



MEETING AGENDA

Western Riverside County Programs and Projects Committee

Time: 1:30 p.m.
Date: June 27, 2022
Location: BOARD ROOM
County of Riverside Administration Center
4080 Lemon St, First Floor, Riverside CA 92501

COMMITTEE MEMBERS

Ben J. Benoit, **Chair**/Joseph Morabito, City of Wildomar
Brian Berkson, **Vice Chair**/Guillermo Silva, City of Jurupa Valley
Wes Speake/Jim Steiner, City of Corona
Clint Lorimore/Todd Rigby, City of Eastvale
Linda Krupa/Malcolm Lilienthal, City of Hemet
Bill Zimmerman/Dean Deines, City of Menifee
Yxstian Gutierrez/Edward Delgado, City of Moreno Valley
Ted Hoffman/Katherine Aleman, City of Norco
Michael Vargas/Rita Rogers, City of Perris
Kevin Jeffries, County of Riverside, District I
Karen Spiegel, County of Riverside, District II
Jeff Hewitt, County of Riverside, District V

STAFF

Anne Mayer, Executive Director
John Standiford, 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.

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
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, June 27, 2022

BOARD ROOM

**County Administrative Center
4080 Lemon Street, First Floor
Riverside, 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 on the Commission's website, www.rctc.org.

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, Executive Order N-29-20, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a Committee 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 – MAY 23, 2022

Page 1

7. **AGREEMENTS FOR ON-CALL RIGHT OF WAY ENGINEERING AND SURVEYING**

Page 9

Overview

This item is for the Committee to:

- 1) Award Agreement No. 22-31-057-00 with Psomas for the on-call right of way engineering and surveying services for a three-year term for an amount not to exceed \$750,000;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, on behalf of the Commission;
- 3) Authorize the Executive Director, or designee, to execute task orders under the terms of the agreements; and
- 4) Forward to the Commission for final action.

8. **AGREEMENTS FOR ON-CALL RIGHT OF WAY ENVIRONMENTAL SITE ASSESSMENT SERVICES**

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Overview

This item is for the Committee to:

- 1) Award Agreement No. 22-31-068-00 with Dudek for the on-call right of way environmental site assessment services for a three-year term in an amount not to exceed \$350,000;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;

- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultant under the terms of the agreement; and
- 4) Forward to the Commission for final action.

9. FREEWAY SERVICE PATROL TOW OPERATOR FUEL RELIEF REIMBURSEMENT

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Overview

This item is for the Committee to:

- 1) Authorize one-time payment as fuel relief reimbursement to Pepe's Towing for Freeway Service Patrol (FSP) services on Beats 4, 7, 8 for a total amount of \$6,270 for the months of March through June 2022;
- 2) Approve Agreement No. 18-45-132-03, Amendment No. 3 to Agreement No. 18-45-132-00, with Coastal Pride Towing for continued FSP services on Beats 20, 34, 35 for an additional amount of \$187,400 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending August 29, 2023, for a total amount not to exceed \$2,652,356;
- 3) Approve Agreement No. 17-45-061-04, Amendment No. 4 to Agreement No. 17-45-061-00, with Pepe's Towing for continued FSP services on Beats 18, 19 for an additional amount of \$24,750 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending September 30, 2022, for a total amount not to exceed \$4,308,922;
- 4) Approve Agreement No. 16-45-103-04, Amendment No. 4 to Agreement No. 16-45-103-00, with Steve's Towing for continued FSP services on the express lanes for an additional \$47,900 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending January 31, 2023, or a total amount not to exceed \$2,216,097;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and
- 6) Forward to the Commission for final action.

10. MID COUNTY PARKWAY CONTRACT PACKAGE 3 - PROJECT STATUS

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Overview

This item is for the Committee to:

- 1) Receive and file an update on project planning and scoping with the county of Riverside (County) regarding Mid County Parkway Contract Package 3 (MCP3) since the May 11, 2022, Commission meeting; and
- 2) Forward to the Commission for final action.

11. EXECUTIVE DIRECTOR REPORT

12. COMMISSIONER COMMENTS

Overview

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

13. ADJOURNMENT

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, July 25, 2022.**

AGENDA ITEM 6A

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, May 23, 2022

MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Chair Ben J. Benoit at 1:31 p.m., in the Board Room at the County of Riverside Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, 92501.

2. ROLL CALL

Members/Alternates Present

Ben Benoit
Jeff Hewitt
Ted Hoffman
Kevin Jeffries
Linda Krupa
Clint Lorimore
Wes Speake
Karen Spiegel
Bill Zimmerman

Members Absent

Brian Berkson
Yxstian Gutierrez
Michael Vargas

3. PLEDGE OF ALLEGIANCE

Commissioner Wes Speake led the Western Riverside County Programs and Projects Committee in a flag salute.

4. PUBLIC COMMENTS

There were no requests to speak from the public.

5. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

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

6. APPROVAL OF MINUTES – APRIL 25, 2022

7. AGREEMENT FOR PREPARATION OF THE PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT FOR THE INTERSTATE-10/HIGHLAND SPRINGS AVENUE INTERCHANGE IMPROVEMENTS

David Lewis, Capital Projects Manager, presented the agreement for preparation of the project approval and environmental document (PA/ED) for Interstate 10/Highland Springs Avenue Interchange improvements, highlighting the following:

- A map of the project location and an ariel exhibit of the project area
- Background and update
 - ✓ Presented update to City Councils in May 2021
 - ✓ Caltrans approved PSR on December 10, 2021
 - ✓ Alternatives
 - Hook Ramp Alternatives
 - Diverging Diamond Interchange (DDI) Alternatives
 - Auxiliary lanes included on I-10
 - ✓ CEQA – Initial Study with Proposed Mitigated Negative Declaration (IS/MND)
 - ✓ NEPA – Environmental Assessment with Finding of No Significant Impact (EA/FONSI)
- Procurement process, scope, cost, and schedule
- Additional funds needed for the PA/ED
 - ✓ PSR phase funding
 - ✓ Funding Provided by WRCOG – Cooperative Agreement No. 20-72-018-00
 - Allocated \$2 million of TUMF Pass Zone Funding
 - PSR cost \$473,155
 - Remaining \$1,526,845 to be used for PA/ED Phase
 - ✓ PA/ED phase funding
 - Amend Cooperative Agreement to increase TUMF Pass Zone funding by an additional \$1 million
 - Any remaining funds will be allocated to the PS&E phase
 - This action is subject to the approval of the Pass Zone Executive Committee (meeting May 23) and WRCOG Executive Committee (meeting June 6)
 - This item will not go to the full Commission if the Pass Zone Committee does not approve funding

David Lewis expressed appreciation to the city of Banning Director of Public Works Art Vela and city of Beaumont Public Works Director Jeff Heart for all their efforts on the project and to Chris Gray, Western Riverside Council of Governments (WRCOG) Deputy Executive Director for help securing additional funding.

Commissioner Jeff Hewitt expressed appreciation to David Lewis for a great job moving this forward and stated that this is kind of like the Railroad Canyon of that area as it is so impacted and there are so many new developments going in all over around that. He expressed this means not just a lot to the cities of Banning and Beaumont but to that entire area.

Chair Benoit stated as a regular commuter back and forth to the Coachella Valley this is an area that he stops at frequently because there are Tesla chargers in that area, but it is always impacted, and it definitely needs some improvements and expressed appreciation that RCTC is working on this.

M/S/C (Hewitt/Hoffman) to:

- 1) Award Agreement No. 22-72-011-00 to Mark Thomas & Company, Inc. to provide Preparation of Project Approval/Environmental Documents (PA/ED) for the I-10/Highland Springs Avenue Interchange Improvements in the cities of Banning and Beaumont (Project) for a twenty-four-month term in the amount of \$2,199,634, plus a contingency amount of \$219,963, for a total amount not to exceed \$2,419,597, contingent upon final TUMF funding approval by Western Riverside Council of Governments (WRCOG) Executive Committee;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute Agreement No. 22-72-011-00, on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to approve contingency work up to the total not to exceed amount as required for these services;**
- 4) Approve Agreement No. 22-72-091-00 with WRCOG for additional Transportation Uniform Mitigation Fee (TUMF) Zone funding for the Project in the amount of \$1,000,000;**
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to finalize and execute Agreement No. 22-72-091-00, on behalf of the Commission;**
- 6) Authorize the Executive Director, pursuant to legal counsel review, to execute any future non-funding related amendments to the agreements; and**
- 7) Forward to the Commission for final action.**

8. AGREEMENTS FOR ON-CALL GEOTECHNICAL INVESTIGATION – LABORATORY AND FIELD TESTING OF MATERIALS

David Lewis presented the agreements for the on-call geotechnical investigation – laboratory and field testing of materials, highlighting the following areas:

- Background
 - ✓ Most geotechnical services part of larger consultant contract

- ✓ Streamlines process when geotechnical services are needed
- ✓ Comprehensive Geotechnical services for a variety of projects/tasks
- ✓ Fund type depends on project: eligible for State/Federal funding
- Procurement and task order processes

In response to Commissioner Speake's clarification that is \$500,000 each or \$500,000 total, David Lewis replied it is \$500,000 total.

Commissioner Speake asked if all task orders will be competed between the three firms or if they will be selected based on what the work is.

David Lewis replied all three firms will compete on each task order.

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

- 1) Award the following agreements to provide On-Call Geotechnical Investigation – Laboratory and Field Testing of Materials for a three-year term, and two one-year options to extend the agreements, in an amount not to exceed an aggregate value of \$500,000;**
 - a) Agreement No. 22-31-051-00 to Group Delta Consultants, Inc. (Group Delta);**
 - b) Agreement No. 22-31-086-00 to Kleinfelder, Inc.;**
 - c) Agreement No. 22-31-087-00 to Ninyo & Moore Geotechnical and Environmental Sciences Consultants (Ninyo & Moore);**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to execute task orders under the terms of the agreements; and**
- 4) Forward to the Commission for final action.**

9. AGREEMENTS FOR ON-CALL RIGHT OF WAY SUPPORT SERVICES

Hector Casillas, Right of Way Manager, provided an overview for the agreements for the on-call right of way support services.

Commissioner Speake stated that he has not seen this way of ranking very often where it is by average billing rate only because he is a consultant. He has won contracts like that and there is a little bit of a gaming to it and expressed appreciation that RCTC is not awarding based on the lowest number. He noted that they can put a large number and a couple of low rates to offset one senior rate and asked how staff weighs those when they are competing if it is total price of the project, because he has not seen that before.

Hector Casillas replied when the original request for proposal (RFP) was issued there was only a percentage of the points that was allocated to costs. He stated the staff report

only called out the five average top salaries so that is the ranking for that particular average but when the task order is issued, they can select based on costs or based on the qualifications. It depends on how staff, or the right of way department determines that the task is necessary to proceed.

In response to Commissioner Speake's clarification the award will not be based on lowest price, it will be based on what the right of way department feels will meet the need of the project, Hector Casillas replied correct. They will outline it in the mini-RFP process as to what the weighted of scoring method will be for that task.

Anne Mayer stated just to elaborate a little bit further sometimes if there is a specialty task order and she used a relocation of an industrial building as an example and two out of the three firms have done an industrial relocation in the recent past. She explained they may decide that the qualifications component of the mini-RFP would emphasize the experience more so then whether or not the hourly rate is higher or lower. It really depends on what the task is that staff is seeking and sometimes it is a task that any of the three firms can do and do equally well, so then it might be tilted more heavily towards price.

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

- 1) Award the following agreements to provide on-call right of way support services for a three-year term in an amount not to exceed an aggregate value of \$3.3 million:**
 - a) Agreement No. 22-31-040-00 to Epic Land Solutions;**
 - b) Agreement No. 22-31-080-00 to Monument ROW, Inc.;**
 - c) Agreement No. 22-31-081-00 to Overland, Pacific, & Cutler;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultants under the terms of the agreements; and**
- 4) Forward to the Commission for final action.**

10. AGREEMENT FOR FREEWAY SERVICE PATROL TOW TRUCK SERVICE

Brian Cunanan, Commuter and Motorist Assistance Manager, provided a detailed overview for the award of the Freeway Service Patrol (FSP) tow truck service agreement.

In response to Commissioner Spiegel's question if Royal Coaches Auto Body and Towing, LLC has had a contract with RCTC before, Brian Cunanan replied yes, they are currently a provider on Beat No. 25 on Interstate 15.

Commissioner Spiegel asked how many beats RCTC does have.

Brian Cunanan replied there are 12 beats plus 1 beat for the express lanes.

Commissioner Spiegel stated there are 12, but RCTC has Beat No. 25.

Brian Cunanan replied it is the California Highway Patrol (CHP) number.

In response to Commissioner Ted Hoffman's inquiry that the contingency of \$191,240 is for a five-year period, Brian Cunanan replied correct.

Commissioner Hoffman stated with the cost of fuel prices and everything else going up they are creating a service and he wants to make sure that they can afford to do it after four years.

Brian Cunanan replied the contingency is really meant for if they have construction projects within this beat as well as often times for example if a shift ends at 6:30 PM they do not stop at 6:30 PM because if they are in the middle of providing an assist, they have to complete that assist. He explained they need time for those items and in terms of costs for fuel their operators especially ones with older contracts are hurting and staff will be coming back to the Commission for a recommendation with respect to that. He stated that this award is for \$90.00+ per hour and some of their older contracts are at \$60.00 per hour and with the gas rates with what they are now is not a good situation for those operators.

Commissioner Linda Krupa stated that a couple of her residents unfortunately had the need of the FSP service recently and wanted to thank RCTC because it got them out of a real jam that could have been extremely harmful to a lot of motorists. She expressed this is an awesome service that is provided.

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

- 1) Award Agreement No. 22-45-073-00 to Royal Coaches Auto Body and Towing, LLC for Freeway Service Patrol (FSP) tow truck services on State Route 91, Beat Nos. 1 and 2, for a five-year term, in the amount of \$3,824,793, plus a contingency amount of \$191,240, for a total amount not to exceed \$4,016,033;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission;**
- 3) Authorize the Executive Director, or designee, to approve the use of the contingency amount as may be required for these services; and**
- 4) Forward to the Commission for final action.**

11. FUNDING AGREEMENT WITH THE CALIFORNIA HIGHWAY PATROL FOR FREEWAY SERVICE PATROL SUPERVISION

Brian Cunanan provided a detailed overview for the agreement with the CHP to provide supervision and operation of the FSP program in Riverside County.

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

- 1) Approve Agreement No. 22-45-079-00 with the California Highway Patrol (CHP) to provide supervision and operation of the Freeway Service Patrol (FSP) program in Riverside County for a three-year term in an amount not to exceed \$2,167,546;**
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and**
- 3) Forward to the Commission for final action.**

12. EXECUTIVE DIRECTOR REPORT

- 12A.** Anne Mayer expressed appreciation for the FSP program as it is one of the highlights of the programs and services that RCTC provides. Not only do they help motorists who are stranded on the freeways but often the FSP is the first emergency response vehicle on the scene, which is not their task. The FSP drivers do a terrific job, and this is a program very much worth its investment.
- 12B.** Anne Mayer announced the State Route 60 Truck Lanes project opened on May 20 although there will be project close out issues, it is exciting and an example of a project that was done very well. It had extraordinary cooperation and collaboration between RCTC, Caltrans, RCTC's contractor Skanska did an outstanding job, and the CHP was right there the entire time. This project is now open and on June 2 at 10:00 a.m. is the Ribbon Cutting Event. She apologized as staff is aware of the conflict with Southern California Association of Governments (SCAG).
- 12C.** Anne Mayer announced at its June 27 Western Riverside County Programs and Projects Committee meeting there will be a conversation regarding the Mid County Parkway Construction (MCP) Package No. 3. The Committee had spent the last three months in extensive conversations about the MCP and there have been some productive meetings with the County of Riverside staff and a game plan is in motion and they are hoping to bring some recommendations at this committee next month.

13. COMMISSIONER COMMENTS

- 13A.** Commissioner Hoffman announced in the city of Norco at the I-15 and Sixth Street they are getting a lot of truck traffic as the Army Core of Engineers are doing a big construction along the Santa Ana River. There are 300 trips a day, doubles, with bottom dumps and the trucks are coming up SR-71 to SR-91 and up down to I-15 and into the city of Norco and exiting out the I-15 off Sixth Street. He stated to let the city know if there is an issue and they will direct that person to the Army Core of Engineers.
- 13B.** Commissioner Krupa noted its regarding SR-60 and she was coming back from the desert last weekend and where they divert one lane of traffic if they get into that

diversion and want to get off at Beaumont/SR-79 it is impossible. They were stuck heading to SR-60 and there is a median down most of it but was able to make a safe U-turn down towards the bottom and went right on back. She stated that is horrible on I-10 to try to get over and get off on SR-79, which is impossible if they are in that left lane.

Chair Benoit replied he is aware it is possible because he has seen people do it and it is scary. He noted that is not RCTC's project it is Caltrans as RCTC would have maybe moved that a little bit. Anne Mayer confirmed that is not RCTC's project.

14. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was adjourned at 2:06 p.m.

Respectfully submitted,

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

Lisa Mobley
Administrative Services Manager/
Clerk of the Board

AGENDA ITEM 7

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	June 27, 2022
TO:	Western Riverside County Programs and Projects Committee
FROM:	Timothy Green, Senior Management Analyst Hector Casillas, Right of Way Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreements for On-Call Right of Way Engineering and Surveying

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Award Agreement No. 22-31-057-00 with Psomas for the on-call right of way engineering and surveying services for a three-year term for an amount not to exceed \$750,000;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement, on behalf of the Commission;
- 3) Authorize the Executive Director, or designee, to execute task orders under the terms of the agreements; and
- 4) Forward to the Commission for final action.

BACKGROUND INFORMATION:

Right of way engineering and surveying services are necessary to support the Right of Way department's Commission projects, future Measure A highway and rail projects, as well as projects for the Western Riverside County Regional Conservation Authority (RCA), for which the Commission is the managing agency as of January 1, 2021.

Right of way engineering and surveying companies provide boundary maps, monumentation maps, survey control maps, records of survey, parcel or appraisal maps, lot line adjustments, and legal descriptions and plat maps, among other services. These companies also meet the requirements of Caltrans in providing base mapping and pre-construction and post-construction monumentation.

The Commission utilizes these services when acquiring property for projects or to determine property boundaries on property already owned by the Commission. Often, the Commission will call on these companies to stake or mark the areas of a property that are proposed to be acquired, obtaining useful information for the Commission's appraisers, right of way agents, and the property owners. The current on-call right of way engineering and surveying services contract will be expiring June 30, 2022; therefore, staff is procuring a new on-call contract.

Procurement Process

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

RFQ No. 22-31-057-00 for On-Call Right of Way Engineering and Surveying was released by staff on March 24, 2022. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 46 firms downloaded the RFQ; 8 of these firms are located in Riverside County. A pre-submittal meeting was held on April 5, 2022 and attended by 6 firms. Staff responded to all questions submitted by potential proposers prior to the April 11, 2022, clarification deadline. Three firms – Guida Surveying (Irvine); K&A Engineering (Corona); and Psomas (Riverside) – submitted statements of qualifications prior to the 2:00 p.m. submittal deadline on April 21, 2022. Of the three proposals submitted, two were responsive and responsible as staff determined that the proposal submitted by K&A Engineering was non-responsive due to not meeting the Disadvantaged Business Enterprise (DBE) requirements set forth in the RFQ. Utilizing the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission staff.

Based on the evaluation committee's assessment of the written proposals and pursuant to the terms of the RFQ, the evaluation committee shortlisted and invited two firms to the interview phase of the evaluation and selection process. Interviews of the shortlisted firms – Guida Surveying and Psomas– were conducted on May 12, 2022.

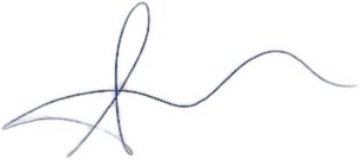
The evaluation committee conducted a subsequent evaluation of each firm, based on both written and interview components presented to the evaluation committee by each proposer. Accordingly, the evaluation committee determined Psomas to be the most qualified firm to provide On-Call Right of Way Engineering and Surveying services. The evaluation committee recommends contract award to Psomas for a three-year term, in an amount not to exceed \$750,000, as this firm earned the highest total evaluation score.

The on-call, indefinite delivery/quantity task order type contract does not guarantee work to the awardee; therefore, no funds are guaranteed to the consultant. Services will be provided through the Commission's issuance of contract task orders to the consultant on an as-needed basis. Staff will review the task orders by analyzing costs and comparing consultant's level of effort with similar task orders performed in the past. To ensure the consultant's price is fair and reasonable, the Commission's internal auditor is auditing the consultant's indirect cost rate, wages, and other direct costs.

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

FISCAL IMPACT

Funding for these agreements will be provided by various highway, rail, and conservation project budgets.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2022/23 and 2023/24+	Amount:	\$200,000 \$550,000
Source of Funds:	2009 Measure A, State Transportation Improvement Program, various Federal, and Transportation Uniform Mitigation Fees, RCA reimbursements			Budget Adjustment:	No
GL/Project Accounting No.:	623999 81403 00013 0000 262 31 81403 654199 81403 00013 0000 265 33 81403 r22001 81403 00013 0000 750 68 81403				
Fiscal Procedures Approved:				Date:	06/16/2022

Attachments: Draft On-Call Professional Services Agreement 22-31-057-00 with Psomas

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
PSOMAS
FOR ON-CALL RIGHT OF WAY
ENGINEERING AND SURVEYING SERVICES**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and **PSOMAS** ("Consultant"), a **CORPORATION**. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals.

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

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

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

D. A source of funding for payment for on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way engineering and surveying services in the County of Riverside, California. Services shall be provided on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement and executed by the Commission and the Consultant ("Task Order"). Consultant represents that it is experienced in providing such services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

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

Terms.

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

2. The Consultant shall commence work upon receipt of a written "Notice to Proceed" or "Limited Notice to Proceed" from Commission.

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

4. Audit Procedures. Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms

of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end three years from the date set forth above. All Task Order work should be completed within the term.

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

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

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

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

8. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are: **Sean Smith, Dave Moritz, William Estepa, Tim Garcia, and Dannie Green**, 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. Task Orders; Commencement of Services; Schedule of Services. Consultant shall commence Services under a Task Order within five (5) days of receiving a fully executed Task Order from the Commission. Task Orders shall be in substantially the form set forth in Exhibit "B" attached hereto and incorporated herein by reference. Each Task Order shall identify the funding source(s) to be used to fund the Services under the relevant Task Order, and Consultant shall comply with the requirements specified herein, and in the attached exhibits, applicable to the identified funding source(s).

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

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

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

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

12. Delay in Performance.

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

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

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

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

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

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

16. Claims Filed by Contractor.

16.1 If claims are filed by the Commission's contractor for the Project ("Contractor") relating to work performed by Consultant's personnel, and additional information or assistance from the Consultant's personnel is required by the Commission in order to evaluate or defend against such claims; Consultant agrees to make reasonable efforts to make its personnel available for consultation with the Commission's construction

contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

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

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

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

17. Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term 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 "C" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. In no event, shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 19.8 shall not be exceeded, unless authorized by a written amendment.

19.2 In addition to the allowable incurred costs, Commission shall pay Consultant a fixed fee to be set forth in each Task Order ("Fixed Fee"). The Fixed Fee is nonadjustable for each Task Order, except in the event of a significant change in the Scope of Services, and such adjustment is made by written amendment.

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

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

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

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

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

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

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

19.9 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.

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

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

20. Disputes.

20.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement of the Parties shall be

decided by a committee consisting of RCTC's Contract Administrator and the Director of Capital Projects, who may consider written or verbal information submitted by Consultant.

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

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

21. Termination.

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

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

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

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

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

Agreement. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

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

21.8 Consultant may not terminate this Agreement except for cause.

22. Cost Principles and Administrative Requirements.

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

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

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

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

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

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

24. Audit Review Procedures.

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

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

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

25. Subcontracting.

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

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

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

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

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

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

26. Equipment Purchase

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

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

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

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

27. Labor Code Requirements.

27.1 Prevailing Wages.

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

(b) Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration,

demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

(c) When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

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

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

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

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

trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

28. Ownership of Materials/Confidentiality.

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

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

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

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

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

Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

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

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

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

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

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

28.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any

other proprietary right of any person or entity in consequence of the use on the Project by Commission of the Documents & Data, including any method, process, product, or concept specified or depicted.

29. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), indemnify and hold Commission, Caltrans and their directors, officials, officers, employees, consultants, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, 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, their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

Consultant's obligations as set forth in this Section shall survive expiration or termination of this Agreement.

30. 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.

31. Insurance.

31.1 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.

31.2 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.

31.3 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.

31.4 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.

31.5 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.

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

31.7 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.

31.8 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.

31.9 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.

31.10 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.

32. 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.

33. 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.

34. Prohibited Interests.

34.1 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.

34.2 Consultant Conflict of Interest

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

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

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

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

(e) Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

34.3 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.

34.4 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.

34.5 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.

34.6 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.

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

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

(b) The Consultant's certification provided in this Section is a material representation of fact upon which reliance was placed when this Agreement was

entered into, and is a prerequisite for entering into this Agreement pursuant to Section 1352, Title 31, US. Code. Failure to comply with the restrictions on expenditures, or the disclosure and certification requirements set forth in Section 1352, Title 31, US. Code may result in a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

34.8 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.

35. 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.

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

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

38. Disputes; Attorneys' Fees.

38.1 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.

38.2. 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.

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

40. 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.

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

CONSULTANT:

Psomas
1650 Spruce Street, Suite 400
Riverside, CA 92507
Attn: Sean Smith

COMMISSION:

Riverside County
Transportation Commission
4080 Lemon Street, 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.

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

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

44. 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.

45. 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.

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

provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference

47. 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.

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

49. 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.

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

51. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.

Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed

to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

52. 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.

53. 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.

54. 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.

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

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

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR
RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES**

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

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

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

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

EXHIBIT "A"

SCOPE OF SERVICES

Right of Way Engineering and Surveying Services

The Riverside County Transportation Commission (Commission) and the Western Riverside County Regional Conservation Authority (RCA) have procured one or more Consultants (Consultant or Right of Way Engineering and Surveying Services Consultant) to provide Right of Way Engineering and Surveying Services on an On-Call/as needed basis in support of current Commission and RCA Projects, Measure A Projects, and projects done in partnership with other agencies, pursuant to Task Orders issued in the sole discretion of the Commission and/or the RCA.

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

Such Right of Way Engineering and Surveying Services may include, but are not limited to, the following work programs, and/or comply with applicable requirements below:

1. Consultant shall provide right of way engineering and survey services including but not limited to: preparing Boundary Maps, Monumentation Maps, Survey Control Maps, Records of Survey, Lot Line Adjustments, Subdivision Maps, Legal Descriptions and Plats, Parcel Maps, Appraisal Maps, Certificates of Compliance, staking/marketing of parcels and rights of way for appraisal and utility potholing purposes, and other right of way engineering as necessary.
2. Consultant shall prepare Boundary, Monumentation, and Survey Control Maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where the Commission is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps.
3. Consultant shall utilize appropriate land surveying and land title practices to:
 - Establish all property and easement boundaries within and overlapping the project area
 - Perform site reconnaissance and monument recovery
 - Establish or reestablish all monumentation required by state law and local regulations

- File a Record of Survey, if necessary, to comply with the Land Surveyors Act. The preparation, filing, and associated fees will be the responsibility of Consultant.

All data, maps, and documents produced by Consultant shall be subject to approval and acceptance by the Commission's or the RCA's Project Manager, and in certain cases, Caltrans. In the event of non-acceptance due to errors or omissions, Consultant shall have seven calendar days to make corrections and return maps and documents to the Commission and/or the RCA. Final acceptance will occur only after the work product has been determined to conform to the scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with state law and local regulation, and the procedures and instructions contained in the Caltrans Right of Way Manual, the Caltrans Surveys Manual (Manuals), and the Caltrans District 8 Right of Way Engineering Quality Assurance Plan for the Preparation of Documents and Maps. All right of way acquired by the Commission on for state highway system projects will be subject to acceptance and transfer to the State.
5. Consultant shall appoint a Survey Manager who is a licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work performed by Consultant for the Commission or the RCA.
6. Deliverables shall typically consist of one (1) electronic copy.
7. If any legal issues exist during the course of an assignment, Consultant shall request legal opinion. The Commission's or RCA's legal counsel shall render all legal opinions.
8. Consultant shall utilize the services of Commission's and/or RCA's on-call consultants supplemental work required for the effective delivery of Consultant's services to the Commission or the RCA. Fees charged by Commission's or RCA's on-call consultants shall be paid directly by the Commission or the RCA.

Any and all work submitted by the Consultant shall be reviewed by the Consultant LS/LCE and be complete and final in strict accordance with the California Board of Professional Engineers and Land Surveyors Rule 476, Subsection (e), and signed and sealed in accordance with Section 8761 of the Professional Land Surveyors Act.

As it pertains to projects affecting the State Highway System, work shall not be considered complete until Caltrans has approved the work for inclusion into the Right of Way Engineering files. Caltrans does not assume responsibility for the Consultant work after inclusion into the R/W Engineering files, Consultant shall retain responsibility for all work performed and submitted.

Lot Line Adjustments, Parcel Maps, Surveys and Legal Descriptions work required under this Scope of Work may include field surveying, legal description, map preparation and the marking of properties for utility potholing, appraisal, and boundary determination purposes or other right of way engineering required for transportation purposes. Surveys prepared in connection with Caltrans projects shall be performed in accordance with the current Manuals. Work not covered by the Manuals or not associated with Caltrans projects shall be performed in accordance with accepted professional surveying standards.

Survey points, lines, and monuments shall be established, marked, identified, and referenced. If required, Records of Survey shall be prepared and filed in accordance with Chapter 15 (Land Surveyors Act) of the Business and Professions Code. A copy of original survey documents resulting from contract work, which may include field notes, adjustment calculations, final results, and intermediate documents, may be required to be delivered and will become the property of Commission or RCA.

DRAFT

EXHIBIT "B"

SAMPLE TASK ORDER FORM

Task Order No. _____

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:

List funding sources: _____

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed \$_____.00

Completion Date: _____, 202__

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

Riverside County Transportation Commission

Consultant

Dated: _____

Dated: _____

By: _____

By: _____

**EXHIBIT C
COMPENSATION**

DRAFT

EXHIBIT "C"

COMPENSATION SUMMARY¹

FIRM	PROJECT TASKS/ROLE	COST
<i>Prime Consultant:</i>		
Psomas	Engineering & Surveying	\$ 750,000.00
<i>Sub Consultants:</i>		
CL Surveying & Mapping, Inc.	Land Surveying Support Services	TBD
TOTAL COSTS		\$ 750,000.00

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 "D"

FHWA/ CALTRANS REQUIREMENTS

1. STATEMENT OF COMPLIANCE.

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

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

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

2. DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

3. DISCRIMINATION

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

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

4. PROMPT PAYMENT

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

5. RELEASE OF RETAINAGE

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

6. LEGAL REMEDIES

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

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

7. DBE PARTICIPATION

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement does not have a DBE goal, but DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Commission, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

8. DBE PARTICIPATION GENERAL INFORMATION

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.

E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

9. COMMERCIALLY USEFUL FUNCTION

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

11. DBE RECORDS

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each

DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insure, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

14. DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

In accordance with 49 CFR Part 29, which by this reference is incorporated herein, Consultant's subconsultants completed and submitted the Certificate of subconsultant Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion as part of the Consultant's proposal. If it is later determined that Consultant's subconsultants knowingly rendered an erroneous Certificate, the Commission may, among other remedies, terminate this Agreement.

15. ENVIRONMENTAL COMPLIANCE

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

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

16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

EXHIBIT "E"

CONSULTANT DBE COMMITMENT

DRAFT


Psomas | Exhibit 10-01 Consultant Proposal DBE Commitment

Local Assistance Procedures Manual

Exhibit 10-01
Consultant Proposal DBE Commitment

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Riverside County Transportation Commission 2. Contract DBE Goal: 12%
 3. Project Description: On-Call Right-of-Way Engineering and Surveying Services
 4. Project Location: Riverside County
 5. Consultant's Name: Psomas 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %		
Land Surveying Support Services	38284	CL Surveying and Mapping, Inc. Lam Le, PLS 400 East Rincon St., Ste. 202, Corona, CA 92879 909.484.4200 Lam@cl-survey.com	12%		
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION			
17. Local Agency Contract Number: _____		12 % IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.			
18. Federal-Aid Project Number: _____					
19. Proposed Contract Execution Date: _____					
20. Consultant's Ranking after Evaluation: _____					
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		 4/21/2022			
21. Local Agency Representative's Signature	22. Date	12. Preparer's Signature	13. Date		
23. Local Agency Representative's Name	24. Phone	Sean Smith, PLS	909.800.8911		
25. Local Agency Representative's Title		14. Preparer's Name	15. Phone		
		Vice President			
		16. Preparer's Title			

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

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

EXHIBIT "F" - FTA PROVISIONS

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

Notwithstanding anything to the contrary contained in the Agreement, including the other Exhibits attached thereto, the following provisions shall apply if funding for the Services is provided, in whole or in part, from the Federal Transit Administration ("FTA"). In addition, the exhibits attached to this Agreement, may be replaced and substituted with similar forms required by FTA. Consultant agrees to complete any such substitute forms.

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER

(1) The Commission 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 ("Government"), the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Commission, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) 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 AND RELATED ACTS

(1) 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.

1 UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION MASTER AGREEMENT For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, U.S.C. (Highways), Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the National Capital Transportation Act of 1969, as amended, the Transportation Equity Act for the 21st Century, as amended, 23 U.S.C. § 101 note, or other Federal enabling legislation; FTA MA(14); October 1, 2007; <http://www.fta.dot.gov/documents/14-Master.pdf>.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation 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. chapter 53 or any other Federal law, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Consultant, to the extent the Federal Government deems appropriate.

(3) 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

(1) The Consultant agrees to provide the Commission, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States or any of their authorized representatives access to all Project work, materials, payrolls, and other data of the Consultant which are directly pertinent to this contract as required by 49 U.S.C. § 5325(g).

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees 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 transmission of the final expenditure report, 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 the Commission, 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).

(4) The Consultant agrees to require its subcontractors and third party contractors to provide the same.

4. FEDERAL CHANGES

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 Grant Agreement or Cooperative Agreement between the Commission and the Federal Government

("Grant Agreement or Cooperative Agreement"), 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 REQUIREMENTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, FTA Circular 4702.1A, "Title VI and Title VI – Dependent Guidelines for Federal Transit Administration Recipients," May 13, 2007, Federal transit law at 49 U.S.C. § 5332, 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 – The Consultant agrees to comply with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and equal employment opportunity provisions of 49 U.S.C. § 5332, and 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.

(3) Age - In accordance with the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 through 634 and Federal transit law at 49 U.S.C. § 5332, 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.

(4) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees 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.

(5) DBE Program Compliance - The Commission has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to FTA funded agreements. The requirements and procedures of the Commission's DBE Program are hereby incorporated by reference into this Agreement. Consultant shall complete Exhibits "G" and "H" of this Agreement, or similar forms to be provided by the Commission, in compliance with the Commission's DBE Program for FTA funded agreements. Failure by Consultant or its subcontractor(s) to carry out the Commission's DBE Program procedures and requirements, or the applicable requirements of 49 C.F.R. Part 26, section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26, shall be considered a material breach of this Agreement. Such a material breach may be grounds for termination of this Agreement or such other appropriate administrative remedy as the Commission deems appropriate. The Consultant shall ensure that a provision mandating compliance with the Commission's DBE Program for FTA funded agreements is included in any and all sub-agreements entered into which arise out of or are related to this Agreement. Consultant shall also promptly provide the Commission with all necessary information related to the DBE status of its subcontractors. Should the DBE status of any of its subcontractors change in any way, Consultant shall promptly inform the Commission of this change.

(6) 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. TERMINATION PROVISIONS

The termination provisions found at Section 21 of this Agreement are consistent with the termination provisions suggested by FTA for the protection of the Federal Government. The termination provisions found at Section 21 of this Agreement control termination under this Agreement.

7. DEBARMENT AND SUSPENSION

Instructions for Certification

1. By signing and submitting a Proposal, the Consultant is providing the signed certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Commission may pursue available remedies, including suspension and/or debarment.
3. The Consultant shall provide immediate written notice to Commission if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Commission for assistance in obtaining a copy of those regulations.
5. The Consultant agrees by submitting a Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Commission.
6. The Consultant further agrees by submitting a Proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to

the Federal Government, Commission may pursue available remedies including suspension and/or debarment.

9. The Consultant agrees to comply, and assures the compliance of each subconsultant, lessee, or third party contractor, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29.

10. The Consultant agrees to, and assures that its subconsultants, lessees and third party contractors have reviewed the "Excluded Parties Listing System" at <http://elpls.gov/> before entering into any third sub agreement, lease or third party contract.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion"

(1) The Consultant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the Consultant is unable to certify to the statements in this certification, it shall attach an explanation to this proposal.

8. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Commission Executive Director, or his or her designee. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the Commission's Executive Director, or his or her designee. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Commission's Executive Director, or his or her designee, shall be binding upon the Consultant and the Consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Commission, Consultant shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Commission and the Consultant arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Commission is located.

Rights and Remedies - The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Commission, or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

FTA Notification - Consultant shall notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project. If the Consultant wishes to name the Federal Government as a party to litigation, the Consultant shall inform FTA in writing before doing so.

9. LOBBYING

Lobbying Restrictions. To the extent applicable, Consultant agrees to:

- (1) Comply, and assure the compliance of each subcontractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- (2) Comply with Federal statutory provisions, to the extent applicable, prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

10. CLEAN AIR

(1) 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 through 7671q. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. CLEAN WATER

(1) 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 through 1377. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. ENERGY CONSERVATION

Energy Conservation. To the extent applicable, Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.* To the extent applicable, Consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

13. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

14. ADDITIONAL REQUIREMENTS

To the extent applicable, Consultant agrees to comply with the Federal programs specified below and, with regard to such programs, Consultant agrees not compromise the Commission's compliance with Federal requirements as pertains to the Project.

The Programs are as follows:

- (1) Urbanized Area Formula Program authorized under 49 U.S.C. § 5307.
- (2) Elderly Individuals and Individuals with Disabilities Formula Program authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively.
- (3) New Freedom Program authorized under 49 U.S.C. § 5317.
- (4) Nonurbanized Area Formula Program authorized under 49 U.S.C. § 5311(b).

- (5) Clean Fuels Grant Program authorized under 49 U.S.C. § 5308.
- (6) Job Access and Reverse Commute Formula Grant Program authorized under 49 U.S.C. § 5316.

15. RELEASE OF RETAINAGE

The Commission shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Commission of the contract work and pay retainage to prime contractors based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Commission. Federal regulations (49 CFR 26.29) require that any delay or postponement of payment over 30 days may take place only for good cause and with the Commission's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Federal Transit Authority, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal Transit Authority, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

17. EMPLOYMENT PROVISIONS

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

A. Equal Employment Opportunity — Consultant must comply with Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by Executive Order 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at

41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

B. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Consultant must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Consultants and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Commission shall report all suspected or reported violations to the responsible DOE contracting officer.

C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) — Consultant must comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each Consultant is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. Davis-Bacon Act (40 U.S.C. 276a) — Consultant shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

18. FTA DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

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

It is the policy of the Commission to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;

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

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

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

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

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

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

F. DBE Certification Status: If a listed DBE subconsultant is decertified during the life of any Task Order, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a non-DBE subconsultant becomes a certified DBE during the life of the Task Order, the DBE subconsultant shall notify Consultant in writing with the date of

certification. Consultant shall furnish the written documentation to Commission in a timely manner. Consultant shall include this requirement in all subcontracts.

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

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

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

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

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

EXHIBIT “G” – LOBBYING ACTIVITIES DISCLOSURE

DRAFT

Psomas | Exhibit K – Disclosure of Lobbying Activities

Local Assistance Procedures Manual

EXHIBIT 10-Q
Disclosure of Lobbying Activities

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 _____
<div style="font-size: 2em; color: blue; opacity: 0.5; transform: rotate(-45deg); position: absolute; top: 50%; left: 50%;">DRAFT</div> <div style="font-size: 1.5em; color: blue; font-weight: bold;">Not Applicable</div>		
4. Name and Address of Reporting Entity 1650 Spruce Street, Suite 400, Riverside, CA 92507 <input checked="" 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)	
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 checked="" 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 checked="" 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>Sean Smith, PLS</u> Title: <u>Vice President</u> Telephone No.: <u>909.800.8911 (c)</u> Date: <u>4/21/2022</u>		Authorized for Local Reproduction Standard Form - LLL

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Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

AGENDA ITEM 8

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	June 27, 2022
TO:	Western Riverside County Programs and Projects Committee
FROM:	Angela Ferreira, Senior Management Analyst Hector Casillas, Right of Way Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreements for On-Call Right of Way Environmental Site Assessment Services

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Award Agreement No. 22-31-068-00 with Dudek for the on-call right of way environmental site assessment services for a three-year term in an amount not to exceed \$350,000;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;
- 3) Authorize the Executive Director, or designee, to execute task orders awarded to the consultant under the terms of the agreement; and
- 4) Forward to the Commission for final action.

BACKGROUND INFORMATION:

Environmental Site Assessments are necessary to support the Right of Way department's Commission projects, future Measure A highway and rail projects, as well as projects for the Western Riverside County Regional Conservation Authority (RCA), for which the Commission is the managing agency as of January 1, 2021.

The presence of hazardous substances needs to be investigated prior to property acquisitions. Therefore, it is necessary for the Commission and RCA to exercise due diligence in identifying hazardous materials and potential hazardous substance related problems. Performing early testing of known or potentially contaminated sites may avoid or, at least, minimize costs and schedule delays on Commission projects.

On-call consultants will be required to furnish specialized environmental engineering and field services including, but not limited to, site assessments and investigations, remedial investigation/feasibility studies, remediation action plans, remediation action design, post-remediation monitoring at specified sites, hazardous waste remediation, abatement, lead and asbestos testing, and removal of materials.

Phase I – Initial site assessment shall include, but not be limited to, identifying hazardous and potentially hazardous problems.

Phase II – Site investigations shall include, but not be limited to, items such as work plans, health and safety plans, surveys and surface geophysical investigations, drilling, sampling, laboratory analysis, and reporting.

In November 2018, the Commission approved similar contracts with three firms for up to three-year terms; these contracts have been used successfully to deliver projects and react to new and changing conditions rapidly. The total authorized amount on those contracts was also \$300,000, of which approximately \$100,000 was expended.

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. 22-31-068-00 for on-call right of way environmental site assessment services was released by staff on February 24, 2022. The RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 36 firms downloaded the RFQ; 5 of these firms are located in Riverside County. Staff responded to all questions submitted by potential proposers prior to the March 8, 2022, clarification deadline. Four firms – Dudek (Riverside); Kleinfelder (Riverside); Leighton Consulting, Inc. (Irvine); Ninyo & Moore (Fontana) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on March 24, 2022. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission staff.

Based on the evaluations committee's assessment of the written statement of qualifications and pursuant to the terms of the RFQ, the evaluation committee shortlisted and invited all four firms to the interview phase of the evaluation and selection process. Interviews were conducted on April 14, 2022.


The evaluation committee conducted a subsequent evaluation of each firm, based on both written and interview components presented to the evaluation committee by each proposer. Accordingly, the evaluation committee recommends contract award to Dudek for on-call right of way environmental site assessment services, as this firm earned the highest total evaluation score.

As a result of the evaluation committee's assessment of the written statements of qualifications, the evaluation committee recommends contract award to Dudek for a three-year term, in an amount not to exceed \$350,000, as this firm earned the highest total evaluation score.

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

Fiscal Impacts

Funding for these agreements will be provided by various highway, rail, and conservation projects.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2022/23 and 2023/24+	Amount:	\$100,000 \$250,000
Source of Funds:	2009 Measure A, State Transportation Improvement Program, various Federal, and Transportation Uniform Mitigation Fees, RCA reimbursements			Budget Adjustment:	No
GL/Project Accounting No.:	623999 81403 00014 0000 262 31 81403 654199 81403 00014 0000 265 33 81403 r22001 81403 00014 0000 750 68 81403				
Fiscal Procedures Approved:				Date:	06/16/2022

Attachment: Draft On-Call Professional Services Agreement 22-31-068-00 with Dudek

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
DUDEK
FOR ON-CALL RIGHT OF WAY
ENVIRONMENTAL SITE ASSESSMENT SERVICES**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2022, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and **DUDEK** ("Consultant"), a **S-Corporation**. The Commission and Consultant are sometimes referred to herein individually as "Party", and collectively as the "Parties".

Recitals.

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

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

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

D. A source of funding for payment for on-call professional consulting services provided under this Agreement may be State Proposition 1B funds, Federal Highway Administration Funds ("FHWA") administered by the California Department of Transportation ("Caltrans"), and/or funds from the Federal Transit Administration ("FTA").

E. Consultant desires to perform and assume responsibility for the provision of certain on-call right of way environmental site assessment services 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 issued pursuant to this Agreement and executed by the Commission and the Consultant ("Task Order"). Consultant represents that

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

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

Terms.

1. General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the on-call right of way phase I & phase II environmental assessment 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. Commencement of Services. The Consultant shall commence work upon receipt of a written "Notice to Proceed" or "Limited Notice to Proceed" from Commission.

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

4. Audit Procedures. Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an Independent Cost Review (ICR) Audit, or a CPA ICR audit work paper review. If selected for audit or review, this Agreement, Consultant's cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. This Agreement, Consultant's cost proposal, and

ICR shall be adjusted by Consultant and approved by the Commission's contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into this Agreement by this reference if directed by Commission at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of the Agreement terms and cause for termination of this Agreement and disallowance of prior reimbursed costs. Additional audit provisions applicable to this Agreement are set forth in Sections 23 and 24 of this Agreement.

5. Term.

5.1 This Agreement shall go into effect on the date first set forth above, contingent upon approval by Commission, and Consultant shall commence work after notification to proceed by Commission's Contract Administrator. This Agreement shall end three years from the date set forth above, unless extended by contract amendment. In no case shall the term of this Agreement exceed three (3) years. All Task Order work should be completed within the term.

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

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

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

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

Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Contract Administrator.

8. Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions herein. The key personnel for performance of this Agreement are: **Susan Smith, Audrey Herscheberger, Glenna McMahon, Nicole Peacock**, 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.

Task Orders; Commencement of Services; Schedule of Services. Consultant shall commence Services under a Task Order within five (5) days of receiving a fully executed Task Order from the Commission. Task Orders shall be in substantially the form set forth in Exhibit "B" attached hereto and incorporated herein by reference. Each Task Order shall identify the funding source(s) to be used to fund the Services under the relevant Task Order, and Consultant shall comply with the requirements specified herein, and in the attached exhibits, applicable to the identified funding source(s).

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

10.1 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.

10.2 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.

10.3 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.

11. Delay in Performance.

11.1 Excusable Delays. Should Consultant be delayed or prevented from the timely performance of any act or Services required by the terms of the Agreement by

reason of acts of God or of the public enemy, acts or omissions of the Commission or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

11.2 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.

11.3 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.

12. 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.

13. 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.

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

15. Claims Filed by Contractor.

15.1 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.

15.2 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.

15.3 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.

15.4 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.

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

17. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including

those of the United States Department of Transportation. Compliance with Federal procedures may include completion of the applicable environmental documents and approved by the United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation. For Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

18. Fees and Payment.

18.1 The method of payment for this Agreement will be based on actual cost plus a fixed fee. Commission shall reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the Services. Consultant shall not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant cost proposal attached hereto as Exhibit "C" and incorporated herein by reference, or any cost proposal included as part of a Task Order ("Cost Proposal") unless additional reimbursement is provided for by written amendment. The overhead rates included in the attached Exhibit "C" shall be fixed for the term of the Master Agreement, and shall not be subject to adjustment, unless required by the applicable funding source. In no event, shall Consultant be reimbursed for overhead costs at a rate that exceeds Commission's approved overhead rate set forth in the Cost Proposal. In the event that Commission determines that a change to the Services from that specified in the Cost Proposal, this Agreement or any Task Order is required, the Agreement time or actual costs reimbursable by Commission shall be adjusted by written amendment to accommodate the changed work. The maximum total cost as specified in Section 18.8 shall not be exceeded, unless authorized by a written amendment.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

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

18.7 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

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

18.9 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.

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

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

19. Disputes.

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

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

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

20. Termination.

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

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

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

20.4 Upon receipt of the written Notice of Termination, Consultant shall discontinue all affected Services as directed in the Notice or as otherwise provided herein, and deliver to the Commission all Documents and Data, as defined in this Agreement, as

may have been prepared or accumulated by Consultant in performance of the Services, whether completed or in progress.

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

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

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

20.8 Consultant may not terminate this Agreement except for cause.

21. Cost Principles and Administrative Requirements.

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

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

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

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

22. Retention of Records/Audit. For the purpose of determining compliance with, as applicable, 2 CFR Part 200, Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and Commission shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years

from the date of final payment under this Agreement. The State, State Auditor, Commission, FHWA, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to this Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

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

23. Audit Review Procedures.

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

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

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

24. Subcontracting.

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

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

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

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

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

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

25. Equipment Purchase

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

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

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

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

26. Labor Code Requirements.

26.1 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.

26.2 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.

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

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

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

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

27. Ownership of Materials/Confidentiality.

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

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

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

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

27.2 Intellectual Property. In addition, Commission shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary

rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

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

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

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

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

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

27.4 Infringement Indemnification. Consultant shall defend, indemnify and hold the Commission, 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.

28. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), 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, in any manner arising out of or incident to alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, 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, their directors, officials officers, employees, consultants, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

Consultant's obligations as set forth in this Section shall survive expiration or termination of this Agreement.

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

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

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

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

30.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the

Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

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

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

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

(a) In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director, other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").

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

33. Prohibited Interests.

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

33.2 Consultant Conflict of Interest

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

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

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

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

(e) Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

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

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

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

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

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

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

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

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

33.8 Employment Adverse to the Commission. 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:

Dudek
605 Third Street
Encinitas, CA 92024
Attn: Susan Smith

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 by this Agreement are provided, in whole or in part, from the United States Department of Transportation, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Department of Transportation Requirements and California Department of Transportation (Caltrans) DBE program requirements) attached hereto and incorporated herein by reference. When funding for the Services under a Task Order is provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the

provisions included in Exhibit "F" (FTA Requirements) attached hereto and incorporated herein by reference

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

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

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

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

50. Attorney Client Privilege. The Parties recognize that, during the Project, the Commission and its attorneys will engage in communication that gives rise to an attorney client privilege of confidentiality ("Confidential Communication"). Given the nature of the work done by Consultant for the Commission, it may be necessary for the Consultant to participate in Confidential Communications. To the extent that (i) the Consultant is a party to any Confidential Communication, and (ii) a third party seeks discovery of such communications, then the Consultant shall be deemed to be an agent of the Commission solely for purposes of preserving any attorney client privilege in the relevant Confidential Communication. Any such attorney client privilege shall be held by the Commission and the Consultant is not authorized to waive that privilege or, otherwise, disclose such Confidential Communication except as set forth below. This Section is intended to maintain the privilege in any privileged Confidential Communications that are (1) between and among Commission, Consultant, and Commission's attorneys; (2) between Consultant (on behalf of the Commission) and Commission's attorneys; (3) Confidential Communications that occur in Closed Session meetings wherein the Commission, the Commission's attorneys and Consultant are present; and (4) between Commission and Consultant wherein the substance of the Confidential Communication is conveyed to/from the Consultant.

Consultant may disclose a Confidential Communication to the extent such disclosure is required by legal process, by a court of competent jurisdiction or by any other governmental authority, provided that any such disclosure shall be limited to the specific part of the Confidential Communication required to be disclosed and provided that Consultant first comply with the requirements set forth in this paragraph. As soon as practicable after Consultant becomes aware that it is required, or may become required, to disclose the Confidential Communication for such reason, Consultant shall notify the Commission in writing, in order to allow the Commission to pursue legal remedies designed

to limit the Confidential Communication required to be disclosed or to assure the confidential treatment of the disclosed information following its disclosure. Consultant shall cooperate with the Commission, on a reimbursable basis, to assist the Commission in limiting the scope of disclosure or assuring the confidential treatment of any disclosed information.

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

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

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

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

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

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT
WITH PROPOSITION 1B, FTA AND FHWA FUNDING ASSISTANCE FOR
RIGHT OF WAY PHASE I & PHASE II ENVIRONMENTAL ASSESSMENT SERVICES**

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

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

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

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

EXHIBIT "A" - SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

1.0 SCOPE OF WORK

The presence of hazardous substances within and adjacent to existing and proposed right of way and facilities for various Riverside County Transportation Commission (Commission) rail and highway projects or for various Western Riverside County Regional Conservation Authority (RCA) real property acquisitions for open space for wildlife and plant life conservation is possible. It is, therefore, necessary that the Commission and/or the RCA exercise due diligence in identifying hazardous and potential hazardous substances related problems. For purposes of this work, hazardous substances are substances or combinations of substances as defined in Title 22 California Code of Regulations, Section 66680, Division 20, Health and Safety Code, Sections 25115 and 25117, or those substances defined in Title 49 Code of Federal Regulations, Part 171.8.

On-Call Consultant will be required to furnish environmental engineering services, field services including, but not limited to, site assessment and investigations, remedial investigation/feasibility studies, remediation action plans, remediation action design, post-remediation monitoring at specified areas, hazardous waste remediation, abatement and removal of materials. Work will be assigned on a task order basis.

1.1 Task Order (TO) Procedures for Federally and Caltrans Funded TOs:

- 1.1.1 The Commission's and/or the RCA's Representative or designated project manager will issue TOs to consultant on an as-needed basis.
- 1.1.2 **REQUEST FOR TASK ORDER SUBMITTALS.** Upon a request for a TO Proposal by the Commission or by the RCA Representative, one or more consultants shall develop a plan and submit a proposal for the requested services. The TO shall include a schedule, number of labor hours, labor classification(s), and classification rates to provide the requested services.
- 1.1.3 **REVIEW AND AWARD OF TASK ORDERS.** The Commission's or the RCA's Representative or designated project manager will evaluate the submitted TO Proposal ensuring that the submittal is complete, consistent with the Commission's or the RCA's written or oral request for services, the personnel assigned are acceptable, the schedule is acceptable, that all costs proposed are appropriate, and that the item is in compliance with contractual requirements. If required, the Commission's or the RCA's Representative or designated project manager will conduct negotiations to address exceptions and clarify costs. The fully executed TO will serve as the record of negotiations.
- 1.1.4 **COMPLETION SCHEDULE.** The consultant's performance of services shall commence under each TO only upon written authorization by the Commission's or by the RCA's Representative or designated project manager.

1.1.5 Consultant shall complete the services within the time frame specified on a particular TO.

1.1.6 All work shall be subject to review and approval of the Commission or the RCA either by the Contract Administrator or a designated representative prior to the acceptance and approval of payment.

1.2 Task Order (TO) Procedures for Locally Funded TOs:

1.2.1 Locally funded TOs may be awarded by the designated project manager in the best interest of the Commission or the RCA. TO Proposals are not required for locally funded TOs.

1.3 Phase I – Initial Site Assessment

The Initial Site Assessment (ISA) is necessary for identifying hazardous and potentially hazardous problems within and adjacent to existing and proposed rights-of-way and facilities for the Commission's Measure A or other transportation projects or the RCA's projects. The ISA shall include all pertinent information regarding listed hazardous waste and potential hazardous waste sites in the vicinity of the project. The Consultant may be required to review and update prior environmental reports or remediation work.

During the performance of an ISA, the Consultant shall review published lists of hazardous waste sites and search as necessary available files of federal, state, regional and local agencies such as, but not limited to:

- Environmental Protection Agency (EPA) National Priority List (NPL) reports
- California Environmental Protection Agency (Cal/EPA)
- Regional Water Quality Control Board (RWQCB)
- Office of Emergency Services (hazardous materials management plans)
- Local health departments (site lists, permits, reports)
- Local fire departments (site lists, permits, reports)
- County Tax Assessors (parcel maps and files)
- County Court House (maps and files)
- Utility companies (maps, plans, records)
- Caltrans (right-of-way maps, aerial photos and files)

The Consultant shall also review Sanborn Fire Insurance Maps, aerial photographs and other reports, maps and photographs, as necessary, to determine past and present land uses and to identify known or potential hazardous waste sites on parcels of land for future highway improvement projects. The time frame for this record search shall extend as far back as necessary, or to the limitation of available records, to determine the use and presence of any hazardous wastes/materials on the parcels of land in question.

The Consultant shall review published data from the United States Geological Surveys (USGS), state and other available maps and reports in order to compile a general geologic map and general hydrologic profile of the right-of-way or facility.

As directed, the Consultant shall conduct a field survey for potential hazardous waste sites of all parcels of land within and adjacent to the proposed right-of-way or facility as specified in the Task Order. During this phase, it is not necessary to confirm the actual presence of hazardous waste in soil or groundwater on the site. Coordination and contacts with property owners and/or regulatory agencies shall be pre-approved by the Commission or by the RCA.

All of the work for Phase I ISA or Transaction Screen Reports (TSR) will be performed using American Society for Testing and Materials Standards (ASTM) 1527 or 1528. In circumstances when an ISA will be performed to obtain right of way for a Caltrans project, the work will be completed using the Caltrans Project Development Procedures Manual for Environmental Contamination, Chapter 18.

The Consultant shall be responsible for all Regulatory Agency Coordination through-out all phases of the Project.

General requirements for ISA reports are provided in Attachment I

1.4 Phase II – Site Investigation

If required, site investigations may include, but are not limited to, items such as work plans, health and safety plans, surveys and surface geophysical investigations (if necessary), drilling, sampling, laboratory analysis, and reporting.

All elements of the site investigations must meet all applicable standards set forth by local, state and federal regulatory agencies. There should be no deviation to the required standards. The investigative techniques (i.e., drilling methods, sampling collection and sampling handling procedures, analytical methods and equipment) must be procedurally acceptable to the Commission, the RCA and regulatory agencies.

During soil investigations, the drilling and sampling operations shall be supervised on-site by Professional Engineer (PE), Certified Engineering Geologist (CEG), or Registered Geologist (RG). Personnel with specific registration(s) may be required in a Task Order to conform to regulatory agency requirements.

1.4.1 Work Plans

A technical work plan shall be developed for all site investigations. The work plan shall be sufficiently detailed to fully describe the work to be performed. The Consultant shall submit a draft site-specific work plan to the Commission's or to the RCA's Project Manager for review. The draft shall be revised based on the Commission's or the RCA's comments and returned within seven (7) working days. The Commission or the RCA shall review and approve the plan prior to start of fieldwork.

Appropriate professional personnel shall develop work plans. Interpretation of geology, hydrogeologic, and/or hydrologic information shall be completed under the supervision of a California RG and/or CEG.

All work performed by the Consultant shall be in accordance with the site-specific final work plan as reviewed and approved by the Commission or by the RCA.

1.4.2 Health and Safety Plans

Throughout the performance of field soil investigations, the Consultant, its subcontractors, and their personnel are responsible for their own health and safety planning, monitoring and procedures.

All field soil investigations will require development of an appropriate Health and Safety Plan. The Commission or the RCA shall review and approve the plan prior to the start of work. The Consultant shall submit a draft site specific Health and Safety Plan to the Commission or to the RCA for review. The draft shall be revised based on the Commission's and/or the RCA's comments and returned to the Consultant within seven (7) calendar days. The Health and Safety Plan shall conform to all applicable regulatory requirements including, but not limited to 8CCR 5192 and 8CCR 3202.

The Consultant shall complete all work in accordance with the site Health and Safety Plan. The Consultant shall ensure that all employees, while on the project site, conform to the plan requirements.

1.4.3 Surveys of Buildings, Containers, Etc.

The Consultant may be required to provide survey activities. Survey activities may include the surveying and testing, as applicable, of buildings, structures, stored materials, tank contents and containers to determine whether hazardous waste or materials are present. Typical surveys may include inspection for the following:

- Asbestos containing materials (ACM) in buildings and pipelines
- Poly Chlorinated Biphenyl's (PCB) containing materials in transformers, equipment, containers
- Fuels and other chemicals in tanks, barrels and storage containers
- Review of buildings or structures to determine whether hazardous materials are being used or stored
- The presence of lead paint

Only when requested will a Certified Industrial Hygienist (CIH) be utilized for survey plans and work. Requests for a CIH will be through the Task Order process. When surveys are included in a Task Order, survey activities as well as results shall be included as a report or as part of the Site Investigation Report.

1.4.4 Surface Geophysical Investigations

Consultants shall provide surface geophysical investigative services for the purpose of acquiring data as specified in the Task Order. Surface geophysical work shall be coordinated and interpreted by a geophysicist certified in the state of California.

When geophysical activities are included in a Task Order, in addition to the general soil investigation reporting requirements, geophysical activities and results shall be included as a report or as part of the Site Investigation Report.

1.4.5 Soil Gas Survey

Consultant shall provide subsurface soil gas sampling and analysis services. Gas survey personnel on site shall include a chemist or other experienced professional responsible for equipment operation and calibration.

When soil gas survey activities are included in a Task Order, in addition to the general soil investigation reporting requirements, soil gas survey activities and results shall be included as a report or as part of the Site Investigation Report.

1.4.6 Trenching

Trenching may be required for shallow soil investigation purposes. Excavation may be needed to determine shallow subsurface conditions or to excavate and expose subsurface structures such as foundations, tanks, pipes and/or sumps. Trenching activities shall be observed and supervised by a site engineer, geologist or engineering geologist.

1.4.7 Drilling

Consultant shall provide drilling services that have the capability to drill and sample soft or poorly consolidated material, rock of varying densities, hardness, and degrees of fracturing, engineered fill, asphalt, Portland concrete cement (PCC), and wastes. Consultant shall also provide drilling services that have the capability to properly drill, construct, and develop groundwater monitoring wells.

Monitoring wells may be required to determine if groundwater contamination is present, the extent of the contamination, and the general characterization of the subsurface vadose and hydro geologic conditions. Monitoring wells shall be designed and constructed in accordance with all the appropriate regulations, requirements and to be able to obtain water samples from the appropriate aquifer zones.

The Consultant, prior to drilling and installation of wells, shall obtain all of the necessary well permit(s). The Consultant shall register all monitoring wells with the Department of Water Resources. Copies of these records shall be included in the Site Investigation Report.

When drilling activities are included in a Task Order, in addition to the general soil investigation reporting requirements, drilling activities and results shall be included as a report or as part of the Site Investigation Report.

1.4.8 Sampling

The objective of sampling is to obtain a representative sample of the subsurface soil, vadose and/or water conditions and levels of contamination at the specific site. Sampling intervals shall be site specific and reviewed and approved by the Commission, or by the RCA and/or regulatory agencies.

When sampling activities are included in a Task Order, in addition to the general soil investigation reporting requirements, sampling activities and results shall be included as a report or as part of the Site Investigation Report.

1.4.9 Laboratory Analysis

Laboratory analyses for each parameter will be performed in accordance with EPA protocols established in the EPA document Test Methods for Evaluating Solid Waste, SW-846, Update III, dated June 1997. Analyses will be performed in accordance with the EPA method procedures unless project requirements necessitate the adoption of alternative methods. Analysis will be performed within the holding times. If an alternative method is used, it will be documented and reported.

Laboratories used to perform chemical analysis shall be certified by the California Department of Health Services (DHS). Asbestos and lead samples shall be submitted to an American Industrial Hygiene Association (AIHA) accredited laboratory.

For specific test methods not as yet certified by DHS, the laboratory can perform laboratory analysis only if presently certified by DHS for comparable test methods, e.g., volatile organics, semivolatile organics, etc. or is a currently certified US EPA Contract laboratory. Expected turnaround time for chemical analysis shall be seven (7) calendar days, unless otherwise requested.

Analysis shall be performed in accordance with the Contract Laboratory program protocol (CLP). The Consultant shall be responsible for sample transport from worksite to the laboratory, to provide clean or new sample containers, labels, appropriate preservation and chain-of-custody records.

1.4.9.1 Quality Assurance/Quality Control

Quality control of laboratory analyses is assessed by performing analytical methods according to protocols and analyzing laboratory QA/QC samples to measure precision and accuracy of laboratory methods and equipment, instrument calibration, and preventive maintenance.

1.4.9.1.1 General

Laboratory QA/QC samples that will be analyzed during the proposed assessment include method blanks, laboratory control samples, MSs, and duplicates. Specific acceptance limits for the samples will be per the respective analytical method and at the discretion of the laboratory QA/QC manager.

1.4.9.1.2 Method Blanks

A method blank is a sample of deionized water or clean sand prepared by and analyzed by the laboratory in the same manner as the samples. It is used to assess potential contamination in the laboratory process (e.g., contaminated reagents or improperly cleaned equipment). The laboratory will analyze one method blank sample per batch or every 20 samples for each analytical method.

1.4.9.1.3 Laboratory Control Samples

A laboratory control sample is a known matrix (e.g., deionized water) that has been spiked with a known concentration of specific target analytes. It is used to demonstrate the precision of the analytical process. A laboratory control sample will be analyzed at a frequency of one per preparation or analytical batch not to exceed 20 samples.

1.4.9.1.4 Matrix Spikes

The MS is an actual sample matrix spiked with known concentrations of specific target analytes. The purpose of an MS is to assess the effect of a sample matrix on the recovery of target analytes (i.e., assess the potential for matrix interferences, either high or low). One MS will be analyzed per batch or every 20 samples for each analytical method.

1.4.9.1.5 Laboratory Duplicates

Duplicate samples are used to assess precision in the analytical method. An additional aliquot is extracted from a sample and analyzed using the procedures. Then the results are compared to assess the precision. Duplicates may be of three kinds – laboratory control sample duplicates, MS duplicates, and laboratory sample duplicates. Duplicates should be analyzed per batch or every 20 samples for each analytical sample.

1.4.10 Laboratory Reports

Complete copies of the laboratory reports, including QA/QC summary reports shall be placed in an appendix of the Site Assessment Report. Laboratory reports shall contain, but not limited to, the following information:

- Written explanation of higher detection limits, laboratory contaminants, or other unusual results.
- Name, address, and telephone number of laboratory
- Laboratory number for each sample reported
- Consultant's number for each sample recorded
- Date sample(s) collected
- Date sample(s) received by laboratory
- Date of laboratory testing
- Brief sample description (e.g. soil, water, sludge, etc.)
- Specific test method
- Extraction method utilized
- Test result for each sample and method
- Detection limit for each test method
- Date of test report
- Signature and title of the manager or director of the appropriate laboratory section

1.4.11 Reporting

General requirements for Site Investigation Reports are provided in Attachment II

1.5 Remedial Investigation/Feasibility Studies (RI/FS)

A comprehensive Remedial Investigation/Feasibility Study (RI/FS) will be performed to develop sufficient information to make an informed remedial alternative selection that eliminates, reduces, and/or controls the risks to human health and the environment. All elements of the RI/FS Work Plan shall conform to applicable federal, state and local guidelines, rules, regulations, and criteria negotiated with appropriate regulatory agencies. Appropriate professional personnel shall develop RI/FS Work Plans. Interpretation of geology, hydrogeology, and/or hydrology information shall be conducted under the supervision of a California Registered Geologist or Certified Engineering Geologist.

At the conclusion of the RI/FS, a RI/FS Report shall be prepared to include at a minimum, site characteristics, sources of contaminants, nature and extent of contamination, risk assessment, and review of all potentially feasible remedial actions and associated costs.

A Risk Assessment, included as part of the RI/FS work, may be necessary to determine the risk to human health and the environment from contaminants in the soil and/or groundwater. The Risk Assessment shall describe the environmental fate and transport of the contaminants and consider all potential contaminant migration pathways in addition to

all potential exposure routes to a receptor such as inhalation, ingestion, and dermal absorption.

The Risk Assessment must provide a comparison of the contaminant concentration at a receptor (estimated by the fate and transport element) with appropriate health-based standards. If the contaminant concentration at the receptor exceeds the appropriate health-based standards, then a potential unacceptable excess risk to the receptor exists and a risk management decision must be made (e.g. removal, treatment, stabilization, etc.).

The Risk Assessment must include a professional conclusion that is presented in an objective and technically defensible manner. The Risk Assessment must include a discussion of strengths and weaknesses of the assessment by describing uncertainties, explicitly stating assumptions and limitations, as well as providing scientific basis and rationale for each assumption. Conclusions regarding the potential risk to human health and/or the environment must be based on current federal, state and local guidelines, rules, regulations, and requirements.

General requirements for RI/FS reports are provided in Attachment III.

1.6 Remedial Action Plan and Remedial Action Design

The Remedial Action Plan (RAP) shall compile and summarize site data gathered during the RI/FS, in order to identify, and subsequently design, plan, and implement a final remedial action for the specific site. The RAP shall clearly and concisely describe the selected and rejected alternatives to the extent that the Commission or the RCA is provided an opportunity to comment on the remedial action(s). The RAP must also set forth specific remedial action objectives; rough order of magnitude cost estimates, and timeframes for completion of the remedial action(s).

The Consultant shall submit a draft RAP, potentially including a closure plan, to the appropriate regulatory agencies and the Commission or the RCA for review and approval prior to circulation for public/responsible party input and prior to being adopted as the final document for undertaking remedial action at the specific site.

A Remedial Action Design (RAD) shall be developed to provide technical and operational plans and engineering designs for implementation of the approved final RAP. Based on the selected alternative for remedial action as defined in the RAP, the Consultant shall develop a RAD in accordance with regulatory requirements, which shall include detailed construction designs for the selected remedial alternative. In addition, the work plan shall include sampling protocol for screening and verification sampling, onsite and off-site transportation routes, health and safety requirements for post construction activities. A schedule shall be developed for implementing the construction phase of the remedial action.

1.7 Remediation Oversight

Consultant may provide remediation oversight to monitor and control the adherence to the Remedial Action Design (RAD), and to ensure that the work is completed in a timely and competent manner.

2.0 Other Requirements

2.1 Reports – Progress and Investigative

The Consultant shall submit to the Commission or to the RCA monthly progress reports to report status, difficulties or special problems encountered so that remedies can be developed. Included in the progress report Consultant shall report on costs expended per Task Order and schedule status for current Task Orders.

Unless otherwise stipulated, one (1) electronic copy of the draft workplan, health and safety plan, and site investigation report must be submitted to the Commission's or to the RCA's Project Manager for approval. Work plans and investigation reports must be revised to address all comments, prior to being submitted in final form within the time specified in the Task Order. One (1) electronic copy of the final work plan and health and safety plan and one (1) electronic copy of the final investigation report must be submitted to the Commission's or to the RCA's Project Manager unless another quantity is specified.

2.2 Deliverable Approval and Correction Procedures

All data and documents produced by the Consultant shall be subject to acceptance by regulatory agencies and the Commission or the RCA.

In the event of non-acceptance by regulatory agencies or the Commission or the RCA, the Consultant shall have 14 calendar days to submit the corrections to the Commission or to the RCA.

2.3 Timing

Time is of the essence and time for performance may be a factor in issuance of a Task Order.

2.4 Meeting

The Consultant shall meet with a Commission or a RCA representative at a designated pre-work site visit to view the site and discuss Task Order execution. The Consultant shall provide a person at the pre-work site visit that will exercise responsible charge of the anticipated Task Order.

The Consultant shall meet with the Commission's or the RCA's designee, as needed, to discuss progress on the contract.

2.5 Monitoring and Review Procedures

The Commission or the RCA shall have the right to monitor and review the processes of the Consultant at any time by visiting the Consultant's facility or by requiring meetings.

3.0 MISCELLANEOUS PROVISIONS

3.1 Health and Safety

Consultant shall at all times conduct its operations in such a manner as to avoid any risk of bodily harm to persons or damage to property. Consultant shall promptly take all precautions that are reasonable or necessary to safeguard against such risk and shall make regular safety inspections of its operations. Consultant shall be solely responsible for the discovery, determination and correction of any unsafe conditions arising in connection with the performance of services by Consultant.

In addition, Consultant shall comply with all applicable health and safety laws, standards, codes, rules, regulations, including any safety programs established by the State of California and the U.S. Government as applicable. Consultant warrants the materials, equipment and facilities; whether temporary or permanent, furnished by Consultant in connection with the performance of services shall comply therewith. Consultant shall cooperate and coordinate with the Commission or the RCA and with other consultants on safety matters.

By its action of providing services, Consultant confirms that all of its employees, subcontractors and their employees, engage in field activities related to this agreement have been trained according to the requirements specified in 29 CFR 1910.120 and 8 CCR 5192. In addition, the Consultant shall include this requirement in all subcontracts performed on this project.

At the time any of Consultant's personnel are required to visit any work site, Consultant shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. Consultant's personnel who visit any of the Work Sites on a regular basis shall have a thorough knowledge and understanding of the safety requirements.

Samples suspected of containing asbestos and/or lead shall be collected by personnel certified by the State of California to collect such samples.

The Site Health and Safety Plan shall be developed by an industrial hygienist with sufficient knowledge to recognize and characterize the potential site hazards. During soil investigation activities, a Site Safety Officer (SSO) will be designated and will be responsible for enforcing the site safety plan. Upon the Commission's or the RCA's request, the site Health and Safety Plan will be signed by a Certified Industrial hygienist.

A copy of the Health and Safety Plan shall be distributed to all workers before the field investigation begins. All field investigation workers shall certify that they have read, understand, and agree to comply with the site Health and Safety Plan before the field investigation begins.

The Consultant shall provide safe access to the Work Site for representatives of the applicable local and/or state regulatory agencies during normal field investigations work hours. Designated observation areas outside the work zone shall be established for these site visits. Such inspection tours shall be arranged in advance with the SSO. The SSO shall accompany the representatives while on the site. On Commission owned facilities or RCA owned real property, Consultant shall advise the Project Manager when safety meetings are to be held.

Consultant shall report to the Commission or to the RCA any unsafe conditions observed by its personnel at any Work Site. Any of the consultant's personnel that the Commission or the RCA determines do not have the requisite knowledge shall, at the option of the Commission or the RCA, be removed from the performance of service.

The Consultant shall require the full compliance with this clause by all subcontractors of Consultant.

3.2 Site Safety Officer

The Consultant shall designate a Site Safety Officer (SSO) for each site under active investigation. A SSO or his designated representative shall be present at all times at each site under active investigation. Both persons must be familiar with hazardous waste laws and regulations in California and with Cal/OSHA requirements. The SSO or his designated representative shall be available to accompany the Commission or the RCA and/or representative of the applicable regulatory agencies while they are on site.

The SSO shall direct the implementation and operation of the Health and Safety Plan. The SSO shall enforce compliance with the Health and Safety Plan by all persons while they are within the site perimeter.

3.3 Owner/Regulatory Contacts

The Consultant shall only contact property owners as specifically directed and authorized by the Commission or the RCA. The Consultant shall coordinate with other agencies, such as federal Environmental Protection Agency (EPA), California Environmental Protection Agency (Cal-EPA), Regional Water Quality Control Board (RWQCB), local environmental health agency, and others as necessary to complete fieldwork. The Consultant shall notify and invite the Commission's or the RCA's representative to all regulatory agency meetings related to this investigation.

3.4 Right-of-Entry

The conditions of the right of entry agreement to the property will be explained to the Consultant during the pre-work site meeting. The Consultant shall know and follow the terms and conditions of the right of entry agreement at all times.

3.5 Permits and Licenses

Consultant shall be fully responsible for identifying and obtaining all necessary permits required for performing the services under this agreement. Consultant acknowledges that it has familiarized itself with the existing requirements of the Commission and all applicable federal, state, county and municipal laws, codes, rules, and regulations and the conditions of any required licenses and permits as they were in effect on the date of this Agreement. Consultant shall comply with all the foregoing, and except as otherwise provided herein, Consultant shall procure all licenses and registrations and shall furnish any bonds, security, or deposits required to conduct business without any increase in the Task Order cost or schedule on account of such compliance, regardless of whether such compliance would require additional labor, equipment, or materials not expressly provided for in this Agreement.

3.6 Underground Services Alert (USA)

Before any Task Order involving disturbance of the ground beyond surface sampling begins, the Consultant shall obtain any inquiry identification number from USA.

3.7 Traffic Control

Traffic control (barricades, portable flashing beacons, and detours), when necessary to accomplish the contract work, will be the responsibility of Consultant. The Consultant shall coordinate and obtain all the necessary permits from the local jurisdiction. Traffic control shall be addressed in the Health and Safety Plan.

3.8 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

The Consultant shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Agreement.

The Consultant shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Consultant. The Consultant shall repair any damage, at its own cost or expense, to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or

failure to exercise reasonable care in performing the work. If the consultant fails or refuses to repair the damage promptly, the Commission or the RCA may have the necessary work performed and charge the cost to the Consultant.

3.9 Project Diary

A Project Diary must be maintained to support all work performed. The diary must be filled out and signed as to be true and correct. It must identify the person responsible for project management and must include, but not be limited to, additional notations, observations or remarks to further clarify work.

3.10 Decontamination/Disposal

If required, all personnel shall be decontaminated before leaving the site as specified in the Site Health and Safety Plan. Decontamination procedures shall generally follow the guidelines found in 8 CCR 5192 and shall be detailed in the Site Health and Safety Plan.

Consultant shall equip, supply and maintain an on-site decontamination station for the drilling, installation and sampling equipment. Consultant shall ensure that this station has the capacity to contain all decontamination fluids used in the decontamination procedure. Consultant shall collect these fluids in appropriate containers.

Consultant shall wash and clean all equipment prior to initiation of work at the site. This includes drilling machines, pipe rods, samplers, pumps, casings, screens and any other material brought on site. Before reuse of any equipment at another drilling location at the site, all equipment shall be cleaned and decontaminated.

General requirements for decontamination include, but not limited to:

- Auger flights and any other tools used in drilling operations, monitoring and sampling shall be steam cleaned before initial use and between boreholes.
- Before each use, sampling tubes, liners, and bailers shall be washed in a mixture of liquinox, or similar product, and clear water, rinsed in clear water, rinsed in distilled water and air dried.
- All suspect asbestos containing materials and lead paint materials shall be handled wet.

The Consultant shall avoid contamination of the project area and shall not dump waste oil, drilling fluids, rubbish and/or other materials on the ground. All equipment, unused materials, temporary facilities and other miscellaneous items resulting from or used in the operation shall be removed from the site.

Material removed from trenches, drill holes, etc. shall be properly collected in containers or stockpiled on plastic sheeting supplied by the Consultant. The project site must be maintained clean at all times.

3.11 Hazardous Waste Manifest

The Commission or the RCA will sign all Hazardous and Non-Hazardous Waste Manifests for waste removed from the site.

3.12 Regulatory Requirements

Consultant agrees that it will not store any hazardous substances at the job site for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by law, the Owner, the Commission, the RCA, whichever will be more restrictive. Consultant further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 CFR Part 261 or other applicable law, as amended. Consultant agrees to report to the appropriate governmental agencies all discharges, releases, and spills of hazardous substances and/or wastes required to be reported by law and to immediately notify the Commission or RCA Representative of same.

3.13 Expert Testimony

It shall be recognized that subsequent to the performance of this Agreement the need may arise to provide expert testimony during hearings and/or court proceedings involving site specific activities or other matters, with regard to which personnel provided by the Consultant under this Agreement (including subcontractor personnel) would have gained expertise as a result of the Tasks performed under this Agreement. Therefore the Consultant agrees to make available expert consulting services in support of future proceedings, including litigation support and to enter into any intent agreement as necessary with subcontractors to ensure the availability of subcontractor personnel provided under this Agreement to provide expert consulting services. Agreement to provide such services in the future serves as a notice of intent only.

Should the Consultant or any subcontractors at any tier ever testify in court in any case related to this Agreement, all his/her work will be considered proprietary to the Commission or to the RCA. In such a case, the Consultant and/or subcontractor of any tier shall not release any information to adverse parties.

3.14 Disclosure of Information

The Consultant agrees to notify and obtain the written approval of the Commission or the RCA prior to releasing any information to any third parties including the news media regarding any work under this Agreement except as required by law. The Consultant shall immediately notify the Commission or the RCA of the receipt of a demand by a third party for the disclosure of field test data generated under this Agreement. This requirement shall apply to all subcontractors.

ATTACHMENT I
PHASE I
INITIAL SITE ASSESSMENT REPORT

INITIAL SITE ASSESSMENT REPORT

GENERAL REQUIREMENTS

Contents of the Initial Site Assessment Report should include, but not limited to the following:

1. Title sheet, which identifies the Task Order number, project name, project location, contract number, Consultant name, name of author, and date.
2. Signature page with signature and title of persons who prepared and reviewed the project.
3. Table of Contents.
4. Investigative (Executive) Summary: This section should present and summarize the technical data and findings of the investigation.
5. Investigation narrative, which shall include, but not limited to, the following:
 - Investigation methods and evaluation criteria.
 - Known hazardous substance sites (name, location, contamination onsite, federal or state, impact, schedule for cleanup, etc.).
 - Potential hazardous substance sites in the vicinity of the ISA site (name, location, type of operation, reason to suspect potential are of impact, etc.).
 - Name, address, and telephone number of the business/owner(s) of each site.
 - Type of hazardous substance and/or containers involved at each site (e.g. sludge pits, ponds, underground/above ground storage tanks, piping, etc.) This data shall be written in a clear and concise form, and summarized in a table form.
 - Chemical/hazardous materials that have been stored/used in the past at each site and the known generators (if available) of the materials.
 - Permits, violations, plans, records, and any other information reviewed.
 - Sketches, photographs, and/or descriptive comments as necessary to identify important features such as buildings, ponds, utility lines, etc.
 - Aquifer descriptions, (depths to groundwater, gradient, conductivity, yield, quality, and beneficial users). Public sources such as the Department of Water Resources reports and USGS reports will be sources of this type of information.
 - Geologic units: Geologic and hydrologic information should be scaled to the freeway/rail project. The shallow subsurface conditions (e.g. less than 50 feet below ground surface) will have the greatest impact on construction.
 - Location and use of all known groundwater and monitoring wells in the subject vicinity of the study area.
 - All known or potential hazardous substance sites shall be identified with corresponding symbols and physical features such as geologic units, aquifer

descriptions, and depth to groundwater on a project right-of-way map included in the ISA Report.

- How project may affect suspect sites (e.g. area of contamination vs. construction excavation).
- A list of sites recommended for site investigations shall be included, along with recommendations for follow-up investigations. These sites shall be ranked by significance using a rationale fully justified in the report and prioritized for scheduling this follow-up work.
- Degree of significance for each hazardous substance problem in terms of time to mitigate and approximate costs.
- Describe future plans, if any, of the EPA, Cal-EPA, RWQCB, or other agencies involved in remediating hazardous substance sites within or adjacent to the proposed right-of-way.
- Identify individuals or agencies contacted in developing the information included in the ISA Report.
- List of contact names, telephone numbers, and dates contacted, and information reviewed.
- Limitations in the adequacy and/or conclusions reached in this assessment shall be explained in detailed.

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ATTACHMENT II
PHASE II
SITE INVESTIGATION REPORT

SITE INVESTIGATION REPORT

GENERAL REQUIREMENTS

The report shall be typed and bound in an 8 ½" by 11' size. Contents of the Site Investigation Report should include, but not limited to the following:

1. Title sheet, which identifies the contract number, Task Order number, project name, project location, Consultant name and date.
2. Signature page to include signature and title of persons who prepared and reviewed the report.
3. Table of Contents.
4. Investigative Summary: This section should present and summarize the technical data and findings of the investigation.
5. Introduction: At a minimum, this section should include:
 - Site Description
 - Surrounding Properties
 - Site History
 - Environmental Setting
 - Regional Geology
 - Site Geology and Hydrogeology
 - Purpose and Scope of Work
6. Site Investigation Procedures: This section should provide a work plan and field work methods used for the investigation and should include, at a minimum:
 - Soil Boring Locations
 - Atmospheric Monitoring
 - Borehole Drilling, Sampling and Backfilling
 - Field Screening
 - Equipment Decontamination
 - Chemical Analyses Program
7. Site Investigation Results: This section should provide an evaluation of soil investigation results and should include, at a minimum:
 - Maps to scale showing the site location, feature locations, boring and well locations, vertical and horizontal extent of contamination, contour maps of contaminant concentrations, and hydraulic gradient.
 - Cross-sections showing subsurface geologic and hydrogeologic conditions, sample results, and estimated extent of contamination. An estimate of

volume of contaminated soil and groundwater present must be given along with assumptions and calculations used.

- Statistical analysis of sample results estimating distribution and average concentration, and statistical analysis that demonstrate trends in contaminant level and distribution.
- Backup data for maps, cross sections, and graphs.
- Summary of laboratory results.

8. Conclusions and Recommendations: This section should include, at a minimum:

- Nature, extend, and estimated volume of contamination.
- Recommendations for additional work necessary to characterize the site and potential cost.

9. Appendices: All data used to support the report including, but not limited to:

- Well and boring logs for both existing and new wells and borings (include all wells that can influence hydrogeologic conditions of the site).
- Copies of all permits (e.g. drilling permits, well permits, excavation/grading permits, etc.) obtained from state, county and/or local regulatory agencies.
- Laboratory analysis of each sample tested. Laboratory reports must include Chain-of-Custody forms.
- Survey elevations and location of wells or borings, benchmark, or monument locations.

10. References

ATTACHMENT III
REMEDIAL INVESTIGATION/FEASIBILITY STUDY REPORT

REMEDIAL INVESTIGATION/FEASIBILITY STUDY REPORT

GENERAL REQUIREMENTS

The report shall be typed and bound in an 8 ½" by 11" size. Contents of the Site Investigation Report should include, but not limited to the following:

1. Title sheet, which identifies the Contract number, Task Order number, project name, project location, Consultant name and date.
2. Signature page to include signature and title of persons who prepared and reviewed the report.
3. Table of Contents.
4. Introduction: At a minimum, this section should include, but not limited to:
 - Site Description
 - Surrounding Properties
 - Site History
 - Environmental Setting
 - Regional Geology
 - Site Geology and Hydrogeology
 - Purpose and Scope of Work
5. Study Area Investigation: This section should include, at a minimum:
 - Surface features (topographic mapping, natural and manmade features, etc.)
 - Contaminant source investigation
 - Meteorological investigations
 - Surface water and sediment investigations
 - Soil and vadose zone investigations
 - Groundwater investigations
6. Physical Characteristics of Study Area: This section at a minimum should include field activity results, which then determine physical characteristics including:
 - Surface features
 - Geology
 - Hydrogeology
 - Soils
 - Demography and land use

7. Nature and Extent of Contamination: This section should present results of soil characterization, both natural chemical components and contaminants in media and transport.
8. Fate and Transport should include, at a minimum:
- Potential routes of migration
 - Contaminant persistence
 - Contaminant migration
9. Risk assessment should include, at a minimum:
- Human health evaluation
 - Environmental evaluation
10. Identification and screening Technologies: This section should include, at a minimum:
- Remedial Action Objectives
 - General Response Actions
 - Identification of appropriate and effective technologies for remediation of soil and/or groundwater contamination at the site
11. Development and Screening of Alternatives: This section should include, at a minimum:
- Assembly of technologies into remedial alternatives capable of addressing all media/volumes/areas of contamination which are of concern
 - Discussion of rationale for combination of technologies/media into alternatives
 - Discuss screening/evaluating of alternatives
 - Screen alternatives on the basis of effectiveness, implementation, and cost
 - Discuss feasibility to implement alternatives given the site conditions, location, and time frame
 - Discussion of effectiveness of the treatment on the material in question
 - Discuss the reliability of the alternatives in terms of demonstrated effectiveness and the operation and maintenance requirements
12. Detailed Analysis of Alternatives: This section should include an analysis of the “No Action” alternative and at least two other remedial alternatives. Each alternate analysis should address: time, operation and maintenance requirements, risks to health and environment, cost-effectiveness, level of cleanup, potential economic impact on the responsible party, the physical limitations of the site, controlling regulations and permits, public health concerns, direct and indirect capital costs, and the impact of the cleanup methods on the continuing site activities, future construction activities and Commission or RCA use of the property.

13. Summary and Conclusions

- Summary
- Recommendations

14. Recommended Remedial Alternative: Based on the results of the detailed analysis, this section should contain a detailed discussion of the recommended remedial alternative including the basis for this recommendation.

15. References

16. Appendices

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EXHIBIT "B"

SAMPLE TASK ORDER FORM

Task Order No. _____

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:

List funding sources: _____

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed \$_____.00

Completion Date: _____, 201____

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

Riverside County Transportation Commission

Consultant

Dated: _____

Dated: _____

By: _____

By: _____

EXHIBIT "C" - COMPENSATION AND PAYMENT

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EXHIBIT "C"

COMPENSATION SUMMARY¹

FIRM	PROJECT TASKS/ROLE	COST
Prime Consultant:		
Dudek	Environmental Site Assessment	\$ 350,000.00
Sub Consultants:		
Aurora Industrial Hygiene	Industrial Hygiene and Lead/Asbestps Remediation	TBD
Belshire	Waste Disposal	TBD
BC2 Environmental	Drilling	TBD
Calvada Surveying, Inc.	Utility Clearance Services	TBD
Environmental Health Decisions	Environmental Health Assissments/Toxicologist	TBD
Eurofins CalScience LLC	Analystical Lab Testing	TBD
GEOVision	Geophysical Surveying	TBD
Habitat Restoration Sciences, Inc.	Excavation Remediation, Demolition, Direct Push	TBD
Jones Environmental	Analystical Lab Testing	TBD
Millennium Environmental Inc.	Direct Push Drilling	TBD
RCS Safety	Traffic Control	TBD
ULS	Utility Clearance Services	TBD
TOTAL COSTS		\$ 350,000.00

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 "D"

FHWA/ CALTRANS REQUIREMENTS

1. STATEMENT OF COMPLIANCE.

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

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

C. If this Agreement is federally funded, the Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. If this Agreement is federally funded, the Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,

including employment practices when the Agreement covers a program whose goal is employment.

2. DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

3. DISCRIMINATION

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

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

4. PROMPT PAYMENT

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the

prime contractor receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

5. RELEASE OF RETAINAGE

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

6. LEGAL REMEDIES

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

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

7. DBE PARTICIPATION

Caltrans has developed a statewide DBE program pursuant to 49 C.F.R. Part 26. The requirements and procedures, as applicable, of the Caltrans DBE program are hereby incorporated by reference into this Agreement. Even if no DBE participation will be reported, Consultant shall complete Exhibits "E" of this Agreement in compliance with the Caltrans DBE program, a final utilization report in the form provided by the Commission, and any other Caltrans required DBE forms.

A. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." By obtaining DBE participation on this Agreement, Consultant will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. This Agreement does not have a DBE goal, but DBE goals may be included with each task order request for proposals. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.

C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Commission, Caltrans or the Department of Transportation deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE may be terminated only with prior written approval from the Commission and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting Commission consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

8. DBE PARTICIPATION GENERAL INFORMATION

It is Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Caltrans DBE program. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.

D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work, as more fully described in section 8 below.

E. The Consultant shall list only one subcontractor for each portion of work as defined in the Consultant's bid/proposal and all DBE subcontractors should be listed in the Consultant's bid/cost proposal list of subcontractors.

F. A Consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

9. COMMERCIALLY USEFUL FUNCTION

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

10. DBE CERTIFICATION AND DE-CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Commission's Contract Administrator within 30 days.

11. DBE RECORDS

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each

DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the most current version of the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM- 2402F (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Commission's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the Commission's Contract Administrator.

a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Commission's Contract Administrator showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Commission's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

b. The Contractor shall also submit to the Commission's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Commission's Contract Administrator.

12. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

13. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insure, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives

the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

14. DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

In accordance with 49 CFR Part 29, which by this reference is incorporated herein, Consultant's subconsultants completed and submitted the Certificate of subconsultant Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion as part of the Consultant's proposal. If it is later determined that Consultant's subconsultants knowingly rendered an erroneous Certificate, the Commission may, among other remedies, terminate this Agreement.

15. ENVIRONMENTAL COMPLIANCE

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

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

16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, and by signing this Agreement, Consultant certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

EXHIBIT "E" - FTA PROVISIONS

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

Notwithstanding anything to the contrary contained in the Agreement, including the other Exhibits attached thereto, the following provisions shall apply if funding for the Services is provided, in whole or in part, from the Federal Transit Administration ("FTA"). In addition, the exhibits attached to this Agreement, may be replaced and substituted with similar forms required by FTA. Consultant agrees to complete any such substitute forms.

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER

(1) The Commission 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 ("Government"), the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Commission, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) 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 AND RELATED ACTS

(1) 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.

1 UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION MASTER AGREEMENT For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, U.S.C. (Highways), Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the National Capital Transportation Act of 1969, as amended, the Transportation Equity Act for the 21st Century, as amended, 23 U.S.C. § 101 note, or other Federal enabling legislation; FTA MA(14); October 1, 2007; <http://www.fta.dot.gov/documents/14-Master.pdf>.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation 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. chapter 53 or any other Federal law, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Consultant, to the extent the Federal Government deems appropriate.

(3) 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

(1) The Consultant agrees to provide the Commission, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States or any of their authorized representatives access to all Project work, materials, payrolls, and other data of the Consultant which are directly pertinent to this contract as required by 49 U.S.C. § 5325(g).

(2) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Consultant agrees 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 transmission of the final expenditure report, 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 the Commission, 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).

(4) The Consultant agrees to require its subcontractors and third party contractors to provide the same.

4. FEDERAL CHANGES

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 Grant Agreement or Cooperative Agreement between the Commission and the Federal Government

("Grant Agreement or Cooperative Agreement"), 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 REQUIREMENTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, FTA Circular 4702.1A, "Title VI and Title VI – Dependent Guidelines for Federal Transit Administration Recipients," May 13, 2007, Federal transit law at 49 U.S.C. § 5332, 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 – The Consultant agrees to comply with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and equal employment opportunity provisions of 49 U.S.C. § 5332, and 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.

(3) Age - In accordance with the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 through 634 and Federal transit law at 49 U.S.C. § 5332, 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.

(4) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees 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.

(5) DBE Program Compliance - The Commission has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to FTA funded agreements. The requirements and procedures of the Commission's DBE Program are hereby incorporated by reference into this Agreement. Consultant shall complete Exhibits "G" and "H" of this Agreement, or similar forms to be provided by the Commission, in compliance with the Commission's DBE Program for FTA funded agreements. Failure by Consultant or its subcontractor(s) to carry out the Commission's DBE Program procedures and requirements, or the applicable requirements of 49 C.F.R. Part 26, section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26, shall be considered a material breach of this Agreement. Such a material breach may be grounds for termination of this Agreement or such other appropriate administrative remedy as the Commission deems appropriate. The Consultant shall ensure that a provision mandating compliance with the Commission's DBE Program for FTA funded agreements is included in any and all sub-agreements entered into which arise out of or are related to this Agreement. Consultant shall also promptly provide the Commission with all necessary information related to the DBE status of its subcontractors. Should the DBE status of any of its subcontractors change in any way, Consultant shall promptly inform the Commission of this change.

(6) 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. TERMINATION PROVISIONS

The termination provisions found at Section 21 of this Agreement are consistent with the termination provisions suggested by FTA for the protection of the Federal Government. The termination provisions found at Section 21 of this Agreement control termination under this Agreement.

7. DEBARMENT AND SUSPENSION

Instructions for Certification

1. By signing and submitting a Proposal, the Consultant is providing the signed certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Commission may pursue available remedies, including suspension and/or debarment.
3. The Consultant shall provide immediate written notice to Commission if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Commission for assistance in obtaining a copy of those regulations.
5. The Consultant agrees by submitting a Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Commission.
6. The Consultant further agrees by submitting a Proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Commission may pursue available remedies including suspension and/or debarment.
9. The Consultant agrees to comply, and assures the compliance of each subconsultant, lessee, or third party contractor, with Executive Orders Nos. 12549 and 12689, “Debarment

and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 C.F.R. Part 29.

10. The Consultant agrees to, and assures that its subconsultants, lessees and third party contractors have reviewed the “Excluded Parties Listing System” at <http://elpls.gov/> before entering into any third sub agreement, lease or third party contract.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion”

(1) The Consultant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the Consultant is unable to certify to the statements in this certification, it shall attach an explanation to this proposal.

8. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Commission Executive Director, or his or her designee. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the Commission’s Executive Director, or his or her designee. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Commission’s Executive Director, or his or her designee, shall be binding upon the Consultant and the Consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Commission, Consultant shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Commission and the Consultant arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Commission is located.

Rights and Remedies - The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties,

obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Commission, or Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

FTA Notification - Consultant shall notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project. If the Consultant wishes to name the Federal Government as a party to litigation, the Consultant shall inform FTA in writing before doing so.

9. LOBBYING

Lobbying Restrictions. To the extent applicable, Consultant agrees to:

- (1) Comply, and assure the compliance of each subcontractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- (2) Comply with Federal statutory provisions, to the extent applicable, prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

10. CLEAN AIR

(1) 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 through 7671q. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. CLEAN WATER

(1) 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 through 1377. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. ENERGY CONSERVATION

Energy Conservation. To the extent applicable, Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.* To the extent applicable, Consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C.

13. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and with FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

14. ADDITIONAL REQUIREMENTS

To the extent applicable, Consultant agrees to comply with the Federal programs specified below and, with regard to such programs, Consultant agrees not compromise the Commission’s compliance with Federal requirements as pertains to the Project.

The Programs are as follows:

- (1) Urbanized Area Formula Program authorized under 49 U.S.C. § 5307.
- (2) Elderly Individuals and Individuals with Disabilities Formula Program authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively.
- (3) New Freedom Program authorized under 49 U.S.C. § 5317.
- (4) Nonurbanized Area Formula Program authorized under 49 U.S.C. § 5311(b).
- (5) Clean Fuels Grant Program authorized under 49 U.S.C. § 5308.
- (6) Job Access and Reverse Commute Formula Grant Program authorized under 49 U.S.C. § 5316.

15. RELEASE OF RETAINAGE

The Commission shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Commission of the contract work and pay retainage to prime contractors based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted

including incremental acceptances of portions of the contract work by the Commission. Federal regulations (49 CFR 26.29) require that any delay or postponement of payment over 30 days may take place only for good cause and with the Commission's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Federal Transit Authority, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal Transit Authority, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

17. EMPLOYMENT PROVISIONS

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

A. Equal Employment Opportunity — Consultant must comply with Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339), “Equal Employment Opportunity,” as amended by Executive Order 11375 (3 CFR, 1966–1970 Comp., p. 684), “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR chapter 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) — Consultant must comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, “Consultants and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise

entitled. The Commission shall report all suspected or reported violations to the responsible DOE contracting officer.

C. Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333) — Consultant must comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each Consultant is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. Davis-Bacon Act (40 U.S.C. 276a) — Consultant shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

18. FTA DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

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

It is the policy of the Commission to:

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

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

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

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

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

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

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

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

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

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

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the Consultant from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

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

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

DRAFT

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 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

AGENDA ITEM 9

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	June 27, 2022
TO:	Western Riverside County Programs and Projects Committee
FROM:	Hanan Sawalha, Management Analyst Brian Cunanan, Commuter & Motorist Assistance Manager
THROUGH:	David Knudsen, External Affairs Director
SUBJECT:	Freeway Service Patrol Tow Operator Fuel Relief Reimbursement

STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Authorize one-time payment as fuel relief reimbursement to Pepe's Towing for Freeway Service Patrol (FSP) services on Beats 4, 7, 8 for a total amount of \$6,270 for the months of March through June 2022;
- 2) Approve Agreement No. 18-45-132-03, Amendment No. 3 to Agreement No. 18-45-132-00, with Coastal Pride Towing for continued FSP services on Beats 20, 34, 35 for an additional amount of \$187,400 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending August 29, 2023, for a total amount not to exceed \$2,652,356;
- 3) Approve Agreement No. 17-45-061-04, Amendment No. 4 to Agreement No. 17-45-061-00, with Pepe's Towing for continued FSP services on Beats 18, 19 for an additional amount of \$24,750 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending September 30, 2022, for a total amount not to exceed \$4,308,922;
- 4) Approve Agreement No. 16-45-103-04, Amendment No. 4 to Agreement No. 16-45-103-00, with Steve's Towing for continued FSP services on the express lanes for an additional \$47,900 for fuel relief reimbursement, including a one-time reimbursement for the months of March through June 2022 and ongoing monthly reimbursements through the term of the agreement ending January 31, 2023, or a total amount not to exceed \$2,216,097;
- 5) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements on behalf of the Commission; and
- 6) Forward to the Commission for final action.

BACKGROUND INFORMATION:

The Commission, acting in its capacity as the Service Authority for Freeway Emergencies, is the principal agency in Riverside County, in partnership with Caltrans and the California Highway Patrol (CHP), managing the FSP program. The purpose of the FSP program is to provide a continuously roving tow services patrol along designated freeway segments (referred to as beats) to relieve freeway congestion and facilitate the rapid removal of disabled vehicles and those involved in minor accidents on local freeways.

Contracts with tow operators for FSP services are typically entered into for five-year terms. At the time of the request for proposals (RFP), operators are asked to provide tow rates for all five years, taking into consideration possible inflation and other cost increases. However, the recent fuel cost increases were more significant than expected and operators with older contracts, and consequently lower hourly rates, are being impacted.

DISCUSSION:

The continuous roving requirement of the FSP program results in high mileage travelled by each FSP truck. Driver mileage is logged on a daily basis. The average monthly miles driven per truck for the impacted contracts is as follows:

Operator	Contract	Expiration	Beats	Number of Trucks	Average Monthly Miles Per Truck
Coastal Pride	18-45-132-02	08/29/2023	20, 34, 35	6	5,700
Pepe's Towing	16-45-082-04	03/31/2022	4, 7, 8	6	4,856
	16-45-083-02				
	16-45-044-04				
	17-45-061-03	09/30/2022	18, 19	5	4,098
Steve's Towing	16-45-103-03	01/31/2023	Express Lanes	3	5,190

Due to the unprecedented increases in fuel expenses staff is recommending a fuel relief reimbursement to help our tow operators maintain viable operations. The contracts being considered for fuel relief reimbursement are three years or older and belong to three operators: Coastal Pride Towing, Pepe's Towing, and Steve's Towing. For reference, contracts three years or older have hourly tow rates of \$63.96 - \$70.00 compared to more current contracts ranging between \$80.07 - \$89.94.

It is estimated that one gallon of fuel is used to travel between 10-14 miles. The gallon price of diesel fuel has steadily increased since the beginning of the calendar year. According to statistics from the U.S. Energy Information Administration (EIA), the average cost of diesel fuel started at \$4.80 per gallon in January 2022 and has reached \$6.48 per gallon as of May 2022.

Month	California No 2 Diesel Retail Prices Dollars per Gallon
January 2022	\$4.803
February 2022	\$5.018
March 2022	\$6.133
April 2022	\$6.260
May 2022	\$6.479

Source: EIA

The fuel rates used by the tow operators at the time of the price proposal range between \$4.00 and \$5.00. The proposed fuel relief payment will occur in two parts. The first portion will be a reimbursement for FY 21-22, specifically the months of March – June. The second portion will be recurring monthly payments added to their invoices, through the term of the agreements. In order to determine the reimbursement amount for each operator, estimated gallons used for March - June were multiplied by the difference of the average fuel cost for the month, per the EIA, and the proposed fuel cost submitted by the operator at the time of the RFP.


The ongoing monthly payments will be determined by multiplying the estimated gallons used, based on average monthly mileage, by the difference of the average fuel cost for the month, per the EIA, and the proposed fuel cost submitted by the operator at the time of the RFP. These payments will be made for any overage of fuel cost above the operator RFP fuel price, up to a cost of \$8.00 per gallon and end September 2023. Staff will be monitoring fuel prices on a monthly basis and should fuel cost exceed \$8.00 per gallon, this item will be brought back to the Commission with an updated recommendation. A breakdown of the total fuel relief reimbursement plan is as follows:

Operator	Contract	Expiration	FY 21/22 Fuel Relief (Mar – June 2022)	Ongoing Maximum Fuel Relief for July - Remaining Term of Agreement	Maximum Total Fuel Relief Reimbursement
Coastal Pride	18-45-132-02	08/29/2023	\$27,100	\$160,300	\$187,400
Pepe's Towing	16-45-082-04 16-45-083-02 16-45-044-04	03/31/2022	\$6,270	-	\$6,270
	17-45-061-03	09/30/2022	\$9,300	\$15,450	\$24,750
Steve's Towing	16-45-103-03	01/31/2023	\$11,500	\$36,400	\$47,900
Total			\$54,170	\$212,150	\$266,320

The current rates of the impacted contracts range between \$63.96 - \$70.00 per hour. Factoring in the maximum fuel relief adjustment into the monthly reimbursement, the range of hourly rates is approximately \$73.00 - \$80.00.

FISCAL IMPACT

Sufficient funding, consisting of Caltrans and SAFE funds, for towing services is available in Fiscal Year 2021/22 budget and included in the proposed FY 2022/23 budget.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2021/22 FY 2022/23 FY 2023/24	Amount:	\$54,170 \$189,250 \$22,900
Source of Funds:	State of California, SAFE funds			Budget Adjustment:	No N/A
GL/Project Accounting No.:	002173 81014 00000 0000 201 45 81002				
Fiscal Procedures Approved:				Date:	06/16/2022

Attachments:

- 1) Draft Agreement No. 18-45-132-03
- 2) Draft Agreement No. 17-45-061-04
- 3) Draft Agreement No. 16-45-103-04
- 4) Description of Service Areas

Agreement No. 18-45-132-03

**AMENDMENT NO. 3
TO AGREEMENT FOR FREEWAY EMERGENCIES,
FOR FREEWAY SERVICE PATROL FOR BEAT #20, #34
AND #35 WITHIN RIVERSIDE COUNTY
WITH OJ
BARKA, INC.**

1. PARTIES AND DATE

- 1.1 This Amendment No. 3 is made and entered into as of _____, 2022 by and between the Riverside County Transportation Commission, a public entity ("COMMISSION"), acting as the Riverside County Service Authority for Freeway Emergencies (referred to herein as "SAFE"), and OJ Barka, Inc., a California corporation (referred to herein as "CONTRACTOR"). SAFE and CONTRACTOR are sometimes individually referred to herein as "Party" and collectively as "Parties".

2. RECITALS

- 2.1 SAFE and Coastal Pride Towing, Inc. entered into Agreement No. 18-45- 132-00, dated August 21, 2018, for the purpose of providing Freeway Service Patrol ("FSP") services on Beat No. 20, 34, & 35 within Riverside County (the "Master Agreement").
- 2.2 SAFE, Coastal Pride Towing, Inc. and CONTRACTOR entered into an Assignment and Assumption Agreement dated May 6, 2019 (referred to herein as Amendment No. 1) in order to assign the Master Agreement from Coastal Pride Towing, Inc. to CONTRACTOR.
- 2.3 SAFE and CONTRACTOR entered into Amendment No. 2 to the Master Agreement, dated August 28, 2011, for the purpose of extending the term of the Master Agreement and to acknowledge the right of SAFE to waive penalties, imposed pursuant to the terms of the Master Agreement, in its discretion.
- 2.4 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to add fuel relief reimbursement.

3. TERMS

- 3.1 The maximum compensation to be provided under this Amendment No. 3 shall not exceed One Hundred Eighty-Seven Thousand, Four Hundred Dollars (\$187,400).

- 3.2 The maximum not to exceed value of the Master Agreement, as amended by this Amendment No. 3 shall not exceed Two Million, Six Hundred Fifty-Two Thousand, Three Hundred Fifty-Six Dollars (\$2,652,356).
- 3.3 Except as amended by this Amendment No. 3, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 3.
- 3.4 This Amendment shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.5 The recitals set forth above are true and correct and are incorporated into this Amendment No. 3 by reference.
- 3.6 This Amendment No. 3 may be signed in counterparts, each of which shall constitute an original.
- 3.7 A manually signed copy of this Amendment No. 3 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 3 for all purposes. This Amendment No. 3 may be signed using an electronic signature.

[Signatures on following page]

**SIGNATURE PAGE TO
AGREEMENT NO. 18-45-132-03**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

OJ BARKA, INC., a California Corporation

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM

ATTEST:

By: _____
Best Best & Krieger
General Counsel

By: _____

Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

Agreement No. 17-45-061-04

**AMENDMENT NO. 4 TO AGREEMENT
BETWEEN RIVERSIDE COUNTY TRANSPORTATION COMMISSION, ACTING
AS THE RIVERSIDE COUNTY SERVICE AUTHORITY FOR FREEWAY
EMERGENCIES, FOR FREEWAY SERVICE PATROL FOR BEAT #18 AND #19
WITHIN RIVERSIDE COUNTY WITH PEPE'S TOWING
SERVICES**

1. PARTIES AND DATE

This Amendment No. 4 for Freeway Service Patrol Services is made and entered into as of _____, 2022, by and between the Riverside County Transportation Commission, a public entity ("Commission"), acting as the Riverside County Service Authority for Freeway Emergencies (referred to herein as "SAFE"), and Pepe's Inc., a California corporation doing business as Pepe's Towing Services (referred to herein as "Contractor"). SAFE and Contractor are sometimes individually referred to herein as "Party" and collectively as "Parties".

2. RECITALS

- 2.1 SAFE and Contractor have entered into an agreement dated October 1, 2017, for the purpose of providing Freeway Service Patrol ("FSP") services on Beat No. 18 and 19 within Riverside County (the "Master Agreement").
- 2.2 SAFE and Contractor amended the Master Agreement on July 9, 2019 ("Amendment No. 1"), in order to add construction FSP services required for the State Route 60 truck lane construction project (the "60 TL Project").
- 2.3 SAFE and Contractor amended the Master Agreement on June 10, 2020 ("Amendment No. 2"), in order to exercise the first one-year option extending the term to September 30, 2021 and add construction FSP services required for the Caltrans 1-10 Tune-Up construction project ("1-10 Tune-Up Project") between Pennsylvania Avenue in Beaumont to SR-111 in Cabazon.
- 2.4 SAFE and Contractor entered into an Amended and Restated Amendment No. 2 to the Master Agreement ("Restated Amendment No. 2") on September 25, 2020 to expressly include the term extension.
- 2.5 SAFE and Contractor amended the Master Agreement on September 30, 2021, in order to exercise the second one-year option extending the term to September 30, 2022.

- 2.6 SAFE and Contractor now desire to amend the Master Agreement in order to add fuel relief reimbursement.

3. TERMS

- 3.1 The maximum compensation to be provided under this Amendment No. 4 shall not exceed Twenty-Four Thousand, Seven Hundred Fifty Dollars (\$24,750).
- 3.2 The maximum not to exceed value of the Master Agreement, as amended by this Amendment No. 4 shall not exceed Four Million, Three Hundred Eight Thousand, Nine Hundred Twenty-Two Dollars (\$4,308,922).
- 3.3 Except as amended by this Amendment No. 4, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 4.
- 3.4 This Amendment No. 4 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.5 A manually signed copy of this Amendment No. 4 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 4 may be signed using an electronic signature.
- 3.6 This Amendment No. 4 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE
PAGE TO
AGREEMENT NO. 17-45-061-04**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**PEPE'S, INC.
DBA PEPE'S TOWING SERVICES**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM

ATTEST:

By: _____
Best Best & Krieger
General Counsel

By: _____

Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

Agreement No. 16-45-103-04

**AMENDMENT NO. 4 TO
 AGREEMENT FOR FREEWAY SERVICE PATROL SERVICES
 FOR BEAT NO. 91-T AND BEAT NO.15-T
 WITH E&S TOWING ENTERPRISES, INC. D/B/A STEVE'S TOWING**

1. PARTIES AND DATE

This Amendment No. 4 is made and entered into as of _____, 2022 by and between the Riverside County Transportation Commission acting in its capacity as the Riverside Service Authority for Freeway Emergencies ("SAFE"), a public entity, and E&S Towing Enterprises, Inc., a California corporation d/b/a Steve's Towing (referred to herein as "CONTRACTOR").

2. RECITALS.

- 2.1 SAFE and CONTRACTOR have entered into an agreement, dated December 29, 2016, for the provision of freeway patrol services on Beat No. 91-T on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE and CONTRACTOR have entered into an Amendment No. 1 to the Master Agreement, dated September 23, 2019, to extend the term of the Master Agreement to December 31, 2021, for the continued provision of freeway service patrol services.
- 2.3 SAFE and CONTRACTOR have entered into an Amendment No. 2 to the Master Agreement, dated June 10, 2020, in order to amend the Scope of Services to include freeway service patrol services for the 15 Express Lanes beat (Beat No. 15-T); provide a new hourly rate and additional compensation for such Services; and allocate funds for CONTRACTOR to outfit two trucks to be used for the Services to meet FSP compliance requirements.
- 2.4 SAFE and CONTRACTOR have entered into Amendment no. 3 to the Master Agreement, dated December 30, 2021, in order extend the term of the Master Agreement, provide a new hourly rate for Beat No. 91-T, and provide additional compensation for Services.
- 2.5 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to add fuel relief reimbursement.

3. TERMS

- 3.1 The maximum compensation to be provided under this Amendment No. 4 shall not exceed Forty-Seven Thousand Nine Hundred Dollars (\$47,900).
- 3.2 The maximum not to exceed value of the Master Agreement, as amended by this Amendment No. 4 shall not exceed Two Million, Two Hundred Sixteen Thousand, Ninety-Seven Dollars (\$2,216,097).
- 3.3 Except as amended by this Amendment No. 4, all provisions of the Master Agreement, as previously amended, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern

the actions of the parties under this Amendment No. 4.

- 3.4 This Amendment No. 4 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.5 This Amendment No. 4 may be signed in counterparts, each of which shall constitute an original.
- 3.6 A manually signed copy of this Amendment No. 4 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 4 for all purposes. This Amendment No. 4 may be signed using an electronic signature.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. 16-45-103-04**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**E&S TOWING ENTERPRISES, INC.
dba STEVE'S TOWING**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM

ATTEST:

By: _____
Best Best & Krieger
General Counsel

By: _____

Its: _____

* A corporation requires the signatures of two corporate officers.

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

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
FREEWAY SERVICE PATROL - IMPACTED BEATS DESCRIPTION**



BEAT	COMPANY	NO. OF TRUCKS	SERIVCE AREA	LENGTH IN MILES
4	Pepe's Towing	2	SR-91 from Magnolia Ave to 60/91/215 Interchange	11.0
7	Pepe's Towing	2	SR-60 from Milliken St to Main St	11.7
8	Pepe's Towing	2	SR-60 from Central Ave to I-215 at Alessandro Blvd to S-R60 at Theodore St	12.3
18	Pepe's Towing	3	I-215 from RC line to Central Ave	5.8
19	Pepe's Towing	2	I-215 from Alessandro to 74/W 4th St	10.2
20	Coastal Pride Towing	2	I-215 from SR-74/W 4th St to Murrieta Hot Springs	16.8
34	Coastal Pride Towing	2	I-15 from Indian Truck Trail to SR-74 I-15 from SR-74 to Bundy Canyon Road	14.1
35	Coastal Pride Towing	2	I-15 from Bundy Canyon Road to SR-79/ Temecula Parkway	12.9
Express Lanes	Steve's Towing	3	SR- 91 Exp Lanes from OC line to McKinley, I-15S Connector to Ontario Ave I-15 Exp Lanes from SR60 to Cajalco Rd.	27.1

AGENDA ITEM 10

<i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i>	
DATE:	June 27, 2022
TO:	Western Riverside County Programs and Projects Committee
FROM:	David Lewis, Capital Project Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Mid County Parkway Contract Package 3 - Project Status

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Receive and file an update on project planning and scoping with the county of Riverside (County) regarding Mid County Parkway Contract Package 3 (MCP3) since the May 11, 2022, Commission meeting; and
- 2) Forward to the Commission for final action.

BACKGROUND INFORMATION:

The Mid County Parkway (MCP), a proposed 16-mile east-west highway that will stretch from State Route 79 in the Hemet Valley to Interstate 215 at Placentia Avenue in the city of Perris (City), has been under development by the Commission since 1998. At its April 2015 meeting, the Commission as the lead agency under the California Environmental Quality Act (CEQA) certified the final environmental impact report, adopted findings pursuant to CEQA, adopted a mitigation monitoring and reporting program, adopted a statement of overriding considerations, and approved the MCP project. As the lead agency under the National Environmental Policy Act, FHWA approved the final environmental impact statement on April 15, 2015, and issued a record of decision for the MCP project in August 2015.

Subsequently, at its January 2016 meeting, the Commission authorized staff to proceed with design and right of way (ROW) acquisition for the first construction package, the I-215/Placentia Avenue Interchange project. At its October 24, 2016, Commission meeting, the Commission authorized the acquisition of ROW and mitigation property for the entire MCP in accordance with the Commission's ROW policies and procedures. At its June 2020 meeting, the Commission approved the construction contract for the I-215/Placentia Avenue interchange project, which is scheduled for completion in September 2022.

At the February 28, 2022, Western Riverside County Programs and Projects Committee (Committee) meeting, staff planned to present an item to award an agreement for preparation

of plans, specifications, and estimates (PS&E) for the Mid County Parkway Construction Package No. 2 (MCP2) from Redlands Avenue to Ramona Expressway (Project). However, after receiving objections to the Project from the City, and holding several meetings with the City to attempt to resolve those issues, the Commission on May 11, 2022, adopted a decision to defer work on MCP2 and directed staff to work with the County to develop a scope for a different construction package with County jurisdiction, along Ramona Expressway from Rider Street to Warren Road (MCP3) to address ongoing safety issues and continue progress on the overall MCP project. The Commission also expressed its desire to require agreements with local jurisdictions prior to expending significant funds on Commission sponsored projects within those jurisdictions, requiring repayment of the funds if the jurisdictions withdraw support for the projects.

DISCUSSION:

From May 11 through June 9, 2022, Commission staff met with County staff to develop the scope for a project that would address the safety issues along Ramona Expressway while also meeting the requirements of the MCP project. The team identified an approximate 8.5-mile segment of Ramona Expressway from west of Pico Ave to Warren Road that experienced the highest occurrence of accidents along the Ramona Expressway. This segment was included in the original MCP, and the proposed improvements would be consistent with the ultimate MCP. The proposed project is detailed in Attachment 1 and indicates the limits of the proposed scope of MCP3.

The existing Ramona Expressway within this segment consists of one lane in each direction with passing lanes in a few locations. The proposed improvements will include restriping to make existing Ramona Expressway into two westbound lanes and adding pavement for two eastbound lanes plus a median, barriers in locations along the corridor, a new bridge over the San Jacinto River, and traffic signals at several intersections.

During the review of the accidents along this segment, it was noted that many were a result of vehicles crossing over the striped median into opposing traffic. To address the safety issues, the project will include a raised median with delineators along portions of the project, and a concrete median barrier in the remaining sections. The proposed improvements are within the existing County ROW and should require minimal if any ROW acquisitions or utility relocations. In addition, these improvements would align with the ultimate MCP project and would allow for future projects to expand the facility to meet those requirements.

Project Funding

To ensure timely progress on this important safety project, staff proposes to use \$5,686,000 of Local Partnership Program (LPP) - Formula funds previously programmed for design of the MCP2 package on the MCP3 package, with the remaining funding provided by local sources. This will allow for the quickest and most cost-effective path to begin delivery of the project. The CTC is scheduled to take action on repurposing these LPP-Formula funds at its August 2022 meeting,

and this will allow the Commission to award the design contract for the MCP3 project. Staff will present a full update on MCP3 funding at the September Commission meeting.

Consultant Selection Process

Due to significant safety concerns and the timing of the previous construction package these improvements need to be constructed as soon as possible. Therefore, at the September Commission meeting, staff will be recommending award for the development of the PS&E to the successful consultant from the competitive procurement process for the PS&E of MCP2. The scope of work is similar in nature and on the same project with different limits.

Staff will identify tasks that can be performed prior to the award of the PS&E design contract to help advance the design. These tasks will be performed under an existing contract for the planning and environmental phases of the MCP and will be performed with the remaining project budget.

Maintaining progress on MCP is essential to preserving the benefits of the investments made by the Commission over the past 20 years, in addition to the commitments made to communities along this corridor. This includes the eventual completion of the portion in Perris as well as the entire corridor. Staff's recommendation to improve Ramona Expressway will advance the corridor while addressing a current safety need.

County Partnership

The MCP project will no longer be adopted as a state facility and will be incorporated into the County roadway system, with the County being responsible for the operations and maintenance of the MCP3 upon completion. Therefore, the development of the MCP3 scope of work and implementation of the project will comply with County requirements and requires a partnership with the County to achieve the successful delivery and completion of this important project. To ensure the roles, responsibilities, and requirements are clearly defined, RCTC will enter into a cooperative agreement with the County for the MCP3 project. The cooperative agreement will include the details of how the project will proceed through design, construction, final acceptance, and acceptance by the County for operations and maintenance. To address the Commission's concerns about the City or County withdrawing support for the project, the cooperative agreement will include language to allow RCTC to recover project costs expended from the effective date of the cooperative agreement. This language has been discussed and reviewed with the County and RCTC legal counsel and should address the Commission's concerns. Staff anticipates bringing the cooperative agreement with the County to the September Commission for approval at the same time as the design contract award.

Right of Way funding for MCP2

The Commission previously programmed \$36,939,000 of Surface Transportation Block Grant (STBG) federal funds for acquisition of ROW for MCP2. Of this amount, approximately \$21,939,000 of the funds will be reprogrammed onto MCP3 construction, leaving approximately \$15,000,000 on MCP2. Several core parcels needed for the ultimate alignment of the MCP may soon be at eminent risk of development and leaving this funding in place will allow staff to proceed with acquisition of some of the parcels before they are developed. The remaining funds will be moved to construction of MCP3. Exact dollar amounts will be provided in September after receiving updated appraisals of the core parcels.

Fiscal Impact

There is no fiscal impact currently. However, staff will return to the Commission in September to seek approval for both scope and a contract for PS&E on MCP3 to reprogram remaining funds, if applicable, and enter into a cooperative agreement with County.

Attachment: Map - MCP Construction Package 3

ATTACHMENT 1



MCP Construction Package 3