their VMT.

Commissioner Speake stated this is a benefit because currently other projects that have had to contribute to VMT they have purchased pieces of a bus station, or they have done improvements to rail facilities and those are even more abstract, this is VMT saved, and they can get it to a number. It seems like if the Commission came to an average number

they could spend, it would be an easy check for someone to write to subsidize this and maybe grow it over time and suggested RCTC look into this.

Chair Berkson clarified that today's action is to increase the subsidy from \$400 to \$600 per month. He expressed appreciation for Commissioner Speake's comments, and he hopes that comes back with people writing checks because that subsidy could go up. He stated when a person is evaluating the cost to run this vanpool with their group of people and they know it is a certain amount out of pocket, any additional subsidies the Commission receives down the road could turn that to maybe zero out of pocket costs. This could turn out in the future to be very successful.

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

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

10. AGREEMENT FOR ELEVATOR MAINTENANCE, INSPECTION AND REPAIR SERVICES

Gary Ratliff, Facilities Administrator, presented the elevator maintenance, inspection, and repair services agreement, highlighting the following areas:

- Stations – Riverside Downtown, La Sierra, Corona-North Main, Corona-West
- Elevator modernization project – Ensure maximum reliability; minimize elevator shutdowns; ensure safety; reduce risk of injury to passengers; reduce liability exposure; and increase patron satisfaction
- Elevator services – Testing and inspection; maintenance service intervals; repairs and emergency
- Procurement five-year agreement

Commissioner Conder expressed appreciation for the presentation and stated that it does preserve the property the Commission owns, and he made the motion to approve staff recommendation.

In response to Chair Berkson's clarification if the \$159,120 for the repairs and emergency call outs is the maximum or the contracted amount, Gary Ratliff replied that should be the maximum as he estimated out with the contingency money as well as the modernization efforts that they made in looking at the last five years of expense and he does not see extending it beyond that.

Commissioner Berkson clarified the funds are pulled as it is needed. Gary Ratliff replied yes.

M/S/C (Conder/Vargas) to:

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

11. EXECUTIVE DIRECTOR REPORT

Anne Mayer announced:

- The State Route 60 Truck Lane Project won the California Transportation Foundation (CTF) Goods Movement Project of the Year. The RCTC consultant Skanska Falcon team will all be recognized at the CTF Annual Awards dinner on June 6 in Sacramento and congratulated Bryce Johnston, Senior Capital Projects Manager, and his team.
- RCTC received \$15.5 million of Transit and Intercity Rail Corridor funding there was \$690 million statewide for 28 projects and RCTC received it for the Perris Valley Line Double Tracking project. By upgrading this track to Metrolink standards Metrolink will be able to use both sets of tracks and run a train going south and a train going north instead of having to wait at the siding. The source of that funding is SB 1, Cap and Trade, and some general fund dollars and that is an award made by the California State Transportation Agency. She congratulated the team for a great job on the application.

In response to Chair Berkson's question if RCTC owns those tracks, Anne Mayer replied RCTC owns the right of way BNSF has the right to run on that track. The existing track that RCTC upgraded is for Metrolink only, BNSF runs on the other

track. When RCTC upgrades it, it will go into the Metrolink system as Metrolink and Metrolink is still doing all the dispatch. She noted that Metrolink received \$10 million in this allocation as well.

12. COMMISSIONER COMMENTS

- 12A.** Commissioner Linda Krupa announced the city of Hemet is having a candlelight service tonight at 7:00 p.m. for Council Member Karlee Meyer who passed away a week ago. She reported due to the Coachella Festivals the traffic congestion was horrible over the weekend especially in the San Jacinto Valley going up to the Pass Area and going out to the desert. She noted to keep that in mind when the Commission starts pushing more on State Route 79 Realignment.

Chair Berkson noted there will be another festival on October 7 and 8. He stated that he was out in Palm Springs on April 17 and traffic was a nightmare so he decided not to go there today.

13. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was at 2:26 p.m.

Respectfully submitted,

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

Lisa Mobley
Administrative Services Director/
Clerk of the Board

AGENDA ITEM 7

| <i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i> | |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------|
| DATE: | May 22, 2023 |
| TO: | Western Riverside County Programs and Projects Committee |
| FROM: | Jillian Guizado, Planning and Programming Director |
| THROUGH: | Aaron Hake, Deputy Executive Director |
| SUBJECT: | 2023 Western Riverside County Regional Arterials Call for Projects Funding Recommendations |

STAFF RECOMMENDATION:

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

- 1) Approve the funding recommendations in Attachment 1 for 2009 Western Riverside County Measure A Regional Arterial (MARA) and Transportation Uniform Mitigation Fee (TUMF) Regional Arterial funds;
- 2) Direct staff to prepare and execute funding agreements with the project sponsors to outline the project schedule and local funding commitments; and
- 3) Authorize the Executive Director to execute the funding agreements with the project sponsors, pursuant to legal counsel review.

BACKGROUND INFORMATION:

At its February 2023 meeting, the Commission approved the release of the 2023 Western Riverside County Regional Arterials Call for Projects (Call for Projects) for approximately \$85 million of MARA and \$50 million of TUMF Regional Arterial funds. Funding for the Call for Projects included accumulated fund balance and projected revenues for Fiscal Years 2023/24 and 2024/25. The intention of the Call for Projects is to fund construction activities. However, up to 20 percent of the funding available was considered for projects seeking plans, specifications, and estimates (PS&E) funding. A subcommittee of the Commission's Technical Advisory Committee, comprised of public works staff from each of the Commission's members agencies, provided input and guidance on eligibility, funding limits, schedule, and scoring criteria. The scoring criteria consists of Project Readiness, Regional Significance, Safety, Matching Funds, and Parity with point ranges from 1 to 20 depending on the criterion.

DISCUSSION:

The project submittal deadline was April 5, 2023. RCTC received applications for 25 projects requesting a total of \$184 million, which exceeds the approximately \$135 million available. Projects were evaluated by Commission staff and regional agency staff from Western Riverside Council of Governments (WRCOG), Coachella Valley Association of Governments, and San

Bernardino County Transportation Authority. The evaluation committee met on April 20, 2023, to discuss and score the project applications. The five evaluators' scores were averaged together. The average score for each project is listed in Attachment 1.

Project Recommendations

Staff's recommendations for funding are grouped into three categories:

1. **Priority** – fully funded projects with the funded phase scheduled to begin within 12 months.
2. **Conditional** – either partially funded or the funded phase is scheduled to begin between 13-24 months.
3. **Contingency List** – if an awarded agency receives other grant funding to fully fund an approved project or cannot begin the funded project phase within the allotted time, contingency list projects will be funded in the order in which they are listed; the contingency list will only remain active until six months prior to the next call for projects.

TUMF Regional Arterial

All six projects submitted that are located on the TUMF backbone network and have not met or exceeded the maximum TUMF share, as verified by WRCOG staff, are recommended for TUMF Regional Arterial funding as detailed in Table 1.

Table 1. TUMF Regional Arterial Funding Recommendation

| Agency | Project | FY 23/24 | FY 24/25 |
|------------------|-------------------------------------------------------|---------------------|--------------------|
| Beaumont | Potrero Interchange Phase II | \$8,000,000 | |
| Wildomar | Clinton Keith Rd. Widening | 3,396,221 | |
| Perris | Ethanac Rd. Bridge over San Jacinto River & Extension | 8,798,000 | |
| Menifee | Bundy Canyon Rd./Scott Rd. Widening | | \$9,367,560 |
| Riverside County | Cajalco Rd. Widening and Safety Enhancement | 15,000,000 | |
| Calimesa | Realign Calimesa Blvd. at Cherry Valley Blvd. | 5,200,000 | |
| TOTAL | | \$40,394,221 | \$9,367,560 |

MARA

Fourteen of the 25 projects submitted in the Call for Projects are recommended to receive MARA funding as detailed in Table 2. Two of the projects recommended for TUMF Regional Arterial funding are also recommended for MARA funding due to those projects reaching their maximum TUMF shares.

Table 2. Measure A Regional Arterial Funding Recommendation

| Agency | Project | FY 23/24 | FY 24/25 |
|---------------|--------------------------------------------------------|---------------------|---------------------|
| Eastvale | Limonite Avenue Gap Closure | \$13,500,000 | |
| San Jacinto | Esplanade Ave. Widening – Sanderson to Warren | 3,960,000 | |
| Murrieta | Murrieta Hot Springs Rd. Widening – Margarita to SR-79 | 3,000,000 | |
| Wildomar | Bundy Canyon Rd. Improvement – Segment 2 | 13,298,440 | |
| Wildomar | Clinton Keith Rd. Widening | 2,254,919 | |
| Temecula | Ynez Rd. Improvements | 1,475,000 | |
| Beaumont | Second St. Extension | 1,500,000 | |
| Banning | Sun Lakes Extension | | \$13,500,000 |
| Riverside | Third St. Grade Separation | | 12,000,000 |
| Menifee | McCall Blvd. Widening Project | | 3,140,000 |
| Menifee | Bundy Canyon Rd./Scott Rd. Widening | | 632,440 |
| Wildomar | Bundy Canyon Rd. Improvement – Segment 3 | | 8,050,420 |
| Moreno Valley | Indian St./Cardinal Ave. Bridge (Over Lateral A) | 750,000 | |
| Corona | Ontario Avenue Widening | | 7,938,781 |
| TOTAL | | \$39,738,359 | \$45,261,641 |

Next Steps**Funding Agreements**

Funding agreements will be required to outline the project schedules, funding plan, and local agency match commitment. In addition, should projects experience savings, the project sponsor is to notify Commission staff so that savings are applied to the appropriate project fund sources or in a proportional manner.

Monitoring


Project sponsors are required to advance their approved projects in the next two years, evidenced by providing at least an initial invoice to the Commission for the funded phase. Staff will monitor project progress through existing processes taking place every January and July.

Future Funding Opportunities

It is staff's intention to release a Regional Arterials Call for Projects every two years, contingent upon sufficient future TUMF and MARA revenues.

FISCAL IMPACT:

Staff identified the appropriate fund source and fiscal year for the projects and the necessary funding will be included in the FY 2023/24 budget as indicated in Tables 1 and 2. Projects proposed to receive TUMF Regional Arterial funds have been checked by WRCOG for confirmation they are on the TUMF backbone network as required per the Commission's MOU with WRCOG. Maximum TUMF share capacity was also verified by WRCOG; in cases that the funding request exceeds the maximum TUMF share, MARA funding is recommended.

| Financial Information | | | | | |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------|--------------------|------------------------------|
| In Fiscal Year Budget: | Yes | Year: | FY 2023/24 FY 2024/25+ | Amount: | \$80,132,580 \$54,629,201 |
| Source of Funds: | 2009 Western Riverside County MARA, TUMF Regional Arterial | | | Budget Adjustment: | No |
| GL/Project Accounting No.: | 005200 81102 00000 0000 266 72 81101 005200 81402 00000 0000 266 72 81402 005200 81301 00000 0000 266 72 81301 725000 81102 00000 0000 210 72 81101 725000 81301 00000 0000 210 72 81301 | | | | |
| Fiscal Procedures Approved: |  | | | Date: | 05/04/2023 |

Attachment: 2023 Western Riverside County Regional Arterials Call for Projects Funding Recommendations

2023 Western Riverside County Regional Arterials Call for Projects Funding Recommendations

| Lead Agency | Project Name | Phase | Phase Start | TUMF Backbone? | Average Score | Request | MARA Funding | TUMF Funding | Funding Recommendation |
|--------------------------------------------|----------------------------------------------------------------------------------|------------|--------------------------------|------------------------|---------------|----------------|----------------|---------------|---------------------------------------------------|
| Eastvale | Limonite Avenue Gap Closure Project | CON | October 2023 | No, secondary | 45.2 | \$ 13,500,000 | \$ 13,500,000 | | Priority |
| Beaumont | Potrero Interchange Phase II | CON | March 2024 | Yes | 44.8 | \$ 8,000,000 | | \$ 8,000,000 | Conditional - need to fulfill \$33.5M funding gap |
| San Jacinto | Esplanade Ave. Widening - Sanderson to Warren Rd. | CON | March 2024 | No, secondary | 40.8 | \$ 3,960,000 | \$ 3,960,000 | | Priority |
| Murrieta | Murrieta Hot Springs Road Widening - Margarita Road to SR-79 | CON | September 2023 | No, secondary | 37.8 | \$ 3,000,000 | \$ 3,000,000 | | Priority |
| Wildomar | Bundy Canyon Rd. Improvement Project, Segment 2 | CON | March 2024 | Yes, max share reached | 37.4 | \$ 13,298,440 | \$ 13,298,440 | \$ - | Priority |
| Wildomar | Clinton Keith Rd. Widening Project | CON | May 2024 | Yes, max share reached | 37.4 | \$ 5,651,140 | \$ 2,254,919 | \$ 3,396,221 | Priority |
| Perris | Ethanac Rd. Bridge over San Jacinto River & Roadway Extension, East of the River | CON | March 2024 | Yes | 37 | \$ 8,798,000 | | \$ 8,798,000 | Priority |
| Temecula | Ynez Road Improvements | CON | April 2024 | No | 36.6 | \$ 1,475,000 | \$ 1,475,000 | | Priority |
| Beaumont | Second Street Extension | CON | July 2023 | No | 36.6 | \$ 1,500,000 | \$ 1,500,000 | | Priority |
| Banning | Sun Lakes Extension Project | CON | July 2024 | No, secondary | 36.4 | \$ 13,500,000 | \$ 13,500,000 | | Conditional - need to fulfill \$11.5M funding gap |
| Riverside | Third Street Grade Separation | CON | April 2025 | No, secondary | 36 | \$ 12,000,000 | \$ 12,000,000 | | Conditional - schedule |
| Menifee | McCall Boulevard Widening Project | CON | July 2024 | No, secondary | 35.4 | \$ 3,140,000 | \$ 3,140,000 | | Priority |
| Menifee | Bundy Canyon Road/Scott Road Widening Project | CON | May 2025 | Yes, max share reached | 32.8 | \$ 10,000,000 | \$ 632,440 | \$ 9,367,560 | Conditional - schedule |
| Riverside County | Cajalco Road Widening and Safety Enhancement Project | PS&E | July 2023 | Yes | 32.6 | \$ 15,000,000 | | \$ 15,000,000 | Priority (PS&E) |
| Wildomar | Bundy Canyon Rd. Improvement Project, Segment 3 | CON | December 2024 | Yes, max share reached | 31.6 | \$ 13,200,000 | \$ 8,050,420 | \$ - | Conditional - schedule |
| Calimesa | Realignment of Calimesa Boulevard at Cherry Valley Boulevard | ROW + CON | April 2024 | No | 28.2 | \$ 5,200,000 | | \$ 5,200,000 | Priority |
| Moreno Valley | Indian Street/Cardinal Avenue Bridge (Over Lateral A) | PS&E | Underway (complete Spring '24) | No | 27.6 | \$ 750,000 | \$ 750,000 | | Priority (PS&E) |
| Corona | Ontario Avenue Widening Project | CON | June 2025 | No, secondary | 25.6 | \$ 13,500,000 | \$ 7,938,781 | | Conditional - need to fulfill \$5.5M funding gap |
| SUBTOTAL: Projects Recommended for Funding | | | | | | \$ 145,472,580 | \$ 85,000,000 | \$ 49,761,781 | |
| Moreno Valley | SR-60/World Logistic Center Parkway Interchange | PS&E | Winter 2023 | No, secondary | 25.4 | \$ 6,500,000 | \$ 6,500,000 | | Contingency list |
| Riverside | SR-91/Adams Street Interchange Reconfiguration | PS&E | July 2024 | No, secondary | 25.4 | \$ 4,000,000 | \$ 4,000,000 | | Contingency list |
| Corona | Magnolia Avenue Bridge and Road Widening Project | CON | June 2025 | No, secondary | 25 | \$ 13,050,000 | \$ 13,050,000 | | Contingency list |
| Moreno Valley | Traffic Signal Communications Fiber Network Phase 1 | PS&E + CON | May 2024 & August 2024 | No | 23.8 | \$ 5,346,000 | \$ 5,346,000 | | Contingency list |
| Moreno Valley | Traffic Signal Synchronization on Arterials | PS&E + CON | May 2024 & August 2024 | No | 23.8 | \$ 1,782,000 | \$ 1,782,000 | | Contingency list |
| Moreno Valley | SR-60/Rubidoux Boulevard Interchange Project | PA/ED | August 2023 | No, secondary | 22.75 | \$ 1,500,000 | | | Ineligible (PA/ED) |
| Moreno Valley | SR-60/Redlands Boulevard Interchange | PS&E | Winter 2023 | No, secondary | 15 | \$ 7,000,000 | \$ 7,000,000 | | Contingency list |
| TOTAL: All Projects | | | | | | \$ 184,650,580 | \$ 122,678,000 | \$ 49,761,781 | |

AGENDA ITEM 9

| <i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i> | |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DATE: | May 22, 2023 |
| TO: | Western Riverside County Programs and Projects Committee |
| FROM: | Bryce Johnston, Senior Capital Projects Manager |
| THROUGH: | Erik Galloway, Project Delivery Director |
| SUBJECT: | Agreements for On-Call Construction Management Services, Materials Testing, and Construction Surveying Services for the Construction of Commuter Rail Station Capital Improvement Projects |

STAFF RECOMMENDATION:

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

- 1) Award the following agreements to provide on-call construction management services, materials testing, and construction surveying services (collectively, CM services) for the construction of commuter rail station capital improvement projects for a three-year term, and one, two-year option to extend the agreements, in an amount not to exceed an aggregate value of \$8 million;
 - a. Agreement No. 23-33-047-00 to AECOM Technical Services, Inc.;
 - b. Agreement No. 23-33-069-00 to Jacobs Project Management Co.;
 - c. Agreement No. 23-33-070-00 to Kleinfelder Construction Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements.

BACKGROUND INFORMATION:

The Commission has a need for the provision of comprehensive on-call professional services related to construction management (CM) services for the construction support of rail and commuter rail station capital improvement projects. Typically, the Commission procures CM services as the need for services arises. An on-call CM contract provides a more streamlined process since formal solicitation, selection, negotiation of basic rates and contracting are completed as part of the on-call procurement process.

The intention of this procurement is to provide the Commission with comprehensive on-call professional CM services for a variety of Commission rail and commuter rail station capital improvement projects such as the Riverside Downtown Layover Facility and the Moreno Valley/March Field station upgrades project. CM services will be funded with various Federal Transit Administration grants.

Procurement Process

Pursuant to Government Code 4525 et seq, selection of architect, engineer, and related services shall be on the basis of demonstrated competence and on professional qualifications necessary for the satisfactory performance of the services required. Therefore, staff used the qualification method of selection for the procurement. Evaluation criteria included elements such as qualifications of firm, staffing and project organization, project understanding and approach, and the ability to respond to the requirements set forth under the terms of a request for qualifications (RFQ).

RFQ No. 23-33-047-00 for on-call CM services, materials testing, and construction surveying services for the construction of commuter rail station capital improvement projects was released by staff on February 13, 2023. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 85 firms downloaded the RFQ; 14 of these firms are located in Riverside County. A pre-submittal meeting was held on February 22, 2023 and attended by 20 firms. Staff responded to all questions submitted by potential proposers prior to the March 2, 2023, clarification deadline. Five firms – AECOM Technical Services, Inc. (Orange); Anser Advisory (Santa Ana); Jacobs Project Management Co. (Ontario); Kleinfelder Construction Services, Inc. (Riverside); and WSP USA Inc. (San Bernardino) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on March 16, 2023. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission, Metrolink and Bechtel staff.

As a result of the evaluation committee's assessment of the written statements of qualifications, the evaluation committee determined three firms – AECOM Technical Services, Inc.; Jacobs Project Management Co.; and Kleinfelder Construction Services, Inc. – to be the most qualified firms to provide on-call CM services, materials testing, and construction surveying services for the construction of commuter rail station capital improvement projects. The evaluation committee recommends contracts for these three firms for a three-year term, and one, two-year option to extend the agreements, in the aggregate amount of \$8,000,000, as these firms earned the highest total evaluation scores.

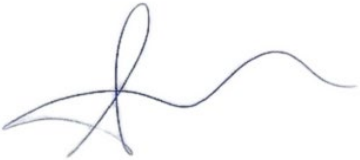
As part of the procurement process for architectural and engineering services, the contract is subject to a pre-award audit by Caltrans Audits and Investigations Unit. The result of the pre-award audit may change the proposed cost slightly and is expected to be finalized prior to Commission approval in June 2023.

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.

FISCAL IMPACT:

Funding for these services will be provided by Measure A and various local, state, and federal sources.

| Financial Information | | | | | |
|-----------------------------|------------------------------------------------------------------------------------------------------------------|-------|---------------|--------------------|-------------|
| In Fiscal Year Budget: | Yes | Year: | FY 2023/2024+ | Amount: | \$8,000,000 |
| Source of Funds: | Federal Transit Administration, 2009 Measure A Western County Rail, and/or other local, state, and federal funds | | | Budget Adjustment: | No |
| GL/Project Accounting No.: | 654199 81302 XXXXX XXXX 265 33 81301 | | | | |
| Fiscal Procedures Approved: |  | | | Date: | 05/11/2023 |

Attachments:

- 1) Draft Agreement No. 23-33-047-00 with AECOM Technical Services, Inc.
- 2) Draft Agreement No. 23-33-069-00 with Jacobs Project Management Co.
- 3) Draft Agreement No. 23-33-070-00 with Kleinfelder Construction Services

Agreement No. 23-33-047-00

**PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
AECOM TECHNICAL SERVICES, INC.
FOR ON-CALL
CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING,
AND CONSTRUCTION SURVEYING SERVICES
FOR THE
CONSTRUCTION OF COMMUTER RAIL STATION CAPITAL IMPROVEMENT
PROJECTS**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and AECOM TECHNICAL SERVICES, INC. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals.

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

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

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

D. A source of funding for payment for on-call professional consulting services provided under this Agreement may be Proposition 1B funds ("Prop 1B") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Agreement shall not be deemed to be approved by the Commission until the certification shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of commuter rail station capital improvement projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

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

Terms.

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

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

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

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

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

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant’s cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. This Agreement, Consultant’s cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission’s contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 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 (DATE), unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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

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

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

7. Consultant's Representative. Consultant hereby designates Matthew Gollan 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: Matthew Gollan, David Vornberger, Irfan Kalhoro, Alex Gordon, Robert Spalik, Brian Price, Adam D'Alvia, 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. Claims Filed by Contractor.

16.1 If claims are filed by the Commission's contractor for the Project ("Contractor") relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required by the Commission in order to evaluate or defend against such claims; Consultant agrees to make reasonable efforts to make its personnel available for consultation with the Commission's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

16.2 Consultant's personnel that the Commission considers essential to assist in defending against Contractor claims will be made available on reasonable notice from the Commission. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.

16.3 Services of the Consultant's personnel and other support staff in connection with Contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

16.4 Nothing contained in this Section shall be construed to in any way limit Consultant's indemnification obligations contained in Section 29. In the case of any conflict between this Section and Section 29, Section 29 shall govern. This Section is not intended to obligate the Commission to reimburse Consultant for time spent by its personnel related to Contractor claims for which Consultant is required to indemnify and defend the Commission pursuant to Section 29 of this Agreement.

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

reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

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

19. Fees and Payment.

19.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. Commission shall reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the Services. Consultant shall not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant cost proposal attached hereto as Exhibit "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. In no event, shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. To the extent legally permissible, Consultant's approved overhead rate shall be fixed for the term of this Agreement. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.8 shall not be exceeded, unless authorized by a written amendment.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is

nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized DPA rates, and Commission has not otherwise approved said rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to the Commission on demand.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, Commission shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 21, Termination.

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

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due Commission including any equipment purchased under the Equipment Purchase provisions of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

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

19.9 Commission has or will enter into Three (3) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are Jacobs Engineering (23-33-069-00) and Kleinfelder Construction Services (23-33-070-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Eight Million Dollars (\$8,000,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

19.10 Salary increases shall be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by Commission's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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

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

20. Disputes.

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

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

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

21. Termination.

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

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

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

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

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

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

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

21.8 Consultant may not terminate this Agreement except for cause.

22. Cost Principles and Administrative Requirements.

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

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

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

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

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

23.1 Accounting System. Consultant and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate expenditures by line item for the Services. The accounting system of Consultant and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

24. Audit Review Procedures.

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

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

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

25. Subcontracting.

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

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

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

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

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

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

26. Equipment Purchase

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

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

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

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

27. Labor Code Requirements.

27.1 Prevailing Wages.

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

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

(c) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the

minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(d) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

28. Ownership of Materials/Confidentiality.

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

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

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

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

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

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for

wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

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

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

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

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

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

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which , in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers. 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 29 shall survive expiration or termination of this Agreement.

30. Insurance.

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

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

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

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

30.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$2,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

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

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

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(d) All Coverages.

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

(ii) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

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

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

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

approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

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

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

Pursuant to the authority contained in Section 591 of the Vehicle Code, the Commission has determined that the Project will contain areas that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

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

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

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

33. Prohibited Interests.

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

33.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement, or any ensuing Commission construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing Commission construction project, which will follow.

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

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

(d) Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

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

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

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

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.5 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

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

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

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

37. Disputes; Attorneys' Fees.

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

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

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

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

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

CONSULTANT:

AECOM Technical Services, Inc.

999 W. Town and Country Road
Orange, CA 92868
Attn: Matthew Gollan

COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING/ASSISTANCE**

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

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RIVERSIDE COUNTY TRANSPORTATION COMMISSION By: _____ [INSERT NAME] Chair <i>Approved as to Form:</i> By: _____ Best, Best & Krieger LLP General Counsel | AECOM TECHNICAL SERVICES, INC. By: _____ Signature _____ Name _____ Title ATTEST: By: _____ Its: _____ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

* A corporation requires the signatures of two corporate officers.

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

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

EXHIBIT "A" - SCOPE OF WORK

The Commission intends to contract with an on-call “bench” of qualified consultants to provide for Construction Management Services, Material Testing and Construction Surveying Services for the construction of Rail, Transit and Commuter Rail Station Infrastructure and Facilities Capital Improvement Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission’s model agreement. The selected consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

Projects for which construction management and related services may be required include station platform improvements, passenger shelters, station amenities, landscaping access ways involving pedestrian connections, fencing for access control, parking lot improvements, bicycle paths and bicycle storage solutions to facilitate active transportation in the stations. In addition, construction management and related services may be required for station related track work, signals, Quiet Zones and layover facilities. The foregoing generally described projects may include upgrade to technology with improved ticket vending machines, customer information kiosks, communicator upgrades, signage and potentially wireless connectivity.

List of Potential Projects

- Railroad Track Addition/Rehabilitation/Replacement
- Railroad Platform Expansion and Improvements
- Pedestrian At-grade Railroad Crossings
- Railroad Layover Facilities
- Railroad Signal Systems
- Railroad Grade Crossings
- Transit and Commuter Railroad Station Facility Improvements
- Parking Structure Design and Development
- Parking Lot Improvements, Rehabilitation and Expansions
- Pedestrian Bridge Structure
- Passenger Shelters
- Station Security and Safety Elements

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

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

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

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

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

2. PERFORMANCE REQUIREMENTS

2.1 Construction Management: Offeror shall furnish a Project Manager/Resident Engineer to coordinate Offeror's operations with Commission. The Project Manager shall be responsible for all matters related to Offeror's personnel and operations. A Resident Engineer shall be assigned as a single point of contact to direct and coordinate construction activities. Other Assistant Resident Engineers may be assigned to specific project responsibilities as needed. The Resident Engineer shall be a Civil Engineer, registered in the State of California, and shall be in responsible charge of construction activity within the Project.

The number of Offeror's personnel assigned to the Project will vary throughout the duration of the agreement. Offeror's personnel shall be assigned, in varying levels of responsibility, as needed by the Offeror to meet the Project schedule and comply with Project requirements.

Resumes of personnel shall be submitted to the Commission for review and approval prior to approval of an ATO and assignment to the Project. The Commission and Offeror will jointly determine the quality and quantity of services that are required by Offeror personnel. Personnel selected for assignment by Offeror shall be made available for personal interviews prior to acceptance by the Commission. If, in the opinion of Commission, an individual lacks adequate or appropriate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of Offeror personnel is unsatisfactory to the Commission, the Commission may release him/her by written notice and may require that another qualified person be assigned.

If Offeror personnel are on leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel returns to the Project.

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for Offeror personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for Offeror personnel. The Project Manager, with concurrence from the Commission, shall have the authority to increase, decrease, or eliminate Offeror personnel work hours' dependent on the schedule and requirements of the construction Contractor. All overtime required by Offeror personnel shall be approved and authorized by the Commission prior to each occurrence.

Offeror personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. Offeror personnel shall cooperate and consult with the Commission and city officials during the course of the Project. Offeror's personnel shall perform duties as may be required to assure that construction is performed in accordance with the Project plans and specifications. Offeror's personnel shall keep accurate and timely records and document all work performed by the Contractor and Offeror.

Offeror shall monitor for Contractor's compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

Offeror's personnel shall assist the Commission and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. Local agencies will retain jurisdictional control for traffic control outside of the Project's limits.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

2.2 Materials Testing: The number of field testing personnel assigned to the Project will vary throughout the duration of the construction Contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction Contractor.

The Resident Engineer shall coordinate materials testing and inspection with the Contractor to avoid delay.

The Commission intends to maintain a consistency of material testing quality throughout each phase of each Project. Offeror is therefore encouraged to provide,

when possible, the same field personnel for the duration of construction of the Project.

Resumes of materials testing personnel shall be submitted to the Commission for review and approval prior to assignment to the Project. If, at any time, the level of performance of any testing personnel is below expectations, Commission may release that field person and require that another be assigned as needed.

If a member of Offeror's personnel is on a leave of absence, Offeror's Project Manager will provide an equally qualified replacement employee until the original member returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee.

All personnel shall be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with the Commission and local agency officials during the course of the agreement; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. Offeror's personnel shall be experienced in performing inspections and/or testing in accordance with requirements described or inferred from the construction contract special provisions and plans and shall keep records and document the work as directed by the Resident Engineer and/or required by the local agency having jurisdiction. All records will be provided to the Commission in both hard copy and electronic format at the completion of the project. Also Commission staff shall be provided electronic remote access to the Consultant document control system.

All services required hereunder shall be performed in accordance with Caltrans, SCRRRA, AREMA or applicable Specifications for Public Works (Greenbook) regulations, policies, procedures, manuals, and referenced standards.

2.3 Construction Surveying: Offeror shall furnish a surveying crew to perform construction surveys and final monumentation for the Project. The same survey crew shall provide services throughout the duration of the construction contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor.

It is the intent of the Commission to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, Offeror is encouraged to provide the same field personnel for the duration of construction. It is important that the Survey Party Chief(s) assigned to a project be completely familiar with the horizontal and vertical control at the project site as well as survey and documentation requirements for the Project.

Resumes of Offeror personnel and certification shall be submitted to the Commission for review. Offeror personnel must be approved by the Commission prior to assignment to a project. The Commission and Offeror will have the

responsibility of determining the quality and quantity of work performed by Offeror personnel. If, at any time, the level of performance by Offeror's personnel is below expectations, Commission may release the survey crew member and require that another be assigned.

If Offeror's survey crew personnel assigned to the Project is on a leave of absence, the Project Manager shall provide an equally qualified replacement(s) until the original employee(s) returns to work. The replacement shall be required to meet all the requirements of the permanently assigned employee.

Offeror's personnel shall:

- Be knowledgeable of and comply with applicable building codes and local, state, and federal regulations;
- Be knowledgeable of Caltrans surveying requirements;
- Cooperate and consult with Commission officials during the course of the agreement;
- Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications; and
- Keep records and document work as directed by the Resident Engineer.

All services required hereunder shall be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards except as directed otherwise by the Commission.

3. DUTIES AND RESPONSIBILITIES

3.1 Pre-construction Services

a Plan Review

Offeror shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, Resident Engineer's pending files, liaison with local agencies (including Building Permit requirements), utility arrangements, operational arrangements with BNSF, SCRRA and/or RTA (as needed), and existing station operations in order to verify completeness and consistency of documents throughout the Project. As a minimum, Offeror shall check for quantity discrepancies, potential detail conflicts, constructability, and consistency between plans, specifications and pay items.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

b Schedule

Offeror shall review the Design Engineer's proposed Project schedule with the Project plans and specifications to determine if the proposed sequence and duration of activities will provide for safe and expeditious completion of the Project.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

Offeror shall review the Design Engineer's Project estimate with the Project plans and specifications to verify that all aspects of the Project scope have been addressed.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

3.2 Bid Process

a. Bidding Process

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid questions and draft responses;
- 2) Draft addenda to the bid documents;
3. Review of bidder's documents;
4. Prepare bid tabulation.

b. Pre-construction Meetings

Offeror shall assist the Commission in conducting one or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the Design Engineer, Caltrans, city officials, and utility companies.

c. Contract Award

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid for completeness and responsiveness.
- 2) Perform bid analysis.
- 3) Review of procedural items.
- 4) Check Contractor references, licenses, insurance, and sureties.
- 5) Coordinate with prospective Contractor for scheduling of award of the construction contract.

All processes shall be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and/or relevant Commission procedures.

3.3 Construction Project Administration

- a. Offeror shall administer Project construction contract using Caltrans Construction Manual as a guideline.
- b. Offeror shall conduct regular Project coordination meetings with Contractor, Commission, local agencies, and Design Engineer, as appropriate.
- c. Offeror shall review and approve the Contractor's Baseline Schedule and subsequent Updates and track weather or unsuitable site conditions on a weekly basis.

Offeror shall prepare construction progress payments in conjunction with the Contractor per contract requirements and maintain payment records and supporting documentation. All progress payments shall be reviewed by the Commission for approval.

- d. Offeror shall establish and maintain Project records. Project record keeping shall include, but is not limited to the following: correspondence, memoranda, contract documents, change orders, claims, Commission and engineer directives, meeting minutes, shop drawings, as-built changes, materials records, survey data, supplemental drawings, progress payments and requirements listed elsewhere. Offeror shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractor, subcontractors, and principal material suppliers.
- e. Offeror shall establish and maintain a filing system for each Project using the Caltrans Construction Manual as a guideline.
- f. Offeror shall review and approve Contractors' construction schedules per contract requirements on an ongoing basis and alert the Commission to conditions that may lead to delays in completion of the Project.
- g. Offeror shall prepare and submit a Monthly Project Report (MPR). The MPR shall include construction activity, accomplishments, safety and traffic

issues, and status of Requests for Information (RFIs), submittals, current issues, Contract Change Orders (CCOs) and current Project budget and schedule. The format and contents of the MPR will be determined by RCTC. Provision of an MPR acceptable to the Commission will be a condition precedent for payment of the CM's invoices.

- h. Offeror shall review and ensure compliance with environmental requirements.
- i. Offeror shall ensure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual.
- j. Offeror shall conduct labor interviews and review Contractors' certified payroll records/fringe benefit statements, etc. and maintain records to assist the Commission with monitoring labor compliance, DBE, and equal employment opportunity (EEO) requirements.
- k. Offeror shall ensure that the Project meets all provisions of an approved Storm Water Pollution Prevention Plan (SWPPP) and/or Water Pollution Control Plan (WPCP) and coordinate with the State Water board by providing data into their SMARTS system.
- l. Offeror shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

3.4 Construction Project Coordination

- a. Offeror shall provide a qualified Resident Engineer and other qualified assistant Resident Engineers, as needed to effectively manage the Project.
- b. Offeror Resident Engineer shall act as a single point of contact between Contractor, the Commission, Offeror's construction surveyor, Offeror's materials inspector, and utility companies. Offeror may, when requested by the Commission, act as point of contact between Design Engineers, Caltrans, cities with jurisdiction, utilities, and the public.
- c. Offeror shall maintain regular contact with the Commission's Construction Manager.

- d. Offeror shall review contract plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to Commission. Should the Commission determine that changes are necessary, Offeror shall prepare Contract Change Orders (CCOs) and supporting transmittal memoranda in accordance with construction contract documents and Commission procedures.
- e. Offeror shall monitor, coordinate, and track construction progress to ensure the Project proceeds on schedule and according to the order of work required in the plans and special provisions. Offeror shall direct the Contractor, in conjunction with Commission, to expedite work, as required, to maintain schedule.
- f. Offeror shall coordinate review of shop drawings and Requests for Information (RFI) with the Design Engineer and RCTC's Construction Manager. Offeror shall log and track all submittals and RFIs.
- g. Offeror shall provide a qualified SWPPP coordinator who shall review Contractor-prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with the cities with jurisdiction and the Commission. Offeror shall cooperate with Caltrans and/or monitoring agencies during inspections and field reviews.
- h. Offeror shall coordinate the implementation of any changes with the Construction Manager and the Design Engineer.
- i. Offeror shall review and approve Traffic Control Plans and forward to Commission as necessary.
- j. Offeror shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.
- k. Offeror shall coordinate all Project construction activities with existing Station operations.

3.5 Construction Inspection

- a. Offeror shall coordinate all construction inspection and special inspections that may be required by local agencies for the Project. Offeror shall ensure that appropriate city and local agency are notified and present as required

throughout the Project. Offeror shall notify the Commission immediately regarding any directives, recommendations, notices, etc. received from agencies other than Commission.

- b. Offeror shall perform and document daily on-site inspections of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. Offeror shall exercise reasonable care and diligence to discover and promptly replace, correct, and/or mitigate all defects or deficiencies in the materials or workmanship used in the Project. Any such deficiencies and their resolution shall be reported to the Commission.
- d. Offeror personnel assigned to the Project shall be thoroughly familiar with contract special or technical provisions provided by the Design Engineer, , Standard Specifications and RCTC's General Conditions/Instructions to Bidders, Caltrans, SCRRA, Greenbook Standard Plans and City's building permit requirements and conditions of approval as they apply to the Project. Offeror personnel shall have the ability to read and interpret construction plans and specifications. Offeror personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, Offeror personnel shall be familiar with the construction requirements of the Caltrans Storm Water Pollution Prevention Program.
- e. Assignments to be performed by Offeror personnel shall include, but are not limited to, the following:
 - 1) Inspect installation of dry and wet utilities, inspection and testing of subgrade, aggregate base and paving, inspection of signage, pavement markings, and traffic striping, inspection of building foundation and wood frame building construction, inspection of retaining wall construction, landscaping and landscape irrigation, signals, electrical and systems installation and related construction activities. Work shall include checking grade and alignment, construction traffic control, and any other duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents;
 - 2) Identify actual and potential problems associated with the Project and recommending sound engineering solutions;

- 3) Maintain awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel;
- 4) Prepare complete and accurate daily reports, engineering calculations, materials records, payment quantity documents, reports, and correspondence related to Project activities. Documents shall be sufficient to document actual cost of force account work (time and materials payment);
- 5) Prepare construction sketches, drawings, and cross-sections, as necessary;
- 6) Maintain contemporaneous records of all additions or deviations from the approved plans for preparation of as-built plans;
- 7) Inspect for environmental compliance;
- 8) Arrange for lane closures in accordance with City of jurisdiction's procedures and coordinate any work with the California Highway Patrol and/or City's Public Works Department;
- 9) Maintain awareness of water discharge requirements. Monitor Contractors' compliance with applicable regulations and construction contract provisions;
- 10) Monitor Contractors' compliance with applicable regulations required by AQMD;
- 11) Ensure Contractors' compliance with Project Environmental Commitment Record; and
- 12) Other duties as may be required or reasonably requested.

3.6 Construction Project Support

a. Construction Surveys

Offeror shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project. Offeror may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction. The Resident Engineer shall review survey requests from the Contractor and arrange for the work, as appropriate. Requests may include, but not be limited to, the following types of surveys and related services:

1) Construction Surveys

Offeror shall assist the Resident Engineer in all phases of construction staking and calculations as needed.

Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.

Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

Survey data shall include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.

Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

Perform construction staking, including (where required) but not limited to:

- Utility locations (new and as-built);
- Clearing limits;
- Slope staking;
- Rough grade;
- Finish grade;
- Building layout;
- Storm drain, sanitary sewer, and irrigation systems; and
- Curbs, gutters, and sidewalk

Monitor for settlement, if required.

Global Positioning Satellite (GPS) equipment shall be utilized if required by the Commission.

2) Right of Way Lines

Existing right of way shall be established from Commission record information and existing monumentation.

- Perpetuate existing monumentation. Includes restoring, renewing, referencing, and resetting existing boundary related monumentation and bench marks. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.
- Final monumentation. Includes setting of centerline points of control upon completion of construction and documenting control bench marks on as-built plans.

3) Special Design – Data Surveys

Includes drainage, utility, and surveys that might be required for special field studies.

b. Materials Testing and Geotechnical Services

Offeror shall provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing shall be used to ensure that construction work conforms to the applicable requirements of the City with jurisdiction, Caltrans standards and specifications, and the Design Engineer's technical provisions for material quality and workmanship.

All field and laboratory testing shall be performed in accordance with California Test Methods or test methods specified by the Design Engineer in the technical provisions of the Contract.

Offeror shall be responsible for the accuracy and completeness of all test data compilation and results.

All material test results shall be provided in accordance with the applicable Standard Specifications and Special Provisions, and California Test methods or procedures set forth by the Design Engineer or the city with jurisdiction. Failing tests shall be immediately reported internally to the Resident Engineer. All test results shall be recorded on appropriate forms. The test documents shall be legible and show the identity of the tester where appropriate. A summary sheet containing all results of a particular regime of tests shall be developed and kept current.

All test results and inspection reports shall be available to the Commission during construction and provided at the conclusion of construction.

c. Permits

Offeror shall review construction of the Project for permit compliance and coordinate with Commission and the Design Engineer to ensure that necessary permits are obtained. Offeror shall assist Commission in the coordination, timely processing and verification of approval for all permits. Offeror shall maintain permits and permit documentation on site.

3.7 Construction Cost and Schedule

- a. Offeror shall monitor and track the following:
 - 1) Contract pay item quantities and payments;
 - 2) Contract Change Orders;
 - 3) Supplemental work items;
 - 4) Agency and/or State furnished materials;
 - 5) Materials-on-hand but not installed;
 - 6) Anticipated extra work balance;
 - 7) Contingency balance; and
 - 8) Project budget.
- b. Offeror shall review and monitor Contractor's schedule and inform Commission of any significant changes or deviations in the schedule.
- c. Offeror shall provide and maintain a Project staffing plan of field office personnel. In cooperation with Commission, the staffing plan shall be periodically updated to reflect Project progress and needs.

3.8 Construction Contract Change Orders and Claims

- a. Offeror shall receive and evaluate requests for changes and/or substitutions by the Contractor. Offeror shall coordinate proposed changes with the Commission's Construction Manager and shall prepare and submit Contract Change Orders to the Commission for approval accompanied by Offeror's Transmittal Memo describing background information, reasons for the change and proposed method of payment and/or adjustment of contract time.

- b. Offeror shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, Offeror shall consult with the Commission prior to its preparation. Unless directed otherwise by Commission, the preferred method of payment for Contract Change Orders should be as follows:
 - 1) Agreed Price;
 - 2) Adjustment in compensation to a bid item; and
 - 3) Time and materials or Force Account.
- c. Offeror shall identify and preemptively attempt to resolve all potential claims, track and monitor unresolved claims, and implement a claims avoidance process.
- d. Offeror shall assist Commission, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against Commission or the Project.

3.9 Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. Offeror shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for Offeror's personnel;
- b. Offeror shall prepare an Illness and Injury Protection Plan;
- c. Offeror shall provide monthly safety status reports;
- d. Offeror shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual as appropriate;
- e. Offeror shall provide appropriate safety training for all Offeror field personnel;
- f. Offeror shall provide all necessary safety equipment as required for Offeror personnel.

3.10 Construction Project Close Out

- a. Offeror shall conduct a final walk-through with the Commission and Design Engineers.
- b. Offeror shall prepare a list of items to be completed and/or corrected by the Contractor [Punch List] for final completion of the Project.
- c. Offeror shall review and verify completeness of as-built drawings.
- d. Offeror shall prepare final construction reports including the Project Completion Report.
- e. Offeror shall prepare and deliver to the Commission all Project files in accordance with Commission's and Caltrans policies.
- f. Offeror shall assist the Commission and Contractor in obtaining final release of all Project permits.

4. DELIVERABLES

In addition to the requirements described above, the Offeror shall provide the following:

- a. Offeror's Illness and Injury Prevention Plan as described in the CalOSHA Construction Safety Orders.
- b. Correspondence to/from Contractor, Resident Engineers' daily reports, Assistant Resident Engineers' daily reports, and extra work diaries.
- c. Approved Project Baseline Schedule and Monthly Updates with analysis with Weekly Statements of Working Days.
- d. Monthly Project Reports.
- e. Listing of approved submittals with supporting information.
- f. RFI submittals and responses.
- g. Monthly Construction Contract progress payments, back-up documentation, and support information as requested.

- h. Contractor final payment documents, delivered to Commission no later than ten (10) working days after acceptance by Commission of the completed construction Projects.
- i. Project Completion Report.
- j. All Project files, Project reports, correspondence, memoranda, shop drawings, Project logs, change order data, claims and claim reports, and Contractor payment records.
- k. Certified payrolls and fringe benefit statements for all employees, Offeror and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- l. All materials test results and field testing and/or testing reports. Include reports required by the city's building officials.
- m. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
 - 1) Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein; and
 - 2) Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
- n. All original survey documents resulting from this agreement, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of the Commission. A copy of all survey documents furnished by Commission shall be retained by Offeror for future reference.

When the survey is performed with a total station survey system, the original field notes shall be submitted as a hard copy in a readable format of the data (observations) originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

Exhibit A

o. Deliverables to the Resident Engineer shall follow the format specified below:

- Horizontal Control;
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions;
- Vertical Control;
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum;
- Topography; and
- Alpha-numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans or SCRRA (Metrolink).

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:

- Conventional Cross – Sections (each cross – section):
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
- Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.

p. Data Collector Data

If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.

q. Other

As specified in the survey request.

5 EQUIPMENT AND MATERIAL TO BE PROVIDED BY OFFEROR

As agreed with Commission's Project Manager, the Offeror shall provide the following:

- 1) Office facilities including, telephones, desks, chairs, computers, and appropriate office equipment. One (1) office with a desk, chair, telephone, and computer shall be reserved for the Commission.
- 2) Tools and equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Attachment B, Offeror's Cost Proposal, shall be reimbursed by the Commission as agreed by the Commissions' Project Manager.
- 3) Offeror personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is used, Offeror shall provide a base station at the field office.
- 4) Materials Testing facilities shall be fully equipped at all times to perform the services required, including but not limited to the following:

A laboratory in close proximity to the Project shall be required. The type and location of the lab should be such that it can meet the needs of the Project in an efficient, time effective manner. The laboratory shall be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.

Each vehicle shall be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

Field personnel shall be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.

All laboratory and testing equipment shall be calibrated per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

- 5) Survey equipment and supplies shall be provided to complete the required survey work. Equipment and supplies shall, include, but not be limited to:

a. Survey vehicles

Survey vehicles will be suitable to perform the required work encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.

b. Data Processing Systems

Data processing systems shall include hardware and software to:

- Performing survey and staking calculations from the design plans and specifications;
- Reduce survey data collected with conventional and total station survey systems;
- Perform network adjustments for horizontal and vertical control surveys; and
- Format survey data to be compatible with the Caltrans computer survey and data system.

c. Drafting equipment and supplies.

d. Digital calculators.

e. Hand tools as appropriate for the requested survey work.

f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

h. Leveling instruments and equipment:

- Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less; and
- Suitable level rods for the work to be performed.

i. Distance measuring instruments and equipment:

- Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions;
- Prisms, sufficient to perform the required work; and
- Tapes; steel, cloth.

j. Angle measuring instruments and equipment:

- Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical; and
- Targets as required to perform the work.

k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.

l. Radio or cellular communications equipment for communication between field office and field crews.

m. Caltrans or SCRRA manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

n. Lighting may be required for nighttime survey work.

6 MATERIALS TO BE FURNISHED BY COMMISSION

- 1) The Commission will provide copies of all Project construction documents including plans, special provisions, reports, designer prepared Resident Engineer files, and contracts.
- 2) The Commission will provide copies of all previously secured permits and Project authorizations.
- 3) Appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

7 STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current applicable Caltrans or Metrolink Manuals including:

- 1) Construction Manual and its revisions;
- 2) Quality Assurance Program Manual;
- 3) Manual of Traffic Controls for Construction and Maintenance Work Zones;
- 4) Local Agency Standards and latest edition of the California Uniform Building Code;
- 5) SCRRRA Standard Plans and Specifications.

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by Offeror shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Commission will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this agreement. Any Offeror employee who does not perform adequately shall be replaced if directed by the Commission Construction Manager.

8 AVAILABILITY AND WORK HOURS

The typical workday includes all hours worked by the Commission's construction Contractor. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for Offeror's personnel.

Unless otherwise directed by Commission, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by Commission.

9 LIMITATIONS OF AUTHORITY

Offeror does not have the authority to:

- 1) Authorize deviations from the Contract documents;
- 2) Approve substitute materials or equipment; except as authorized in writing by Commission;
- 3) Conduct or participate in tests or third party inspections; except as authorized in writing by Commission;
- 4) Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors;
- 5) Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions;
- 6) Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor;
- 7) Verbally authorize or approve change orders or extra work for the Project; and
- 8) Offer or receive incentives, inducements, or other forms of remuneration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

10 THIRD PARTY RELATIONSHIPS

This Agreement is intended to provide unique services for a specific project. In the development of the Project, Commission has worked closely with local jurisdictions such as the city of Riverside and others in the preparation of the construction documents and other Project related materials. The Commission, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. Offeror shall take direction **only** from the Commission and shall regularly inform **only** Commission of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, Offeror may find occasion to meet with city representatives, the Design Engineer, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While the Commission enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, Offeror shall not act on any suggestions,

solicited or unsolicited, without obtaining specific direction from the Commission. All oral and written communication with outside agencies or Offeror's related to the Project shall be directed only to the Commission. Distribution of Project related communication and information shall be at the sole discretion of Commission representatives.

11 CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this agreement, the following also shall apply:

- 1) Offeror shall conform to the safety provisions of the Caltrans Construction Manual;
- 2) Offeror's field personnel shall wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soles with steel toe protection at all times while working in the field;
- 3) Offeror shall provide appropriate safety training for all Offeror's personnel including rail safety for BNSF or Metrolink, as appropriate; and
- 4) All safety equipment shall be provided by Offeror.

12 BASIS FOR SURVEY AND MONUMENT STAKING

Survey shall be based upon existing horizontal and vertical control and existing pavement elevations.

Monuments established by Offeror shall be marked by Offeror with furnished disks, plugs, tags. In addition, Offeror shall identify Offeror-established monuments by tagging or stamping the monuments with the license or registration number of Offeror's surveyor who is in "responsible charge" of the work.

13 PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by the Commission.

EXHIBIT "B"- COMPENSATION AND PAYMENT

DRAFT

EXHIBIT "B"

COMPENSATION SUMMARY¹

| FIRM | PROJECT TASKS/ROLE | COST |
|-----------------------------------|-------------------------------------------------------------------------------|------------------------|
| <i>Prime Consultant:</i> | | |
| AECOM | Construction Management Services | \$ 8,000,000.00 |
| <i>Sub Consultants:</i> | | |
| C2PM | Civil/Structural Inspection | TBD |
| Guida Surveying | Construction Surveying | TBD |
| Leighton Consulting | Materials Testing | TBD |
| Pacific Railway Enterprises, Inc. | Transit Inpection, System Startup and Testing | TBD |
| Wabtec/Xorail | Transit Inpection, Systems Startup and Testing, signaling (wireless crossing) | TBD |
| | | |
| | | |
| | | |
| | | |
| | | |
| TOTAL COSTS | | \$ 8,000,000.00 |

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

EXHIBIT "C"

CALTRANS REQUIREMENTS/ PROP 1 B PROVISIONS

1. STATEMENT OF COMPLIANCE.

A. Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

2. DEBARMENT AND SUSPENSION CERTIFICATION

A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to Commission.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

3. PROMPT PAYMENT

Consultant agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Consultant receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission.

4. RELEASE OF RETAINAGE

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

5. LEGAL REMEDIES

In addition to those contract remedies set forth under relevant provisions of California law, either Party to this Agreement may, where applicable, seek legal redress for violations of this Agreement pursuant to the relevant provisions of 49 C.F.R. Parts 23 and 26, to the relevant federal or state statutory provisions governing civil rights violations, and to the relevant federal and state provisions governing false claims or "whistleblower" actions, as well as any and all other applicable federal and state provisions of law.

The Consultant shall include a provision to this effect in each of its agreements with its subcontractors.

6. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable

finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

7. INVENTIONS.

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

8. ENVIRONMENTAL COMPLIANCE

A. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

B. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

EXHIBIT "D" - FTA PROVISIONS

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

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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 leading 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

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its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

18. Energy Conservation

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

19. Clean Water

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

d. The Consultant further agrees that:

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

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

20. Clean Air

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

b. The Consultant further agrees that:

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

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

21. Recycled Products

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

21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

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

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

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

22. Safe Operation of Motor Vehicles

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

- a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.
- b. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, "promptly" means to refer information without delay and without change.

24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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 E-1

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

THIS FORM IS NOT APPLICABLE TO AECOM

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

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Agreement No. 23-33-069-00

**PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
JACOBS PROJECT MANAGEMENT CO.
FOR ON-CALL
CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING,
AND CONSTRUCTION SURVEYING SERVICES
FOR THE
CONSTRUCTION OF COMMUTER RAIL STATION CAPITAL IMPROVEMENT
PROJECTS**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and JACOBS PROJECT MANAGEMENT CO. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals.

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

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

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

D. A source of funding for payment for on-call professional consulting services provided under this Agreement may be Proposition 1B funds ("Prop 1B") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Agreement shall not be deemed to be approved by the Commission until the certification shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of commuter rail station capital improvement projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

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

Terms.

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

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

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

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

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

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant’s cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. This Agreement, Consultant’s cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission’s contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 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 (DATE), unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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

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

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

7. Consultant's Representative. Consultant hereby designates Gary Tomasetti to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her professional skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Consultant shall work closely and cooperate fully with Commission's Contract Administrator and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Contract Administrator.

8. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are: Gary Tomasetti, Michael Albanese, Justin Duke, Alex Angha, Ben Quintana, 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. Claims Filed by Contractor.

16.1 If claims are filed by the Commission's contractor for the Project ("Contractor") relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required by the Commission in order to evaluate or defend against such claims; Consultant agrees to make reasonable efforts to make its personnel available for consultation with the Commission's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

16.2 Consultant's personnel that the Commission considers essential to assist in defending against Contractor claims will be made available on reasonable notice from the Commission. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.

16.3 Services of the Consultant's personnel and other support staff in connection with Contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

16.4 Nothing contained in this Section shall be construed to in any way limit Consultant's indemnification obligations contained in Section 29. In the case of any conflict between this Section and Section 29, Section 29 shall govern. This Section is not intended to obligate the Commission to reimburse Consultant for time spent by its personnel related to Contractor claims for which Consultant is required to indemnify and defend the Commission pursuant to Section 29 of this Agreement.

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

reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

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

19. Fees and Payment.

19.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. Commission shall reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the Services. Consultant shall not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant cost proposal attached hereto as Exhibit "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. In no event, shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. To the extent legally permissible, Consultant's approved overhead rate shall be fixed for the term of this Agreement. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.8 shall not be exceeded, unless authorized by a written amendment.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is

nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized DPA rates, and Commission has not otherwise approved said rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to the Commission on demand.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, Commission shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 21, Termination.

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

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due Commission including any equipment purchased under the Equipment Purchase provisions of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

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

19.9 Commission has or will enter into Three (3) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are AECOM (23-33-047-00) and Kleinfelder Construction Services (23-33-070-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Eight Million Dollars (\$_8,000,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

19.10 Salary increases shall be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by Commission's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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

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

20. Disputes.

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

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

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

21. Termination.

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

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

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

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

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

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

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

21.8 Consultant may not terminate this Agreement except for cause.

22. Cost Principles and Administrative Requirements.

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

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

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

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

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

23.1 Accounting System. Consultant and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate expenditures by line item for the Services. The accounting system of Consultant and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

24. Audit Review Procedures.

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

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

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

25. Subcontracting.

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

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

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

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

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

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

26. Equipment Purchase

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

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

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

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

27. Labor Code Requirements.

27.1 Prevailing Wages.

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

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

(c) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the

minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(d) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

28. Ownership of Materials/Confidentiality.

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

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

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

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

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

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for

wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

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

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

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

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

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

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which , in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers. 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 29 shall survive expiration or termination of this Agreement.

30. Insurance.

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

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

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

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

30.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$2,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

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

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

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(d) All Coverages.

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

(ii) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

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

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

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

approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

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

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

Pursuant to the authority contained in Section 591 of the Vehicle Code, the Commission has determined that the Project will contain areas that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

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

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

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

33. Prohibited Interests.

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

33.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement, or any ensuing Commission construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing Commission construction project, which will follow.

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

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

(d) Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

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

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

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

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.5 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

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

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

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

37. Disputes; Attorneys' Fees.

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

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

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

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

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

CONSULTANT:

Jacobs Project Management Co.

3257 E. Guasti Road, Suite 120
Ontario, CA 91761
Attn: Gary Tomasetti

COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING/ASSISTANCE**

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

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RIVERSIDE COUNTY TRANSPORTATION COMMISSION By: _____ [INSERT NAME] Chair <i>Approved as to Form:</i> By: _____ Best, Best & Krieger LLP General Counsel | CONSULTANT JACOBS PROJECT MANAGEMENT By: _____ Signature _____ Name _____ Title ATTEST: By: _____ Its: _____ |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

* A corporation requires the signatures of two corporate officers.

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

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

EXHIBIT "A" - SCOPE OF WORK

The Commission intends to contract with an on-call “bench” of qualified consultants to provide for Construction Management Services, Material Testing and Construction Surveying Services for the construction of Rail, Transit and Commuter Rail Station Infrastructure and Facilities Capital Improvement Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission’s model agreement. The selected consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

Projects for which construction management and related services may be required include station platform improvements, passenger shelters, station amenities, landscaping access ways involving pedestrian connections, fencing for access control, parking lot improvements, bicycle paths and bicycle storage solutions to facilitate active transportation in the stations. In addition, construction management and related services may be required for station related track work, signals, Quiet Zones and layover facilities. The foregoing generally described projects may include upgrade to technology with improved ticket vending machines, customer information kiosks, communicator upgrades, signage and potentially wireless connectivity.

List of Potential Projects

- Railroad Track Addition/Rehabilitation/Replacement
- Railroad Platform Expansion and Improvements
- Pedestrian At-grade Railroad Crossings
- Railroad Layover Facilities
- Railroad Signal Systems
- Railroad Grade Crossings
- Transit and Commuter Railroad Station Facility Improvements
- Parking Structure Design and Development
- Parking Lot Improvements, Rehabilitation and Expansions
- Pedestrian Bridge Structure
- Passenger Shelters
- Station Security and Safety Elements

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

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

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

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

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

2. PERFORMANCE REQUIREMENTS

2.1 Construction Management: Offeror shall furnish a Project Manager/Resident Engineer to coordinate Offeror's operations with Commission. The Project Manager shall be responsible for all matters related to Offeror's personnel and operations. A Resident Engineer shall be assigned as a single point of contact to direct and coordinate construction activities. Other Assistant Resident Engineers may be assigned to specific project responsibilities as needed. The Resident Engineer shall be a Civil Engineer, registered in the State of California, and shall be in responsible charge of construction activity within the Project.

The number of Offeror's personnel assigned to the Project will vary throughout the duration of the agreement. Offeror's personnel shall be assigned, in varying levels of responsibility, as needed by the Offeror to meet the Project schedule and comply with Project requirements.

Resumes of personnel shall be submitted to the Commission for review and approval prior to approval of an ATO and assignment to the Project. The Commission and Offeror will jointly determine the quality and quantity of services that are required by Offeror personnel. Personnel selected for assignment by Offeror shall be made available for personal interviews prior to acceptance by the Commission. If, in the opinion of Commission, an individual lacks adequate or appropriate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of Offeror personnel is unsatisfactory to the Commission, the Commission may release him/her by written notice and may require that another qualified person be assigned.

If Offeror personnel are on leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel returns to the Project.

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for Offeror personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for Offeror personnel. The Project Manager, with concurrence from the Commission, shall have the authority to increase, decrease, or eliminate Offeror personnel work hours' dependent on the schedule and requirements of the construction Contractor. All overtime required by Offeror personnel shall be approved and authorized by the Commission prior to each occurrence.

Offeror personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. Offeror personnel shall cooperate and consult with the Commission and city officials during the course of the Project. Offeror's personnel shall perform duties as may be required to assure that construction is performed in accordance with the Project plans and specifications. Offeror's personnel shall keep accurate and timely records and document all work performed by the Contractor and Offeror.

Offeror shall monitor for Contractor's compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

Offeror's personnel shall assist the Commission and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. Local agencies will retain jurisdictional control for traffic control outside of the Project's limits.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

2.2 Materials Testing: The number of field testing personnel assigned to the Project will vary throughout the duration of the construction Contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction Contractor.

The Resident Engineer shall coordinate materials testing and inspection with the Contractor to avoid delay.

The Commission intends to maintain a consistency of material testing quality throughout each phase of each Project. Offeror is therefore encouraged to provide,

when possible, the same field personnel for the duration of construction of the Project.

Resumes of materials testing personnel shall be submitted to the Commission for review and approval prior to assignment to the Project. If, at any time, the level of performance of any testing personnel is below expectations, Commission may release that field person and require that another be assigned as needed.

If a member of Offeror's personnel is on a leave of absence, Offeror's Project Manager will provide an equally qualified replacement employee until the original member returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee.

All personnel shall be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with the Commission and local agency officials during the course of the agreement; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. Offeror's personnel shall be experienced in performing inspections and/or testing in accordance with requirements described or inferred from the construction contract special provisions and plans and shall keep records and document the work as directed by the Resident Engineer and/or required by the local agency having jurisdiction. All records will be provided to the Commission in both hard copy and electronic format at the completion of the project. Also Commission staff shall be provided electronic remote access to the Consultant document control system.

All services required hereunder shall be performed in accordance with Caltrans, SCRRRA, AREMA or applicable Specifications for Public Works (Greenbook) regulations, policies, procedures, manuals, and referenced standards.

2.3 Construction Surveying: Offeror shall furnish a surveying crew to perform construction surveys and final monumentation for the Project. The same survey crew shall provide services throughout the duration of the construction contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor.

It is the intent of the Commission to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, Offeror is encouraged to provide the same field personnel for the duration of construction. It is important that the Survey Party Chief(s) assigned to a project be completely familiar with the horizontal and vertical control at the project site as well as survey and documentation requirements for the Project.

Resumes of Offeror personnel and certification shall be submitted to the Commission for review. Offeror personnel must be approved by the Commission prior to assignment to a project. The Commission and Offeror will have the

responsibility of determining the quality and quantity of work performed by Offeror personnel. If, at any time, the level of performance by Offeror's personnel is below expectations, Commission may release the survey crew member and require that another be assigned.

If Offeror's survey crew personnel assigned to the Project is on a leave of absence, the Project Manager shall provide an equally qualified replacement(s) until the original employee(s) returns to work. The replacement shall be required to meet all the requirements of the permanently assigned employee.

Offeror's personnel shall:

- Be knowledgeable of and comply with applicable building codes and local, state, and federal regulations;
- Be knowledgeable of Caltrans surveying requirements;
- Cooperate and consult with Commission officials during the course of the agreement;
- Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications; and
- Keep records and document work as directed by the Resident Engineer.

All services required hereunder shall be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards except as directed otherwise by the Commission.

3. DUTIES AND RESPONSIBILITIES

3.1 Pre-construction Services

a Plan Review

Offeror shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, Resident Engineer's pending files, liaison with local agencies (including Building Permit requirements), utility arrangements, operational arrangements with BNSF, SCRRA and/or RTA (as needed), and existing station operations in order to verify completeness and consistency of documents throughout the Project. As a minimum, Offeror shall check for quantity discrepancies, potential detail conflicts, constructability, and consistency between plans, specifications and pay items.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

b Schedule

Offeror shall review the Design Engineer's proposed Project schedule with the Project plans and specifications to determine if the proposed sequence and duration of activities will provide for safe and expeditious completion of the Project.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

Offeror shall review the Design Engineer's Project estimate with the Project plans and specifications to verify that all aspects of the Project scope have been addressed.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

3.2 Bid Process

a. Bidding Process

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid questions and draft responses;
- 2) Draft addenda to the bid documents;
3. Review of bidder's documents;
4. Prepare bid tabulation.

b. Pre-construction Meetings

Offeror shall assist the Commission in conducting one or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the Design Engineer, Caltrans, city officials, and utility companies.

c. Contract Award

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid for completeness and responsiveness.
- 2) Perform bid analysis.
- 3) Review of procedural items.
- 4) Check Contractor references, licenses, insurance, and sureties.
- 5) Coordinate with prospective Contractor for scheduling of award of the construction contract.

All processes shall be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and/or relevant Commission procedures.

3.3 Construction Project Administration

- a. Offeror shall administer Project construction contract using Caltrans Construction Manual as a guideline.
- b. Offeror shall conduct regular Project coordination meetings with Contractor, Commission, local agencies, and Design Engineer, as appropriate.
- c. Offeror shall review and approve the Contractor's Baseline Schedule and subsequent Updates and track weather or unsuitable site conditions on a weekly basis.

Offeror shall prepare construction progress payments in conjunction with the Contractor per contract requirements and maintain payment records and supporting documentation. All progress payments shall be reviewed by the Commission for approval.

- d. Offeror shall establish and maintain Project records. Project record keeping shall include, but is not limited to the following: correspondence, memoranda, contract documents, change orders, claims, Commission and engineer directives, meeting minutes, shop drawings, as-built changes, materials records, survey data, supplemental drawings, progress payments and requirements listed elsewhere. Offeror shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractor, subcontractors, and principal material suppliers.
- e. Offeror shall establish and maintain a filing system for each Project using the Caltrans Construction Manual as a guideline.
- f. Offeror shall review and approve Contractors' construction schedules per contract requirements on an ongoing basis and alert the Commission to conditions that may lead to delays in completion of the Project.
- g. Offeror shall prepare and submit a Monthly Project Report (MPR). The MPR shall include construction activity, accomplishments, safety and traffic

issues, and status of Requests for Information (RFIs), submittals, current issues, Contract Change Orders (CCOs) and current Project budget and schedule. The format and contents of the MPR will be determined by RCTC. Provision of an MPR acceptable to the Commission will be a condition precedent for payment of the CM's invoices.

- h. Offeror shall review and ensure compliance with environmental requirements.
- i. Offeror shall ensure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual.
- j. Offeror shall conduct labor interviews and review Contractors' certified payroll records/fringe benefit statements, etc. and maintain records to assist the Commission with monitoring labor compliance, DBE, and equal employment opportunity (EEO) requirements.
- k. Offeror shall ensure that the Project meets all provisions of an approved Storm Water Pollution Prevention Plan (SWPPP) and/or Water Pollution Control Plan (WPCP) and coordinate with the State Water board by providing data into their SMARTS system.
- l. Offeror shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

3.4 Construction Project Coordination

- a. Offeror shall provide a qualified Resident Engineer and other qualified assistant Resident Engineers, as needed to effectively manage the Project.
- b. Offeror Resident Engineer shall act as a single point of contact between Contractor, the Commission, Offeror's construction surveyor, Offeror's materials inspector, and utility companies. Offeror may, when requested by the Commission, act as point of contact between Design Engineers, Caltrans, cities with jurisdiction, utilities, and the public.
- c. Offeror shall maintain regular contact with the Commission's Construction Manager.

- d. Offeror shall review contract plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to Commission. Should the Commission determine that changes are necessary, Offeror shall prepare Contract Change Orders (CCOs) and supporting transmittal memoranda in accordance with construction contract documents and Commission procedures.
- e. Offeror shall monitor, coordinate, and track construction progress to ensure the Project proceeds on schedule and according to the order of work required in the plans and special provisions. Offeror shall direct the Contractor, in conjunction with Commission, to expedite work, as required, to maintain schedule.
- f. Offeror shall coordinate review of shop drawings and Requests for Information (RFI) with the Design Engineer and RCTC's Construction Manager. Offeror shall log and track all submittals and RFIs.
- g. Offeror shall provide a qualified SWPPP coordinator who shall review Contractor-prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with the cities with jurisdiction and the Commission. Offeror shall cooperate with Caltrans and/or monitoring agencies during inspections and field reviews.
- h. Offeror shall coordinate the implementation of any changes with the Construction Manager and the Design Engineer.
- i. Offeror shall review and approve Traffic Control Plans and forward to Commission as necessary.
- j. Offeror shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.
- k. Offeror shall coordinate all Project construction activities with existing Station operations.

3.5 Construction Inspection

- a. Offeror shall coordinate all construction inspection and special inspections that may be required by local agencies for the Project. Offeror shall ensure that appropriate city and local agency are notified and present as required

throughout the Project. Offeror shall notify the Commission immediately regarding any directives, recommendations, notices, etc. received from agencies other than Commission.

- b. Offeror shall perform and document daily on-site inspections of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. Offeror shall exercise reasonable care and diligence to discover and promptly replace, correct, and/or mitigate all defects or deficiencies in the materials or workmanship used in the Project. Any such deficiencies and their resolution shall be reported to the Commission.
- d. Offeror personnel assigned to the Project shall be thoroughly familiar with contract special or technical provisions provided by the Design Engineer, , Standard Specifications and RCTC's General Conditions/Instructions to Bidders, Caltrans, SCRRA, Greenbook Standard Plans and City's building permit requirements and conditions of approval as they apply to the Project. Offeror personnel shall have the ability to read and interpret construction plans and specifications. Offeror personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, Offeror personnel shall be familiar with the construction requirements of the Caltrans Storm Water Pollution Prevention Program.
- e. Assignments to be performed by Offeror personnel shall include, but are not limited to, the following:
 - 1) Inspect installation of dry and wet utilities, inspection and testing of subgrade, aggregate base and paving, inspection of signage, pavement markings, and traffic striping, inspection of building foundation and wood frame building construction, inspection of retaining wall construction, landscaping and landscape irrigation, signals, electrical and systems installation and related construction activities. Work shall include checking grade and alignment, construction traffic control, and any other duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents;
 - 2) Identify actual and potential problems associated with the Project and recommending sound engineering solutions;

- 3) Maintain awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel;
- 4) Prepare complete and accurate daily reports, engineering calculations, materials records, payment quantity documents, reports, and correspondence related to Project activities. Documents shall be sufficient to document actual cost of force account work (time and materials payment);
- 5) Prepare construction sketches, drawings, and cross-sections, as necessary;
- 6) Maintain contemporaneous records of all additions or deviations from the approved plans for preparation of as-built plans;
- 7) Inspect for environmental compliance;
- 8) Arrange for lane closures in accordance with City of jurisdiction's procedures and coordinate any work with the California Highway Patrol and/or City's Public Works Department;
- 9) Maintain awareness of water discharge requirements. Monitor Contractors' compliance with applicable regulations and construction contract provisions;
- 10) Monitor Contractors' compliance with applicable regulations required by AQMD;
- 11) Ensure Contractors' compliance with Project Environmental Commitment Record; and
- 12) Other duties as may be required or reasonably requested.

3.6 Construction Project Support

a. Construction Surveys

Offeror shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project. Offeror may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction. The Resident Engineer shall review survey requests from the Contractor and arrange for the work, as appropriate. Requests may include, but not be limited to, the following types of surveys and related services:

1) Construction Surveys

Offeror shall assist the Resident Engineer in all phases of construction staking and calculations as needed.

Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.

Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

Survey data shall include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.

Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

Perform construction staking, including (where required) but not limited to:

- Utility locations (new and as-built);
- Clearing limits;
- Slope staking;
- Rough grade;
- Finish grade;
- Building layout;
- Storm drain, sanitary sewer, and irrigation systems; and
- Curbs, gutters, and sidewalk

Monitor for settlement, if required.

Global Positioning Satellite (GPS) equipment shall be utilized if required by the Commission.

2) Right of Way Lines

Existing right of way shall be established from Commission record information and existing monumentation.

- Perpetuate existing monumentation. Includes restoring, renewing, referencing, and resetting existing boundary related monumentation and bench marks. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.
- Final monumentation. Includes setting of centerline points of control upon completion of construction and documenting control bench marks on as-built plans.

3) Special Design – Data Surveys

Includes drainage, utility, and surveys that might be required for special field studies.

b. Materials Testing and Geotechnical Services

Offeror shall provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing shall be used to ensure that construction work conforms to the applicable requirements of the City with jurisdiction, Caltrans standards and specifications, and the Design Engineer's technical provisions for material quality and workmanship.

All field and laboratory testing shall be performed in accordance with California Test Methods or test methods specified by the Design Engineer in the technical provisions of the Contract.

Offeror shall be responsible for the accuracy and completeness of all test data compilation and results.

All material test results shall be provided in accordance with the applicable Standard Specifications and Special Provisions, and California Test methods or procedures set forth by the Design Engineer or the city with jurisdiction. Failing tests shall be immediately reported internally to the Resident Engineer. All test results shall be recorded on appropriate forms. The test documents shall be legible and show the identity of the tester where appropriate. A summary sheet containing all results of a particular regime of tests shall be developed and kept current.

All test results and inspection reports shall be available to the Commission during construction and provided at the conclusion of construction.

c. Permits

Offeror shall review construction of the Project for permit compliance and coordinate with Commission and the Design Engineer to ensure that necessary permits are obtained. Offeror shall assist Commission in the coordination, timely processing and verification of approval for all permits. Offeror shall maintain permits and permit documentation on site.

3.7 Construction Cost and Schedule

- a. Offeror shall monitor and track the following:
 - 1) Contract pay item quantities and payments;
 - 2) Contract Change Orders;
 - 3) Supplemental work items;
 - 4) Agency and/or State furnished materials;
 - 5) Materials-on-hand but not installed;
 - 6) Anticipated extra work balance;
 - 7) Contingency balance; and
 - 8) Project budget.
- b. Offeror shall review and monitor Contractor's schedule and inform Commission of any significant changes or deviations in the schedule.
- c. Offeror shall provide and maintain a Project staffing plan of field office personnel. In cooperation with Commission, the staffing plan shall be periodically updated to reflect Project progress and needs.

3.8 Construction Contract Change Orders and Claims

- a. Offeror shall receive and evaluate requests for changes and/or substitutions by the Contractor. Offeror shall coordinate proposed changes with the Commission's Construction Manager and shall prepare and submit Contract Change Orders to the Commission for approval accompanied by Offeror's Transmittal Memo describing background information, reasons for the change and proposed method of payment and/or adjustment of contract time.

- b. Offeror shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, Offeror shall consult with the Commission prior to its preparation. Unless directed otherwise by Commission, the preferred method of payment for Contract Change Orders should be as follows:
 - 1) Agreed Price;
 - 2) Adjustment in compensation to a bid item; and
 - 3) Time and materials or Force Account.
- c. Offeror shall identify and preemptively attempt to resolve all potential claims, track and monitor unresolved claims, and implement a claims avoidance process.
- d. Offeror shall assist Commission, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against Commission or the Project.

3.9 Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. Offeror shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for Offeror's personnel;
- b. Offeror shall prepare an Illness and Injury Protection Plan;
- c. Offeror shall provide monthly safety status reports;
- d. Offeror shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual as appropriate;
- e. Offeror shall provide appropriate safety training for all Offeror field personnel;
- f. Offeror shall provide all necessary safety equipment as required for Offeror personnel.

3.10 Construction Project Close Out

- a. Offeror shall conduct a final walk-through with the Commission and Design Engineers.
- b. Offeror shall prepare a list of items to be completed and/or corrected by the Contractor [Punch List] for final completion of the Project.
- c. Offeror shall review and verify completeness of as-built drawings.
- d. Offeror shall prepare final construction reports including the Project Completion Report.
- e. Offeror shall prepare and deliver to the Commission all Project files in accordance with Commission's and Caltrans policies.
- f. Offeror shall assist the Commission and Contractor in obtaining final release of all Project permits.

4. DELIVERABLES

In addition to the requirements described above, the Offeror shall provide the following:

- a. Offeror's Illness and Injury Prevention Plan as described in the CalOSHA Construction Safety Orders.
- b. Correspondence to/from Contractor, Resident Engineers' daily reports, Assistant Resident Engineers' daily reports, and extra work diaries.
- c. Approved Project Baseline Schedule and Monthly Updates with analysis with Weekly Statements of Working Days.
- d. Monthly Project Reports.
- e. Listing of approved submittals with supporting information.
- f. RFI submittals and responses.
- g. Monthly Construction Contract progress payments, back-up documentation, and support information as requested.

- h. Contractor final payment documents, delivered to Commission no later than ten (10) working days after acceptance by Commission of the completed construction Projects.
- i. Project Completion Report.
- j. All Project files, Project reports, correspondence, memoranda, shop drawings, Project logs, change order data, claims and claim reports, and Contractor payment records.
- k. Certified payrolls and fringe benefit statements for all employees, Offeror and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- l. All materials test results and field testing and/or testing reports. Include reports required by the city's building officials.
- m. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
 - 1) Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein; and
 - 2) Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
- n. All original survey documents resulting from this agreement, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of the Commission. A copy of all survey documents furnished by Commission shall be retained by Offeror for future reference.

When the survey is performed with a total station survey system, the original field notes shall be submitted as a hard copy in a readable format of the data (observations) originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

Exhibit A

o. Deliverables to the Resident Engineer shall follow the format specified below:

- Horizontal Control;
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions;
- Vertical Control;
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum;
- Topography; and
- Alpha-numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans or SCRRA (Metrolink).

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:

- Conventional Cross – Sections (each cross – section):
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
- Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.

p. Data Collector Data

If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.

q. Other

As specified in the survey request.

5 EQUIPMENT AND MATERIAL TO BE PROVIDED BY OFFEROR

As agreed with Commission's Project Manager, the Offeror shall provide the following:

- 1) Office facilities including, telephones, desks, chairs, computers, and appropriate office equipment. One (1) office with a desk, chair, telephone, and computer shall be reserved for the Commission.
- 2) Tools and equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Attachment B, Offeror's Cost Proposal, shall be reimbursed by the Commission as agreed by the Commissions' Project Manager.
- 3) Offeror personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is used, Offeror shall provide a base station at the field office.
- 4) Materials Testing facilities shall be fully equipped at all times to perform the services required, including but not limited to the following:

A laboratory in close proximity to the Project shall be required. The type and location of the lab should be such that it can meet the needs of the Project in an efficient, time effective manner. The laboratory shall be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.

Each vehicle shall be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

Field personnel shall be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.

All laboratory and testing equipment shall be calibrated per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

- 5) Survey equipment and supplies shall be provided to complete the required survey work. Equipment and supplies shall, include, but not be limited to:

a. Survey vehicles

Survey vehicles will be suitable to perform the required work encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.

b. Data Processing Systems

Data processing systems shall include hardware and software to:

- Performing survey and staking calculations from the design plans and specifications;
- Reduce survey data collected with conventional and total station survey systems;
- Perform network adjustments for horizontal and vertical control surveys; and
- Format survey data to be compatible with the Caltrans computer survey and data system.

c. Drafting equipment and supplies.

d. Digital calculators.

e. Hand tools as appropriate for the requested survey work.

f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

h. Leveling instruments and equipment:

- Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less; and
- Suitable level rods for the work to be performed.

i. Distance measuring instruments and equipment:

- Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions;
- Prisms, sufficient to perform the required work; and
- Tapes; steel, cloth.

j. Angle measuring instruments and equipment:

- Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical; and
- Targets as required to perform the work.

k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.

l. Radio or cellular communications equipment for communication between field office and field crews.

m. Caltrans or SCRRA manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

n. Lighting may be required for nighttime survey work.

6 MATERIALS TO BE FURNISHED BY COMMISSION

- 1) The Commission will provide copies of all Project construction documents including plans, special provisions, reports, designer prepared Resident Engineer files, and contracts.
- 2) The Commission will provide copies of all previously secured permits and Project authorizations.
- 3) Appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

7 STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current applicable Caltrans or Metrolink Manuals including:

- 1) Construction Manual and its revisions;
- 2) Quality Assurance Program Manual;
- 3) Manual of Traffic Controls for Construction and Maintenance Work Zones;
- 4) Local Agency Standards and latest edition of the California Uniform Building Code;
- 5) SCRRRA Standard Plans and Specifications.

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by Offeror shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Commission will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this agreement. Any Offeror employee who does not perform adequately shall be replaced if directed by the Commission Construction Manager.

8 AVAILABILITY AND WORK HOURS

The typical workday includes all hours worked by the Commission's construction Contractor. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for Offeror's personnel.

Unless otherwise directed by Commission, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by Commission.

9 LIMITATIONS OF AUTHORITY

Offeror does not have the authority to:

- 1) Authorize deviations from the Contract documents;
- 2) Approve substitute materials or equipment; except as authorized in writing by Commission;
- 3) Conduct or participate in tests or third party inspections; except as authorized in writing by Commission;
- 4) Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors;
- 5) Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions;
- 6) Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor;
- 7) Verbally authorize or approve change orders or extra work for the Project; and
- 8) Offer or receive incentives, inducements, or other forms of remuneration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

10 THIRD PARTY RELATIONSHIPS

This Agreement is intended to provide unique services for a specific project. In the development of the Project, Commission has worked closely with local jurisdictions such as the city of Riverside and others in the preparation of the construction documents and other Project related materials. The Commission, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. Offeror shall take direction **only** from the Commission and shall regularly inform **only** Commission of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, Offeror may find occasion to meet with city representatives, the Design Engineer, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While the Commission enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, Offeror shall not act on any suggestions,

solicited or unsolicited, without obtaining specific direction from the Commission. All oral and written communication with outside agencies or Offeror's related to the Project shall be directed only to the Commission. Distribution of Project related communication and information shall be at the sole discretion of Commission representatives.

11 CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this agreement, the following also shall apply:

- 1) Offeror shall conform to the safety provisions of the Caltrans Construction Manual;
- 2) Offeror's field personnel shall wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soles with steel toe protection at all times while working in the field;
- 3) Offeror shall provide appropriate safety training for all Offeror's personnel including rail safety for BNSF or Metrolink, as appropriate; and
- 4) All safety equipment shall be provided by Offeror.

12 BASIS FOR SURVEY AND MONUMENT STAKING

Survey shall be based upon existing horizontal and vertical control and existing pavement elevations.

Monuments established by Offeror shall be marked by Offeror with furnished disks, plugs, tags. In addition, Offeror shall identify Offeror-established monuments by tagging or stamping the monuments with the license or registration number of Offeror's surveyor who is in "responsible charge" of the work.

13 PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by the Commission.

EXHIBIT "B"- COMPENSATION AND PAYMENT

DRAFT

[illegible]

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

EXHIBIT "C"

CALTRANS REQUIREMENTS/ PROP 1 B PROVISIONS

1. STATEMENT OF COMPLIANCE.

A. Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

2. DEBARMENT AND SUSPENSION CERTIFICATION

A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to Commission.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

3. PROMPT PAYMENT

Consultant agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Consultant receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission.

4. RELEASE OF RETAINAGE

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

5. LEGAL REMEDIES

In addition to those contract remedies set forth under relevant provisions of California law, either Party to this Agreement may, where applicable, seek legal redress for violations of this Agreement pursuant to the relevant provisions of 49 C.F.R. Parts 23 and 26, to the relevant federal or state statutory provisions governing civil rights violations, and to the relevant federal and state provisions governing false claims or "whistleblower" actions, as well as any and all other applicable federal and state provisions of law.

The Consultant shall include a provision to this effect in each of its agreements with its subcontractors.

6. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable

finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

7. INVENTIONS.

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

8. ENVIRONMENTAL COMPLIANCE

A. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

B. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

EXHIBIT "D" - FTA PROVISIONS

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

Exhibit D-2

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

Exhibit D-9

its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

18. Energy Conservation

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

19. Clean Water

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

d. The Consultant further agrees that:

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

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

20. Clean Air

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

b. The Consultant further agrees that:

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

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

21. Recycled Products

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

21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

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

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

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

22. Safe Operation of Motor Vehicles

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

- a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.
- b. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, "promptly" means to refer information without delay and without change.

24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance | 2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award | 3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____ |
| 4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____ | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____ | |
| 6. Federal Department/Agency: _____ | 7. Federal Program Name/Description: CFDA Number, if applicable _____ | |
| 8. Federal Action Number, if known: _____ | 9. Award Amount, if known: _____ | |
| 10. Name and Address of Lobby Entity (If individual, last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary) | 11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary) | |
| 12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned | 14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____ | |
| 13. Form of Payment (check all that apply): <input checked="" type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____ | | |
| 15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12: (attach Continuation Sheet(s) if necessary) | | |
| 16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/> | | |
| 17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | | |
| Signature: _____ Print Name: <u>Issam Khalaf</u> Title: <u>Vice President</u> Telephone No.: <u>(949) 224-7607</u> Date: <u>March 16, 2023</u> | | Authorized for Local Reproduction Standard Form - LLL |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Agreement No. 23-33-070-00

**PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
KLEINFELDER CONSTRUCTION SERVICES, INC.
FOR ON-CALL
CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING,
AND CONSTRUCTION SURVEYING SERVICES
FOR THE
CONSTRUCTION OF COMMUTER RAIL STATION CAPITAL IMPROVEMENT
PROJECTS**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2023, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and KLEINFELDER CONSTRUCTION SERVICES, INC. ("Consultant"), a CORPORATION. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals.

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

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

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

D. A source of funding for payment for on-call professional consulting services provided under this Agreement may be Proposition 1B funds ("Prop 1B") funds administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA"). This Agreement shall not be deemed to be approved by the Commission until the certification shown in Exhibit "E" attached hereto and incorporated herein by reference, is executed.

E. Consultant desires to perform and assume responsibility for the provision of certain on-call construction management services for the construction of commuter rail station capital improvement projects in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be solicited, awarded and authorized by Commission as further described in this Agreement ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

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

Terms.

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

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

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

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

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

4. Audit Procedures.

4.1 Consultant and certain subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant’s cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. This Agreement, Consultant’s cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission’s contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 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 (DATE), unless extended by contract amendment. The Commission may extend the term of this Agreement, in its sole discretion, for one additional two (2) year period.

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

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

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

7. Consultant's Representative. Consultant hereby designates Marc McIntyre 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: Marc McIntyre, Ben Rhode, KC Schaefer, Keith Kranda, Roberto Becerra, Mark Plotnikiewicz, Rey Nocon, 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. Claims Filed by Contractor.

16.1 If claims are filed by the Commission's contractor for the Project ("Contractor") relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required by the Commission in order to evaluate or defend against such claims; Consultant agrees to make reasonable efforts to make its personnel available for consultation with the Commission's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

16.2 Consultant's personnel that the Commission considers essential to assist in defending against Contractor claims will be made available on reasonable notice from the Commission. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the Consultant's personnel services under this Agreement.

16.3 Services of the Consultant's personnel and other support staff in connection with Contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

16.4 Nothing contained in this Section shall be construed to in any way limit Consultant's indemnification obligations contained in Section 29. In the case of any conflict between this Section and Section 29, Section 29 shall govern. This Section is not intended to obligate the Commission to reimburse Consultant for time spent by its personnel related to Contractor claims for which Consultant is required to indemnify and defend the Commission pursuant to Section 29 of this Agreement.

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

reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

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

19. Fees and Payment.

19.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. Commission shall reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the Services. Consultant shall not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant cost proposal attached hereto as Exhibit "B" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. In no event, shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. To the extent legally permissible, Consultant's approved overhead rate shall be fixed for the term of this Agreement. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.8 shall not be exceeded, unless authorized by a written amendment.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is

nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

19.3 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. In addition, payments to Consultant for travel and subsistence expenses claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules, unless otherwise authorized by Commission. If the rates invoiced are in excess of those authorized DPA rates, and Commission has not otherwise approved said rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to the Commission on demand.

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

19.5 Progress payments shall be made monthly in arrears based on Services provided and allowable incurred costs. A pro rata portion of the Fixed Fee shall be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, Commission shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 21, Termination.

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

19.7 Consultant shall be reimbursed, as promptly as fiscal procedures will permit upon receipt by Commission's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due Commission including any equipment purchased under the Equipment Purchase provisions of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to Commission's Contract Administrator at the following address:

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

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

19.9 Commission has or will enter into Three (3) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("Construction Management Services Task Order Contracts"). The other Construction Management Services Task Order Contracts are AECOM (23-33-047-00) and Jacobs Project Management Co (23-33-069-00). The total amount payable by Commission for the Construction Management Services Task Order Contracts shall not exceed a cumulative maximum total value of Eight Million Dollars (\$8,000,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the Construction Management Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management Services Task Order Contracts, Commission must send written notification to Consultant and each of the other consultants entering into the Construction Management Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Commission must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.

19.10 Salary increases shall be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by Commission's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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

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

20. Disputes.

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

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

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

21. Termination.

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

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

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

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

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

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

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

21.8 Consultant may not terminate this Agreement except for cause.

22. Cost Principles and Administrative Requirements.

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

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

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

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

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

23.1 Accounting System. Consultant and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate expenditures by line item for the Services. The accounting system of Consultant and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

24. Audit Review Procedures.

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

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

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

25. Subcontracting.

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

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

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

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

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

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

26. Equipment Purchase

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

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

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

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

27. Labor Code Requirements.

27.1 Prevailing Wages.

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

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

(c) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the

minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

(d) Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

28. Ownership of Materials/Confidentiality.

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

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

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

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

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

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for

wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

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

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

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

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

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

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, inverse condemnation, and any claims related to property acquisition and relocation rules or failure to detect or abate hazardous materials, which are brought by a third party, and which , in any manner arise out of or are incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, Caltrans, and their directors, officials, officers, employees, consultants, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission, Caltrans or their directors, officials, officers, employees, consultants, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission, Caltrans and their directors, officials, officers, employees, consultants, agents, and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, Caltrans or their directors, officials officers, employees, consultants, agents, or volunteers. 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 29 shall survive expiration or termination of this Agreement.

30. Insurance.

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

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

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

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

30.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. For Consultant, such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Subconsultants of Consultant shall obtain such insurance in an amount not less than \$2,000,000 per claim. Notwithstanding the foregoing, the Commission may consider written requests to lower or dispense with the errors and omissions liability insurance requirement contained in this Section for certain subconsultants of Consultant, on a case-by-case basis, depending on the nature and scope of the Services to be provided by the subconsultant. Approval of such request shall be in writing, signed by the Commission's Contract Administrator.

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

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

(a) General Liability.

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

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

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

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

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

(c) Workers' Compensation and Employers Liability Coverage.

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

(ii) The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(d) All Coverages.

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

(ii) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to the Commission, Caltrans and their directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) Consultant shall provide the Commission at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Commission at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Commission has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Commission will be promptly reimbursed by Consultant or Commission will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Commission may cancel this Agreement. The Commission may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Commission nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

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

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

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

approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

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

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

Pursuant to the authority contained in Section 591 of the Vehicle Code, the Commission has determined that the Project will contain areas that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

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

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

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

33. Prohibited Interests.

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

33.2 Consultant Conflict of Interest.

(a) Consultant shall disclose any financial, business, or other relationship with Commission that may have an impact upon the outcome of this Agreement, or any ensuing Commission construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing Commission construction project, which will follow.

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

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

(d) Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

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

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

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

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

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

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

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

(c) The Consultant also agrees by signing this Agreement that he/she shall require that the language set forth in this Section 3.23.5 be included in all Consultant subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly.

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

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

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

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

37. Disputes; Attorneys' Fees.

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

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

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

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

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

CONSULTANT:

Kleinfelder Construction Services

2280 Market Street, Suite 300
Riverside, CA 92501
Attn: Marc McIntyre

COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT
WITH FTA AND PROPOSITION 1B FUNDING/ASSISTANCE**

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

| | |
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| <p>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</p> <p>By: _____ [INSERT NAME] Chair</p> <p><i>Approved as to Form:</i></p> <p>By: _____ Best, Best & Krieger LLP General Counsel</p> | <p>CONSULTANT KLEINFELDER CONSTRUCTION SERVICES, INC.</p> <p>By: _____ Signature</p> <p>_____</p> <p> Name</p> <p>_____</p> <p> Title</p> <p>ATTEST:</p> <p>By: _____</p> <p>Its: _____</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

* A corporation requires the signatures of two corporate officers.

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

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

EXHIBIT "A" - SCOPE OF WORK

The Commission intends to contract with an on-call “bench” of qualified consultants to provide for Construction Management Services, Material Testing and Construction Surveying Services for the construction of Rail, Transit and Commuter Rail Station Infrastructure and Facilities Capital Improvement Projects on an on-call basis pursuant to task orders to be issued in accordance with the terms of this RFQ and the Commission’s model agreement. The selected consultants will supplement the work of the Commission Staff in accordance with the specifications described herein.

Projects for which construction management and related services may be required include station platform improvements, passenger shelters, station amenities, landscaping access ways involving pedestrian connections, fencing for access control, parking lot improvements, bicycle paths and bicycle storage solutions to facilitate active transportation in the stations. In addition, construction management and related services may be required for station related track work, signals, Quiet Zones and layover facilities. The foregoing generally described projects may include upgrade to technology with improved ticket vending machines, customer information kiosks, communicator upgrades, signage and potentially wireless connectivity.

List of Potential Projects

- Railroad Track Addition/Rehabilitation/Replacement
- Railroad Platform Expansion and Improvements
- Pedestrian At-grade Railroad Crossings
- Railroad Layover Facilities
- Railroad Signal Systems
- Railroad Grade Crossings
- Transit and Commuter Railroad Station Facility Improvements
- Parking Structure Design and Development
- Parking Lot Improvements, Rehabilitation and Expansions
- Pedestrian Bridge Structure
- Passenger Shelters
- Station Security and Safety Elements

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

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

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

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

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

2. PERFORMANCE REQUIREMENTS

2.1 Construction Management: Offeror shall furnish a Project Manager/Resident Engineer to coordinate Offeror's operations with Commission. The Project Manager shall be responsible for all matters related to Offeror's personnel and operations. A Resident Engineer shall be assigned as a single point of contact to direct and coordinate construction activities. Other Assistant Resident Engineers may be assigned to specific project responsibilities as needed. The Resident Engineer shall be a Civil Engineer, registered in the State of California, and shall be in responsible charge of construction activity within the Project.

The number of Offeror's personnel assigned to the Project will vary throughout the duration of the agreement. Offeror's personnel shall be assigned, in varying levels of responsibility, as needed by the Offeror to meet the Project schedule and comply with Project requirements.

Resumes of personnel shall be submitted to the Commission for review and approval prior to approval of an ATO and assignment to the Project. The Commission and Offeror will jointly determine the quality and quantity of services that are required by Offeror personnel. Personnel selected for assignment by Offeror shall be made available for personal interviews prior to acceptance by the Commission. If, in the opinion of Commission, an individual lacks adequate or appropriate experience, the individual may be rejected or may be accepted on a trial basis until such time the individual's ability to perform the required services has been demonstrated. If, at any time, the performance of Offeror personnel is unsatisfactory to the Commission, the Commission may release him/her by written notice and may require that another qualified person be assigned.

If Offeror personnel are on leave of absence, the Project Manager shall provide approved, equally qualified replacement personnel until the assigned personnel returns to the Project.

The typical workday includes all hours worked by the construction Contractor. If necessary, overtime for Offeror personnel may be required. The construction Contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for Offeror personnel. The Project Manager, with concurrence from the Commission, shall have the authority to increase, decrease, or eliminate Offeror personnel work hours' dependent on the schedule and requirements of the construction Contractor. All overtime required by Offeror personnel shall be approved and authorized by the Commission prior to each occurrence.

Offeror personnel shall be knowledgeable of and comply with all applicable local, state, and federal regulations. Offeror personnel shall cooperate and consult with the Commission and city officials during the course of the Project. Offeror's personnel shall perform duties as may be required to assure that construction is performed in accordance with the Project plans and specifications. Offeror's personnel shall keep accurate and timely records and document all work performed by the Contractor and Offeror.

Offeror shall monitor for Contractor's compliance with the labor standards provisions of the projects and the related wage determination decisions of the Secretary of Labor.

Offeror's personnel shall assist the Commission and local agencies in obtaining compliance with the safety and accident prevention provisions of the projects. Local agencies will retain jurisdictional control for traffic control outside of the Project's limits.

All services required hereunder shall be performed in accordance with California Department of Transportation guidelines, regulations, policies, procedures, manuals, and standards, except as noted in the special provisions.

2.2 Materials Testing: The number of field testing personnel assigned to the Project will vary throughout the duration of the construction Contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction Contractor.

The Resident Engineer shall coordinate materials testing and inspection with the Contractor to avoid delay.

The Commission intends to maintain a consistency of material testing quality throughout each phase of each Project. Offeror is therefore encouraged to provide,

when possible, the same field personnel for the duration of construction of the Project.

Resumes of materials testing personnel shall be submitted to the Commission for review and approval prior to assignment to the Project. If, at any time, the level of performance of any testing personnel is below expectations, Commission may release that field person and require that another be assigned as needed.

If a member of Offeror's personnel is on a leave of absence, Offeror's Project Manager will provide an equally qualified replacement employee until the original member returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee.

All personnel shall be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with the Commission and local agency officials during the course of the agreement; and perform other duties as may be required to assure that the construction is being performed in accordance with the Project plans and specifications. Offeror's personnel shall be experienced in performing inspections and/or testing in accordance with requirements described or inferred from the construction contract special provisions and plans and shall keep records and document the work as directed by the Resident Engineer and/or required by the local agency having jurisdiction. All records will be provided to the Commission in both hard copy and electronic format at the completion of the project. Also Commission staff shall be provided electronic remote access to the Consultant document control system.

All services required hereunder shall be performed in accordance with Caltrans, SCRRRA, AREMA or applicable Specifications for Public Works (Greenbook) regulations, policies, procedures, manuals, and referenced standards.

2.3 Construction Surveying: Offeror shall furnish a surveying crew to perform construction surveys and final monumentation for the Project. The same survey crew shall provide services throughout the duration of the construction contract. Offeror's personnel shall be assigned as needed by the Resident Engineer to meet the schedule of the construction contractor.

It is the intent of the Commission to maintain a consistency of construction survey quality throughout each phase of each project. Therefore, Offeror is encouraged to provide the same field personnel for the duration of construction. It is important that the Survey Party Chief(s) assigned to a project be completely familiar with the horizontal and vertical control at the project site as well as survey and documentation requirements for the Project.

Resumes of Offeror personnel and certification shall be submitted to the Commission for review. Offeror personnel must be approved by the Commission prior to assignment to a project. The Commission and Offeror will have the

responsibility of determining the quality and quantity of work performed by Offeror personnel. If, at any time, the level of performance by Offeror's personnel is below expectations, Commission may release the survey crew member and require that another be assigned.

If Offeror's survey crew personnel assigned to the Project is on a leave of absence, the Project Manager shall provide an equally qualified replacement(s) until the original employee(s) returns to work. The replacement shall be required to meet all the requirements of the permanently assigned employee.

Offeror's personnel shall:

- Be knowledgeable of and comply with applicable building codes and local, state, and federal regulations;
- Be knowledgeable of Caltrans surveying requirements;
- Cooperate and consult with Commission officials during the course of the agreement;
- Perform duties as may be required to assure construction is performed in accordance with the Project plans and specifications; and
- Keep records and document work as directed by the Resident Engineer.

All services required hereunder shall be performed in accordance with Caltrans regulations, policies, procedures, manuals, and standards except as directed otherwise by the Commission.

3. DUTIES AND RESPONSIBILITIES

3.1 Pre-construction Services

a Plan Review

Offeror shall review construction contract documents prior to construction. Tasks include review of plans, specifications, technical reports, Resident Engineer's pending files, liaison with local agencies (including Building Permit requirements), utility arrangements, operational arrangements with BNSF, SCRRA and/or RTA (as needed), and existing station operations in order to verify completeness and consistency of documents throughout the Project. As a minimum, Offeror shall check for quantity discrepancies, potential detail conflicts, constructability, and consistency between plans, specifications and pay items.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

b Schedule

Offeror shall review the Design Engineer's proposed Project schedule with the Project plans and specifications to determine if the proposed sequence and duration of activities will provide for safe and expeditious completion of the Project.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

Offeror shall review the Design Engineer's Project estimate with the Project plans and specifications to verify that all aspects of the Project scope have been addressed.

Offeror shall provide a written report of its findings and recommendations to the Commission's Project Manager.

3.2 Bid Process

a. Bidding Process

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid questions and draft responses;
- 2) Draft addenda to the bid documents;
3. Review of bidder's documents;
4. Prepare bid tabulation.

b. Pre-construction Meetings

Offeror shall assist the Commission in conducting one or more, pre-construction meetings with all involved parties on the Project. Parties may include, but are not limited to, the Contractor, the Design Engineer, Caltrans, city officials, and utility companies.

c. Contract Award

Offeror shall assist the Commission, as requested, with the following tasks:

- 1) Review bid for completeness and responsiveness.
- 2) Perform bid analysis.
- 3) Review of procedural items.
- 4) Check Contractor references, licenses, insurance, and sureties.
- 5) Coordinate with prospective Contractor for scheduling of award of the construction contract.

All processes shall be consistent with procedures outlined by the California Department of Transportation for Special Funded Programs and/or relevant Commission procedures.

3.3 Construction Project Administration

- a. Offeror shall administer Project construction contract using Caltrans Construction Manual as a guideline.
- b. Offeror shall conduct regular Project coordination meetings with Contractor, Commission, local agencies, and Design Engineer, as appropriate.
- c. Offeror shall review and approve the Contractor's Baseline Schedule and subsequent Updates and track weather or unsuitable site conditions on a weekly basis.

Offeror shall prepare construction progress payments in conjunction with the Contractor per contract requirements and maintain payment records and supporting documentation. All progress payments shall be reviewed by the Commission for approval.

- d. Offeror shall establish and maintain Project records. Project record keeping shall include, but is not limited to the following: correspondence, memoranda, contract documents, change orders, claims, Commission and engineer directives, meeting minutes, shop drawings, as-built changes, materials records, survey data, supplemental drawings, progress payments and requirements listed elsewhere. Offeror shall maintain a record of the names, addresses, and telephone and fax numbers of the Contractor, subcontractors, and principal material suppliers.
- e. Offeror shall establish and maintain a filing system for each Project using the Caltrans Construction Manual as a guideline.
- f. Offeror shall review and approve Contractors' construction schedules per contract requirements on an ongoing basis and alert the Commission to conditions that may lead to delays in completion of the Project.
- g. Offeror shall prepare and submit a Monthly Project Report (MPR). The MPR shall include construction activity, accomplishments, safety and traffic

issues, and status of Requests for Information (RFIs), submittals, current issues, Contract Change Orders (CCOs) and current Project budget and schedule. The format and contents of the MPR will be determined by RCTC. Provision of an MPR acceptable to the Commission will be a condition precedent for payment of the CM's invoices.

- h. Offeror shall review and ensure compliance with environmental requirements.
- i. Offeror shall ensure that the Project meets all provisions of the Caltrans Quality Assurance Program Manual.
- j. Offeror shall conduct labor interviews and review Contractors' certified payroll records/fringe benefit statements, etc. and maintain records to assist the Commission with monitoring labor compliance, DBE, and equal employment opportunity (EEO) requirements.
- k. Offeror shall ensure that the Project meets all provisions of an approved Storm Water Pollution Prevention Plan (SWPPP) and/or Water Pollution Control Plan (WPCP) and coordinate with the State Water board by providing data into their SMARTS system.
- l. Offeror shall assure that the Project meets all applicable regulations of the Air Quality Management District (AQMD).

3.4 Construction Project Coordination

- a. Offeror shall provide a qualified Resident Engineer and other qualified assistant Resident Engineers, as needed to effectively manage the Project.
- b. Offeror Resident Engineer shall act as a single point of contact between Contractor, the Commission, Offeror's construction surveyor, Offeror's materials inspector, and utility companies. Offeror may, when requested by the Commission, act as point of contact between Design Engineers, Caltrans, cities with jurisdiction, utilities, and the public.
- c. Offeror shall maintain regular contact with the Commission's Construction Manager.

- d. Offeror shall review contract plans and special provisions for possible errors and deficiencies prior to construction of any specific element and report such findings to Commission. Should the Commission determine that changes are necessary, Offeror shall prepare Contract Change Orders (CCOs) and supporting transmittal memoranda in accordance with construction contract documents and Commission procedures.
- e. Offeror shall monitor, coordinate, and track construction progress to ensure the Project proceeds on schedule and according to the order of work required in the plans and special provisions. Offeror shall direct the Contractor, in conjunction with Commission, to expedite work, as required, to maintain schedule.
- f. Offeror shall coordinate review of shop drawings and Requests for Information (RFI) with the Design Engineer and RCTC's Construction Manager. Offeror shall log and track all submittals and RFIs.
- g. Offeror shall provide a qualified SWPPP coordinator who shall review Contractor-prepared Storm Water Pollution Prevention Plans (SWPPP) and coordinate approval with the cities with jurisdiction and the Commission. Offeror shall cooperate with Caltrans and/or monitoring agencies during inspections and field reviews.
- h. Offeror shall coordinate the implementation of any changes with the Construction Manager and the Design Engineer.
- i. Offeror shall review and approve Traffic Control Plans and forward to Commission as necessary.
- j. Offeror shall coordinate all Project construction activities with other on-going projects within and adjacent to the Project limits.
- k. Offeror shall coordinate all Project construction activities with existing Station operations.

3.5 Construction Inspection

- a. Offeror shall coordinate all construction inspection and special inspections that may be required by local agencies for the Project. Offeror shall ensure that appropriate city and local agency are notified and present as required

throughout the Project. Offeror shall notify the Commission immediately regarding any directives, recommendations, notices, etc. received from agencies other than Commission.

- b. Offeror shall perform and document daily on-site inspections of the progress and quality of construction to determine if the work being performed is in general conformance with the contract documents, all applicable laws, codes, and ordinances.
- c. Offeror shall exercise reasonable care and diligence to discover and promptly replace, correct, and/or mitigate all defects or deficiencies in the materials or workmanship used in the Project. Any such deficiencies and their resolution shall be reported to the Commission.
- d. Offeror personnel assigned to the Project shall be thoroughly familiar with contract special or technical provisions provided by the Design Engineer, , Standard Specifications and RCTC's General Conditions/Instructions to Bidders, Caltrans, SCRRA, Greenbook Standard Plans and City's building permit requirements and conditions of approval as they apply to the Project. Offeror personnel shall have the ability to read and interpret construction plans and specifications. Offeror personnel shall also have knowledge of State of California Construction Safety Orders (CalOSHA) and traffic control practices as specified in the Work Area Traffic Control Handbook (WATCH). In addition, Offeror personnel shall be familiar with the construction requirements of the Caltrans Storm Water Pollution Prevention Program.
- e. Assignments to be performed by Offeror personnel shall include, but are not limited to, the following:
 - 1) Inspect installation of dry and wet utilities, inspection and testing of subgrade, aggregate base and paving, inspection of signage, pavement markings, and traffic striping, inspection of building foundation and wood frame building construction, inspection of retaining wall construction, landscaping and landscape irrigation, signals, electrical and systems installation and related construction activities. Work shall include checking grade and alignment, construction traffic control, and any other duties that may be required to determine that construction of the Project is being performed in accordance with the contract documents;
 - 2) Identify actual and potential problems associated with the Project and recommending sound engineering solutions;

- 3) Maintain awareness of safety and health requirements. Monitoring Contractors' compliance with applicable regulations and construction contract provisions for the protection of the public and Project personnel;
- 4) Prepare complete and accurate daily reports, engineering calculations, materials records, payment quantity documents, reports, and correspondence related to Project activities. Documents shall be sufficient to document actual cost of force account work (time and materials payment);
- 5) Prepare construction sketches, drawings, and cross-sections, as necessary;
- 6) Maintain contemporaneous records of all additions or deviations from the approved plans for preparation of as-built plans;
- 7) Inspect for environmental compliance;
- 8) Arrange for lane closures in accordance with City of jurisdiction's procedures and coordinate any work with the California Highway Patrol and/or City's Public Works Department;
- 9) Maintain awareness of water discharge requirements. Monitor Contractors' compliance with applicable regulations and construction contract provisions;
- 10) Monitor Contractors' compliance with applicable regulations required by AQMD;
- 11) Ensure Contractors' compliance with Project Environmental Commitment Record; and
- 12) Other duties as may be required or reasonably requested.

3.6 Construction Project Support

a. Construction Surveys

Offeror shall perform construction surveying services, field calculations, and home office calculations to support construction of the Project. Offeror may be requested to review available survey data, construction plans, and right-of-way plans to confirm compatibility and to identify discrepancies prior to and during construction. The Resident Engineer shall review survey requests from the Contractor and arrange for the work, as appropriate. Requests may include, but not be limited to, the following types of surveys and related services:

1) Construction Surveys

Offeror shall assist the Resident Engineer in all phases of construction staking and calculations as needed.

Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System.

Cross-section data collection shall be performed by conventional and terrain line interpolation survey methods.

Survey data shall include topography, cross-section, and other survey data in computer formats compatible with the Caltrans computer survey and design systems.

Prepare and maintain survey documents. Survey documents include survey field notes, maps, drawings, and other survey documents.

Perform construction staking, including (where required) but not limited to:

- Utility locations (new and as-built);
- Clearing limits;
- Slope staking;
- Rough grade;
- Finish grade;
- Building layout;
- Storm drain, sanitary sewer, and irrigation systems; and
- Curbs, gutters, and sidewalk

Monitor for settlement, if required.

Global Positioning Satellite (GPS) equipment shall be utilized if required by the Commission.

2) Right of Way Lines

Existing right of way shall be established from Commission record information and existing monumentation.

- Perpetuate existing monumentation. Includes restoring, renewing, referencing, and resetting existing boundary related monumentation and bench marks. In addition, stake areas where construction disturbs the existing right of way, preparing and filing required maps and records.
- Final monumentation. Includes setting of centerline points of control upon completion of construction and documenting control bench marks on as-built plans.

3) Special Design – Data Surveys

Includes drainage, utility, and surveys that might be required for special field studies.

b. Materials Testing and Geotechnical Services

Offeror shall provide experienced personnel, equipment, and facilities to perform various construction materials sampling and testing. Laboratory and field materials testing shall be used to ensure that construction work conforms to the applicable requirements of the City with jurisdiction, Caltrans standards and specifications, and the Design Engineer's technical provisions for material quality and workmanship.

All field and laboratory testing shall be performed in accordance with California Test Methods or test methods specified by the Design Engineer in the technical provisions of the Contract.

Offeror shall be responsible for the accuracy and completeness of all test data compilation and results.

All material test results shall be provided in accordance with the applicable Standard Specifications and Special Provisions, and California Test methods or procedures set forth by the Design Engineer or the city with jurisdiction. Failing tests shall be immediately reported internally to the Resident Engineer. All test results shall be recorded on appropriate forms. The test documents shall be legible and show the identity of the tester where appropriate. A summary sheet containing all results of a particular regime of tests shall be developed and kept current.

All test results and inspection reports shall be available to the Commission during construction and provided at the conclusion of construction.

c. Permits

Offeror shall review construction of the Project for permit compliance and coordinate with Commission and the Design Engineer to ensure that necessary permits are obtained. Offeror shall assist Commission in the coordination, timely processing and verification of approval for all permits. Offeror shall maintain permits and permit documentation on site.

3.7 Construction Cost and Schedule

- a. Offeror shall monitor and track the following:
 - 1) Contract pay item quantities and payments;
 - 2) Contract Change Orders;
 - 3) Supplemental work items;
 - 4) Agency and/or State furnished materials;
 - 5) Materials-on-hand but not installed;
 - 6) Anticipated extra work balance;
 - 7) Contingency balance; and
 - 8) Project budget.
- b. Offeror shall review and monitor Contractor's schedule and inform Commission of any significant changes or deviations in the schedule.
- c. Offeror shall provide and maintain a Project staffing plan of field office personnel. In cooperation with Commission, the staffing plan shall be periodically updated to reflect Project progress and needs.

3.8 Construction Contract Change Orders and Claims

- a. Offeror shall receive and evaluate requests for changes and/or substitutions by the Contractor. Offeror shall coordinate proposed changes with the Commission's Construction Manager and shall prepare and submit Contract Change Orders to the Commission for approval accompanied by Offeror's Transmittal Memo describing background information, reasons for the change and proposed method of payment and/or adjustment of contract time.

- b. Offeror shall attempt to avoid all unnecessary Contract Change Orders. When a Contract Change Order is necessary, Offeror shall consult with the Commission prior to its preparation. Unless directed otherwise by Commission, the preferred method of payment for Contract Change Orders should be as follows:
 - 1) Agreed Price;
 - 2) Adjustment in compensation to a bid item; and
 - 3) Time and materials or Force Account.
- c. Offeror shall identify and preemptively attempt to resolve all potential claims, track and monitor unresolved claims, and implement a claims avoidance process.
- d. Offeror shall assist Commission, as requested, in the identification, resolution, and final disposition of claims filed by the Contractor or third parties against Commission or the Project.

3.9 Safety

In addition to the requirements specified elsewhere in this contract, the following shall also apply:

- a. Offeror shall implement and conduct a comprehensive safety program including regular tail-gate safety meetings for Offeror's personnel;
- b. Offeror shall prepare an Illness and Injury Protection Plan;
- c. Offeror shall provide monthly safety status reports;
- d. Offeror shall comply with State of California Construction Safety Orders and provisions of the Caltrans Construction Manual as appropriate;
- e. Offeror shall provide appropriate safety training for all Offeror field personnel;
- f. Offeror shall provide all necessary safety equipment as required for Offeror personnel.

3.10 Construction Project Close Out

- a. Offeror shall conduct a final walk-through with the Commission and Design Engineers.
- b. Offeror shall prepare a list of items to be completed and/or corrected by the Contractor [Punch List] for final completion of the Project.
- c. Offeror shall review and verify completeness of as-built drawings.
- d. Offeror shall prepare final construction reports including the Project Completion Report.
- e. Offeror shall prepare and deliver to the Commission all Project files in accordance with Commission's and Caltrans policies.
- f. Offeror shall assist the Commission and Contractor in obtaining final release of all Project permits.

4. DELIVERABLES

In addition to the requirements described above, the Offeror shall provide the following:

- a. Offeror's Illness and Injury Prevention Plan as described in the CalOSHA Construction Safety Orders.
- b. Correspondence to/from Contractor, Resident Engineers' daily reports, Assistant Resident Engineers' daily reports, and extra work diaries.
- c. Approved Project Baseline Schedule and Monthly Updates with analysis with Weekly Statements of Working Days.
- d. Monthly Project Reports.
- e. Listing of approved submittals with supporting information.
- f. RFI submittals and responses.
- g. Monthly Construction Contract progress payments, back-up documentation, and support information as requested.

- h. Contractor final payment documents, delivered to Commission no later than ten (10) working days after acceptance by Commission of the completed construction Projects.
- i. Project Completion Report.
- j. All Project files, Project reports, correspondence, memoranda, shop drawings, Project logs, change order data, claims and claim reports, and Contractor payment records.
- k. Certified payrolls and fringe benefit statements for all employees, Offeror and Contractor, who are subject to the State and/or Federal prevailing wage rates.
- l. All materials test results and field testing and/or testing reports. Include reports required by the city's building officials.
- m. Unless otherwise specified in the survey request, the deliverables shall conform to the following:
 - 1) Survey points, lines, and monuments shall be established, marked, identified, and referenced as required by survey request and requirements herein; and
 - 2) Survey notes, drawings, calculations, and other survey documents and information shall be completed as required by the survey request and the requirements herein.
- n. All original survey documents resulting from this agreement, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to the Resident Engineer and shall become the property of the Commission. A copy of all survey documents furnished by Commission shall be retained by Offeror for future reference.

When the survey is performed with a total station survey system, the original field notes shall be submitted as a hard copy in a readable format of the data (observations) originally collected and submitted by the survey party. The hard copy shall be signed by the Party Chief. If the Party Chief is not licensed, the person in "responsible charge" will be required to sign.

Exhibit A

o. Deliverables to the Resident Engineer shall follow the format specified below:

- Horizontal Control;
- Alpha numeric hard copy point listing with adjusted California Coordinate System northing and eastings and the appropriate descriptions;
- Vertical Control;
- Alpha numeric hard copy benchmark listing with adjusted elevations compatible with the design datum;
- Topography; and
- Alpha-numeric hard copy listing, hard copy drawing, and computer aided drawing and design (CADD) digital drawing. The CADD drawing shall be compatible with the systems utilized by Caltrans or SCRRA (Metrolink).

Data collection method used to collect cross-section data and the coding (feature description) of terrain data for cross-sections shall conform to the survey request requirements. Deliverables shall depend on the data collection method as follows:

- Conventional Cross – Sections (each cross – section):
For each cross - section and alpha numeric listing, a hard copy drawing, and a computer formatted file compatible with the systems utilized by Caltrans.
- Terrain Line Interpolation Cross – Section Data (each terrain line interpolation survey):
Terrain line interpolation cross – sections shall include an alpha numeric listing, a hard copy plan view drawing of the terrain lines, and a computer input file. The computer input file shall be provided in a format compatible with the systems utilized by Caltrans.

p. Data Collector Data

If specified in the survey request, the raw data from the data collector shall be provided in a format conforming to the survey request requirements.

q. Other

As specified in the survey request.

5 EQUIPMENT AND MATERIAL TO BE PROVIDED BY OFFEROR

As agreed with Commission's Project Manager, the Offeror shall provide the following:

- 1) Office facilities including, telephones, desks, chairs, computers, and appropriate office equipment. One (1) office with a desk, chair, telephone, and computer shall be reserved for the Commission.
- 2) Tools and equipment including software, materials, supplies, miscellaneous tools, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Only those items listed in Attachment B, Offeror's Cost Proposal, shall be reimbursed by the Commission as agreed by the Commissions' Project Manager.
- 3) Offeror personnel shall be provided with a mobile radio, cellular phone, or other means to assure full-time communication. If a radio system is used, Offeror shall provide a base station at the field office.
- 4) Materials Testing facilities shall be fully equipped at all times to perform the services required, including but not limited to the following:

A laboratory in close proximity to the Project shall be required. The type and location of the lab should be such that it can meet the needs of the Project in an efficient, time effective manner. The laboratory shall be fully staffed, equipped, and supplied to conduct all required soils, materials, and concrete breaking tests in a timely manner.

Each vehicle shall be fully contained with all necessary equipment and supplies necessary to perform the field sampling and tests required.

Field personnel shall be provided with all necessary safety equipment to permit work to be performed safely and efficiently within operating highway and construction zone environments.

All laboratory and testing equipment shall be calibrated per Section 3-10 and 3-11 of Caltrans' Quality Assurance Program Manual.

- 5) Survey equipment and supplies shall be provided to complete the required survey work. Equipment and supplies shall, include, but not be limited to:

a. Survey vehicles

Survey vehicles will be suitable to perform the required work encountered on the project. Vehicles shall be fully equipped with all necessary tools, instruments, supplies, and safety equipment required to perform the work accurately, efficiently, and safely. Vehicles shall be equipped with a flashing yellow beacon light.

b. Data Processing Systems

Data processing systems shall include hardware and software to:

- Performing survey and staking calculations from the design plans and specifications;
- Reduce survey data collected with conventional and total station survey systems;
- Perform network adjustments for horizontal and vertical control surveys; and
- Format survey data to be compatible with the Caltrans computer survey and data system.

c. Drafting equipment and supplies.

d. Digital calculators.

e. Hand tools as appropriate for the requested survey work.

f. Traffic cones (minimum 25). Traffic cones shall be 28 inches in height (minimum).

g. Traffic control devices as required to perform the requested survey work. Traffic control devices include signs, sign bases, flags, and hand held signs.

h. Leveling instruments and equipment:

- Self-leveling level. Precision: standard deviation in one mile of double run leveling 0.005 feet or less; and
- Suitable level rods for the work to be performed.

i. Distance measuring instruments and equipment:

- Electronic distance measurer (EDM). Precision: standard deviation 3 mm plus 3 PPM, or less; Range: Minimum one mile under average atmospheric conditions;
- Prisms, sufficient to perform the required work; and
- Tapes; steel, cloth.

j. Angle measuring instruments and equipment:

- Theodolite for non-control surveys; Precision: direct circle reading to three seconds, or equivalent, horizontal and vertical; and
- Targets as required to perform the work.

k. When required for efficient survey operations, total station survey systems consisting of an electronic angle measuring instrument, EDM, and electronic data collector shall be provided. The angle measuring instruments and EDM shall conform to the requirements for the equipment previously listed.

l. Radio or cellular communications equipment for communication between field office and field crews.

m. Caltrans or SCRRA manuals, standards, forms, and other policies and procedures to be followed to perform the required work.

n. Lighting may be required for nighttime survey work.

6 MATERIALS TO BE FURNISHED BY COMMISSION

- 1) The Commission will provide copies of all Project construction documents including plans, special provisions, reports, designer prepared Resident Engineer files, and contracts.
- 2) The Commission will provide copies of all previously secured permits and Project authorizations.
- 3) Appropriate forms for recording test data in accordance with Caltrans practices and procedures outlined in the "Manual of Test".

7 STANDARDS

All construction inspection, surveys, materials sampling and testing, and contract administration shall be in accordance with the Project bid documents, special provisions, plans, and current applicable Caltrans or Metrolink Manuals including:

- 1) Construction Manual and its revisions;
- 2) Quality Assurance Program Manual;
- 3) Manual of Traffic Controls for Construction and Maintenance Work Zones;
- 4) Local Agency Standards and latest edition of the California Uniform Building Code;
- 5) SCRRRA Standard Plans and Specifications.

Work not covered by the manuals shall be performed in accordance with accepted professional standards.

Surveys performed by Offeror shall conform to the requirements of the Land Surveyor's Act. In accordance with the Land Surveyor's Act, "responsible charge" for the work shall reside with the Licensed Land Surveyor or a pre-January 1, 1982, Registered Professional Civil Engineer in the State of California.

Unless otherwise specified in the survey request, control surveys shall conform to second order (modified) accuracy standards as specified in the Caltrans "Survey Manual".

Additional standards for specific survey work may be included in the applicable request for survey. Such standards supplement the standards specified herein. If additional standards conflict with the standards specified herein, the "Survey Request's" standard shall govern.

The Commission will decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this agreement. Any Offeror employee who does not perform adequately shall be replaced if directed by the Commission Construction Manager.

8 AVAILABILITY AND WORK HOURS

The typical workday includes all hours worked by the Commission's construction Contractor. The construction Contractor's operations may be restricted to specific hours during the week, which will become the normal workday for Offeror's personnel.

Unless otherwise directed by Commission, the normal work week will consist of 40 hours. From time to time, overtime may be required. However, overtime will be worked only when approved in writing by Commission.

9 LIMITATIONS OF AUTHORITY

Offeror does not have the authority to:

- 1) Authorize deviations from the Contract documents;
- 2) Approve substitute materials or equipment; except as authorized in writing by Commission;
- 3) Conduct or participate in tests or third party inspections; except as authorized in writing by Commission;
- 4) Assume any of the responsibilities of the Contractors, Contractors' Superintendent, or subcontractors;
- 5) Exercise control over or be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions;
- 6) Communicate directly with subcontractors or material suppliers without the prior consent of the Contractor;
- 7) Verbally authorize or approve change orders or extra work for the Project; and
- 8) Offer or receive incentives, inducements, or other forms of remuneration to or from the Contractor to perform services or work outside the terms of any executed contracts for this Project.

10 THIRD PARTY RELATIONSHIPS

This Agreement is intended to provide unique services for a specific project. In the development of the Project, Commission has worked closely with local jurisdictions such as the city of Riverside and others in the preparation of the construction documents and other Project related materials. The Commission, however, is solely responsible for and will be the sole point of contact for all contractual matters related to the Project. Offeror shall take direction **only** from the Commission and shall regularly inform **only** Commission of Project progress, outstanding issues, and all Project related matters.

During the course of the Project, Offeror may find occasion to meet with city representatives, the Design Engineer, or other third parties who have assisted with the Project. These entities may, from time to time, offer suggestions and/or recommendations regarding the Project or elements of the Project. While the Commission enjoys a close relationship with and has considerable confidence in the capabilities of these other parties, Offeror shall not act on any suggestions,

solicited or unsolicited, without obtaining specific direction from the Commission. All oral and written communication with outside agencies or Offeror's related to the Project shall be directed only to the Commission. Distribution of Project related communication and information shall be at the sole discretion of Commission representatives.

11 CONSTRUCTION SITE SAFETY

In addition to the requirements specified elsewhere in this agreement, the following also shall apply:

- 1) Offeror shall conform to the safety provisions of the Caltrans Construction Manual;
- 2) Offeror's field personnel shall wear white hard hats with proper suspension, orange vests with reflective tape, sleeved shirt, long pants, and leather boots with ankle support and rubber soles with steel toe protection at all times while working in the field;
- 3) Offeror shall provide appropriate safety training for all Offeror's personnel including rail safety for BNSF or Metrolink, as appropriate; and
- 4) All safety equipment shall be provided by Offeror.

12 BASIS FOR SURVEY AND MONUMENT STAKING

Survey shall be based upon existing horizontal and vertical control and existing pavement elevations.

Monuments established by Offeror shall be marked by Offeror with furnished disks, plugs, tags. In addition, Offeror shall identify Offeror-established monuments by tagging or stamping the monuments with the license or registration number of Offeror's surveyor who is in "responsible charge" of the work.

13 PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

The quantity and qualifications of field personnel to be assigned will be determined by the scope of the Project and the degree of difficulty of required tasks to be performed. All personnel and personnel assignments shall be subject to approval by the Commission.

EXHIBIT "B"- COMPENSATION AND PAYMENT

DRAFT

EXHIBIT "B"

COMPENSATION SUMMARY¹

| FIRM | PROJECT TASKS/ROLE | COST |
|-----------------------------------------|--------------------------------------------------------------------|------------------------|
| <i>Prime Consultant:</i> | | |
| Kleinfelder Construction Services, inc. | Construction Management Services | \$ 8,000,000.00 |
| <i>Sub Consultants:</i> | | |
| Kleinfelder Inc. | Materials Sampling and Testing Services | TBD |
| Destination Enterprises, Inc. | Railroad Signals/Systems Inspection and Engineering | TBD |
| Pacific Railway Enterprises, Inc. | Railroad Signals/Communications Systems Inspection and Engineering | TBD |
| STC Traffic | Traffic Signal Inspection | TBD |
| CA Wehsener Engineering | Electrical/Communications System Inspection | TBD |
| SYRUSA Engineering, Inc. | Civil and Structural Inspection, Structures Representative | TBD |
| Guida Surveying | Construction Surveying | TBD |
| International Parking Design, Inc. | Parking Structure Design/Constructability Review | TBD |
| TRC Engineers | Stormwater Inspection and Support | TBD |
| | | |
| TOTAL COSTS | | \$ 8,000,000.00 |

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

EXHIBIT "C"

CALTRANS REQUIREMENTS/ PROP 1 B PROVISIONS

1. STATEMENT OF COMPLIANCE.

A. Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

2. DEBARMENT AND SUSPENSION CERTIFICATION

A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to Commission.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

3. PROMPT PAYMENT

Consultant agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Consultant receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission.

4. RELEASE OF RETAINAGE

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

5. LEGAL REMEDIES

In addition to those contract remedies set forth under relevant provisions of California law, either Party to this Agreement may, where applicable, seek legal redress for violations of this Agreement pursuant to the relevant provisions of 49 C.F.R. Parts 23 and 26, to the relevant federal or state statutory provisions governing civil rights violations, and to the relevant federal and state provisions governing false claims or "whistleblower" actions, as well as any and all other applicable federal and state provisions of law.

The Consultant shall include a provision to this effect in each of its agreements with its subcontractors.

6. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable

finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

7. INVENTIONS.

Rights to Inventions and Data Made Under a Contract or Agreement — Consultant shall comply with Federal requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Contract, and shall be in compliance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

8. ENVIRONMENTAL COMPLIANCE

A. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

B. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

C. Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871.) — Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94—163, 89 Stat. 871), which are incorporated by reference in this Contract. (10 CFR 600.236(i)(13).)

EXHIBIT "D" - FTA PROVISIONS

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

Exhibit D-2

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

Exhibit D-9

its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Offeror shall complete and submit with its bid/proposal the attached Certification Regarding Lobbying, and if applicable, the Standard Form-LLL, "Disclosure Form to Report Lobbying."

18. Energy Conservation

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

19. Clean Water

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

d. The Consultant further agrees that:

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

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

20. Clean Air

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

b. The Consultant further agrees that:

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

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

21. Recycled Products

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

21. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY

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

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

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

22. Safe Operation of Motor Vehicles

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

- a. The Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Consultant or RCTC.
- b. The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

23. Notification to FTA.

- a. If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which this Agreement is being performed. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- c. *Additional Notice to U.S. DOT Inspector General.* The Consultant must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Commission located, if Consultant has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Consultant. In this paragraph, "promptly" means to refer information without delay and without change.

24. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Consultant shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in [Public Law 115–232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

Kleinfelder Construction Services has no lobbying activities to disclose pertaining to this procurement.

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance | 2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award | 3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____ |
| 4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____ | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____ | |
| 6. Federal Department/Agency: _____ | 7. Federal Program Name/Description: CFDA Number, if applicable _____ | |
| 8. Federal Action Number, if known: _____ | 9. Award Amount, if known: _____ | |
| 10. Name and Address of Lobby Entity (If individual, last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary) | 11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary) | |
| 12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned | 14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____ | |
| 13. Form of Payment (check all that apply): <input checked="" type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____ | | |
| 15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12: (attach Continuation Sheet(s) if necessary) | | |
| 16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/> | | |
| 17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | | |
| Signature:  | | Print Name: Rich Fitterer, PE, QSD |
| Title: Area Manager | | Telephone No.: 858-705-0768 Date: March 16, 2023 |
| Authorized for Local Reproduction Standard Form - LLL | | |

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

AGENDA ITEM 9

| RIVERSIDE COUNTY TRANSPORTATION COMMISSION | |
|---------------------------------------------------|----------------------------------------------------------------------|
| DATE: | May 22, 2023 |
| TO: | Western Riverside County Programs and Projects Committee |
| FROM: | Sheldon Peterson, Rail Manager |
| THROUGH: | Lorelle Moe-Luna, Multimodal Services Director |
| SUBJECT: | Fiscal Year 2022/23 Low Carbon Transit Operations Program Resolution |

STAFF RECOMMENDATION:

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

- 1) Adopt Resolution No. 23-003 *“Authorization for the Execution of the Certifications and Assurances and Authorized Agent Forms for the Low Carbon Transit Operations Program for the Riverside County Free Rail Pass Program in the amount of \$1,007,009”*.

BACKGROUND INFORMATION:

The Commission’s Commuter Rail Program applies for various federal and state funds that are necessary to fund rail projects within Riverside County. The Commuter Rail Program is currently seeking approval to utilize \$1,007,009 of formula Low Carbon Transit Operations Program (LCTOP) grant funding, administered by the California Department of Transportation, for the Riverside County Free Rail Pass Program (Program). This request follows last year’s allocation of \$2,406,486 to make a total of \$3,413,495 available for the program.

Projects eligible for this funding need to reduce greenhouse gas emissions and support transit agencies in their effort to increase mode share. The Program will provide free Metrolink passes to riders in Riverside County. Free Metrolink passes would attract new riders, incentivize existing riders to take more trips, and contribute to greenhouse gas emission reduction.


The Program would allow riders to sign up through RCTC’s existing Commuter Assistance website “IE Commuter” and be issued free passes through the Metrolink’s Mobile Ticketing Application. For riders without access to mobile devices, the Program would provide promotional codes to purchase the passes at ticket vending machines. Once potential riders have signed up and are verified residents, they can request their initial free roundtrip codes. When they use this set of codes, they can return to the IE Commuter Site to request additional round trips or five-day passes, if they want to ride more frequently. After using the five-day passes further requests could include monthly passes to encourage ongoing and consistent train travel. The goal is to support new riders for up to three months, however this is subject to change as the program is finalized. In addition, the program will offer a continuing free pass program for college and university students for the duration of the program with monthly requests. This would help

expand access to public transportation for disadvantaged and low-income populations and reduce the financial barriers to trying public transportation. In addition, as an IE Commuter partner, RCTC is partnering with San Bernardino County Transportation Authority to make the free passes available to both San Bernardino and Riverside County residents. The Program is anticipated to begin in fall 2023 and would be piloted for a minimum of three-years.

FISCAL IMPACT:

As required by the LCTOP grant guidelines, Resolution No. 23-003 (Attachment 1) is needed to authorize use of the funds on free passes and authorize the Executive Director to execute the Certifications and Assurances and Authorized Agent forms. The resolution is required to submit and file the grant; therefore, staff recommends adoption of the resolution related to the FY 2022/23 LCTOP grant.

Funding received from this grant is included in the FY 2023/24 budget and reflected in Commission's FY 2023/24 Short Range Transit Plan.

| Financial Information | | | | | |
|-----------------------------|--------------------------------------------------------------------------------------|-------|------------|--------------------|-------------|
| In Fiscal Year Budget: | N/A | Year: | FY 2023/24 | Amount: | \$1,007,009 |
| Source of Funds: | LCTOP | | | Budget Adjustment: | N/A |
| GL/Project Accounting No.: | 632107 415 41511 0000 263 41 41501 revenues | | | | |
| Fiscal Procedures Approved: |  | | | Date: | 05/11/2023 |

Attachment: Resolution No. 23-003

RESOLUTION NO. 23-003

**AUTHORIZATION FOR THE EXECUTION OF THE
CERTIFICATIONS AND ASSURANCES AND AUTHORIZED AGENT FORMS
FOR THE LOW CARBON TRANSIT OPERATIONS PROGRAM (LCTOP)
FOR THE RIVERSIDE COUNTY FREE RAIL PASS PROGRAM IN THE AMOUNT OF \$1,007,009**

WHEREAS, the Riverside County Transportation Commission is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors, including local agencies; and

WHEREAS, the Riverside County Transportation Commission wishes to delegate authorization to execute the Certification and Assurances and the Authorized Agent documents for the LCTOP in relation to the Riverside County Free Rail Pass Program, and any amendments thereto, to Anne Mayer, Executive Director; and

WHEREAS, the Riverside County Transportation Commission wishes to implement the LCTOP project(s) listed above.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Riverside County Transportation Commission that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that Anne Mayer, Executive Director be authorized to execute all required documents for the LCTOP program and any Amendments thereto with the California Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Riverside County Transportation Commission that it hereby authorizes the submittal of the following project nomination(s) and allocation request(s) to the Department in Fiscal Year 2022/2023 LCTOP funds:

(Continued on next page)

List project(s), including the following information:

Project Name: Riverside County Free Rail Pass Program

Amount of LCTOP funds requested: \$1,007,009

Short description of project: The Riverside County Transportation Commission will use LCTOP funds to provide free Metrolink passes to encourage new passenger rail riders within Riverside County.

Benefit to a Priority Populations: Project improves combined housing and transportation affordability.

Amount to benefit Priority Populations: \$1,007,009

Contributing Sponsors (if applicable):

APPROVED AND ADOPTED this 14th day of June 2023.

Robert E. Magee, Chair
Riverside County Transportation Commission

ATTEST:

Lisa Mobley, Clerk of the Board
Riverside County Transportation Commission