



MEETING AGENDA

Western Riverside County Programs and Projects Committee

Time: 1:30 p.m.
Date: October 22, 2018
Location: BOARD ROOM
County of Riverside Administration Center
4080 Lemon St, First Floor, Riverside CA 92501

COMMITTEE MEMBERS

Adam Rush, **Chair**/Clint Lorimore, City of Eastvale
Brian Berkson, **Vice Chair**/Verne Lauritzen,
City of Jurupa Valley
Deborah Franklin/Art Welch, City of Banning
Karen Spiegel/Randy Fox, City of Corona
Bill Zimmerman/John Denver, City of Menifee
Victoria Baca/Ulises Cabrera, City of Moreno Valley
Berwin Hanna/Ted Hoffman, City of Norco

Michael Vargas/Rita Rogers, City of Perris
Andrew Kotyuk/Scott Miller, City of San Jacinto
Ben J. Benoit/Timothy Walker, City of Wildomar
Kevin Jeffries, County of Riverside, District I
Marion Ashley, 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.

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

www.rctc.org

AGENDA*

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

1:30 p.m.

Monday, October 22, 2018

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 at the Commission office, 4080 Lemon Street, Third Floor, Riverside, CA, and on the Commission's website, www.rctc.org.

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

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

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

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

5. APPROVAL OF MINUTES – SEPTEMBER 24, 2018

- 6. 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.)*

7. AGREEMENTS FOR ON-CALL ENVIRONMENTAL CONSULTING SERVICES

Page 1

Overview

This item is for the Committee to:

- 1) Award the following agreements to provide on-call environmental consulting services for a three-year term, and one, two-year option to extend the agreements, in an amount not to exceed an aggregate value of \$1.5 million;
 - a) Agreement No. 19-31-015-00 to HDR Engineering, Inc.;
 - b) Agreement No. 19-31-016-00 to LSA Associates, Inc.; and
 - c) Agreement No. 19-31-017-00 to Stantec Consulting Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission;
- 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.

8. AGREEMENTS FOR ON-CALL RIGHT OF WAY PHASE I & PHASE II ENVIRONMENTAL ASSESSMENT SERVICES

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Overview

This item is for the Committee to:

- 1) Award the following agreements to provide on-call right of way phase I & phase II environmental assessment services for a three-year term, and two, one-year options to extend the agreements, in an amount not to exceed an aggregate value of \$300,000;
 - a) Agreement No. 18-31-098-00 to Leighton Consulting, Inc.;
 - b) Agreement No. 18-31-099-00 to Ninyo & Moore; and
 - c) Agreement No. 18-31-100-00 to Stantec Consulting Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission;
- 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.

9. AMENDMENTS TO FREEWAY SERVICE PATROL AGREEMENTS

Page 91

Overview

This item is for the Committee to:

- 1) Approve Agreement No. 18-45-131-01, Amendment No. 1 to Agreement No. 18-45-131-00, with Coastal Pride Towing (Coastal) to provide construction freeway service patrol (CFSP) services on Beat No. 2, for an additional amount of \$630,000, for a total amount not to exceed \$2,155,212;
- 2) Approve Agreement No. 15-45-060-02, Amendment No. 2 to Agreement No. 15-45-060-00, with Airport Mobil Towing (Airport) to provide CFSP services on Beat No. 25, for an additional amount of \$628,000, for a total amount not to exceed \$2,166,500;
- 3) Approve Agreement No. 15-45-061-04, Amendment No. 3 to Agreement No. 15-45-061-00, with Pepe's Towing (Pepe's) to provide CFSP services on Beat No. 26, for an additional amount of \$310,000, for a total amount not to exceed \$1,343,000;
- 4) Approve Agreement No. 16-45-082-02, Amendment No. 2 to Agreement No. 16-45-082-00, with Pepe's Towing to provide CFSP services on Beat No. 4, for an additional amount of \$643,000, for a total amount not to exceed \$1,694,000;
- 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. COMMISSIONERS / STAFF REPORT

Overview

This item provides the opportunity for the Commissioners and staff to report on attended and upcoming meeting/conferences and issues related to Commission activities.

11. ADJOURNMENT

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, November 26, 2018**, Board Chambers, First Floor, County Administrative Center, 4080 Lemon Street, Riverside.

AGENDA ITEM 5

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, September 24, 2018

MINUTES

1. CALL TO ORDER/ ROLL CALL

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Chair Adam Rush at 1:30 p.m., in the Board Room at the County of Riverside Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, 92501.

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

At this time, Commissioner Bill Zimmerman led the Western Riverside County Programs and Projects Committee in a flag salute.

Members/Alternates Present

Members Absent

Marion Ashley
Victoria Baca
Ben Benoit
Brian Berkson
Deborah Franklin
Berwin Hanna
Kevin Jeffries*
Andrew Kotyuk
Karen Spiegel
Adam Rush
Michael Vargas*
Bill Zimmerman

*arrived after meeting was called to order

4. PUBLIC COMMENTS

There were no requests to speak from the public.

5. APPROVAL OF MINUTES – JUNE 25, 2018

**M/S/C (Baca/Hanna) to approve the minutes as submitted.
Abstain: Kotyuk, Zimmerman**

6. ADDITIONS/REVISIONS

There were no additions or revisions at this time.

7. CHANGE ORDER TO AMEND THE INTERSTATE 15 EXPRESS LANES PROJECT DESIGN-BUILD CONTRACT WITH SKANSKA-AMES, A JOINT VENTURE, FOR THE INTERSTATE 15/STATE ROUTE 91 EXPRESS LANES CONNECTOR PROJECT

David Thomas, Toll Project Manager, presented the details of the change order to amend the I-15 Express Lanes project design-build contract with Skanska-Ames, A Joint Venture, for the I-15/SR-91 Express Lanes Connector project.

In response to Commissioner Karen Spiegel's inquiry as to where the funding for the change orders is coming from, David Thomas responded the funding for the change orders is coming from SB 132.

Anne Mayer added the Commission had to make several change orders to the I-15 Express Lanes project to accommodate the I-15 Connector project. These change orders are being paid out of the funding awarded to the I-15 Connector project and they would not be necessary if not for the I-15 Connector project.

David Thomas clarified for Commissioner Brian Berkson the contract is still in negotiations and will be brought to the November Commission for approval.

David Thomas clarified for Chair Rush the Commission has to seek revalidation of the environmental document. This project was not part of the earlier environmental clearance because there was no funding for it. The Commission cannot start this project without environmental clearance; the environmental document is scheduled to be cleared by March 2019.

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

- 1) Approve Change Order No. 10 to Agreement No. 16-31-057-00 for the Interstate 15 Express Lanes Project (I-15 ELP) with Skanska-Ames, a Joint Venture (Skanska-Ames), to perform final engineering design work and limited construction within the limits of the I-15 ELP to accommodate the I-15/State Route 91 Express Lanes Connector Project (15/91 ELC) in the amount of \$15,234,804, plus a contingency amount of \$750,000, for a total amount not to exceed \$15,984,804;**

- 2) **Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the change order amendment on behalf of the Commission;**
- 3) **Authorize the Executive Director or designee to approve contingency work up to the total amount not to exceed as required for the project; and**
- 4) **Forward to the Commission for final action.**

At this time, Commissioners Keven Jeffries and Michael Vargas arrived.

8. AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING, AND CONSTRUCTION SURVEYING FOR THE MID COUNTY PARKWAY – SWEENEY MITIGATION SITE PROJECT IN RIVERSIDE COUNTY

Alex Menor, Capital Projects Manager, presented the scope of the agreement for construction management services, materials testing, and construction surveying for the Mid County Parkway – Sweeney Mitigation Site project in Riverside County.

Commissioner Debbie Franklin asked why the Commission only received one bid.

Jose Mendoza responded to Commissioner Franklin's concerns by stating there are many projects available and contractors are having to choose which projects to bid on.

Anne Mayer added that given the volume of work, there is a definite demand for services and contractors that they can pick and choose what projects they bid on.

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

- 1) **Award Agreement No. 18-31-166-00 to DHS Consulting, Inc. to perform construction management services, materials testing, and construction surveying for the Mid County Parkway – Sweeney Mitigation Site Project (Project) in the amount of \$907,717, plus a contingency amount of \$90,772, for potential changes in scope, for a total amount not to exceed \$998,489;**
- 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 approve the use of the contingency amount as may be required for the Project; and**
- 4) **Forward to the Commission for final action.**

At this time, Commissioner Jeffries stepped out of the meeting.

9. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE 1600 STREAMBED ALTERATION MASTER AGREEMENT FOR THE MID COUNTY PARKWAY PROJECT

Alex Menor, Capital Projects Manager, presented the scope of the California Department of Fish and Wildlife 1600 Streambed Alteration master agreement for the Mid County Parkway project.

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

- 1) Authorize staff to procure a 1600 Streambed Alteration Master Agreement (Master Agreement) from the California Department of Fish and Wildlife (CDFW) for the entire Mid County Parkway (MCP) project for a term of 21 years through 2040;**
- 2) Approve the expenditure for a permit related to the procurement of the Master Agreement in the amount of \$86,826 and for an annual Master Agreement administrative maintenance fee of approximately \$725 for a total amount of \$15,215, plus a contingency amount of \$7,500 for a total amount not to exceed \$109,541;**
- 3) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;**
- 4) Authorize the Executive Director or designee to approve non-funding agreements or amendments that might be required for these services; and**
- 5) Forward to the Commission for final action.**

At this time, Commissioner Jeffries returned to the meeting.

At this time, Commissioner Spiegel stepped out of the meeting.

10. FISCAL YEAR 2018/19 STATE OF GOOD REPAIR PROGRAM

Sheldon Peterson, Rail Manager, presented the details of the FY 2018/19 State of Good Repair program.

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

- 1) Adopt Resolution No. 18-016, *“Resolution of the Riverside County Transportation Commission Authorizing the Execution of the Certifications and Assurances for the California State of Good Repair Program”*;**
- 2) Approve an amendment to the Commission’s Commuter Rail Program’s FY 2018/19 Short Range Transit Plan (SRTP) for \$799,813 related to the receipt and use of Senate Bill 1 State of Good Repair (SGR) funds for the Station Rehabilitation Program;**
- 3) Approve an allocation of \$799,813 in SGR funds to the Commission’s Station Rehabilitation Program;**

- 4) **Authorize the Executive Director, or her designee, to submit project nominations to Caltrans and execute the Recipient Certifications and Assurances and other required documents for the SGR program;**
- 5) **Approve a \$799,813 adjustment to the FY 2018/19 budget to increase state revenues and property improvement expenditures; and**
- 6) **Forward to the Commission for final action.**

At this time, Commissioner Jeffries left the meeting.

At this time, Commissioner Spiegel returned to the meeting.

11. VANCLUB UPDATE – RCTC’S ONGOING VANPOOL SUBSIDY PROGRAM

Brian Cunanan, Commuter and Motorist Assistance Manager, presented an update on RCTC’s ongoing vanpool subsidy program.

Chair Rush asked if the Mobile Source Air Pollution Reduction Review Committee (MSRC) is the sole source of funding.

Brian Cunanan responded MSRC provided the initial funding but the rest will be supplemented with Measure A funds.

Brian Cunanan clarified for Commissioners Benoit and Spiegel the vehicle is leased through Enterprise Rent-A-Car. The driver is usually the vanpool captain or their alternate.

Commissioner Rush asked if there is designated parking for vanpools.

Brian Cunanan responded there are no designated parking zones for the vanpools at this time.

M/S/C to:

- 1) **Receive and file a report on the public launch of the Commission’s ongoing vanpool subsidy program – VanClub; and**
- 2) **Forward to the Commission for final action.**

12. COMMISSIONERS / STAFF REPORT

12A. Commissioner Spiegel requested an update on the 91 options.

12B. Anne Mayer announced a presentation regarding the 91 options will be presented at the November Commission cycle.

12C. Chair Rush announced the I-15/Limonite interchange groundbreaking will be held on September 26 at 9 a.m. in Eastvale.

12D. Anne Mayer updated the Commissioners on the stabbing that occurred September 23 at the Riverside Downtown Metrolink station.

13. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was adjourned at 2:15 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
Clerk of the Board

AGENDA ITEM 7

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	October 22, 2018
TO:	Western Riverside County Programs and Projects Committee
FROM:	Alex Menor, Capital Projects Manager
THROUGH:	Marlin Feenstra, Project Delivery Director
SUBJECT:	Agreements for On-Call Environmental Consulting Services

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Award the following agreements to provide on-call environmental consulting services for a three-year term, and one, two-year option to extend the agreements, in an amount not to exceed an aggregate value of \$1.5 million;
 - a) Agreement No. 19-31-015-00 to HDR Engineering, Inc.;
 - b) Agreement No. 19-31-016-00 to LSA Associates, Inc.; and
 - c) Agreement No. 19-31-017-00 to Stantec Consulting Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission;
- 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.

BACKGROUND INFORMATION:

The Commission requires comprehensive on-call consulting services related to various environmental and archaeological services. These services include, but are not limited to, coordination with resources agencies, Caltrans and local jurisdictions; review of National Environmental Policy Act and California Environmental Quality Act documents; permitting preparation; monitoring and documentation of environmental commitments; and support of the Western Riverside County Multispecies Habitat Conservation Plan projects.

While the Commission typically has most of the environmental-related consulting services described above accomplished through contracts for the preliminary engineering/environmental phase of a project, there are occasions in which these services will be needed outside the environmental phase. Examples of this include the need for permitting prior to construction, construction monitoring, or mitigation.

The purpose of this procurement is to provide the Commission with these comprehensive on-call professional environmental consulting services for a variety of Commission capital projects with Federal Highway Administration and Federal Transit Administration funding projects like the State Route 60 Truck Lane Project, Interstate 15 Railroad Canyon Road Interchange Project, La Sierra Parking Lot, and Riverside Downtown Platform and Track Expansion Project.

In September 2013, the Commission approved similar contracts with four firms for up to five-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 \$1.5 million, of which approximately \$600,000 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. 18-31-170-00 for on-call environmental consulting services was released by staff on July 19, 2018. A public notice was advertised in the *Press Enterprise*, and the RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 70 firms downloaded the RFQ; 10 of these firms are located in Riverside County. A pre-submittal meeting was held on July 26 and attended by 10 firms. Staff responded to all questions submitted by potential proposers prior to the August 7 clarification deadline. Eight firms – EPD Solutions, Inc. (Irvine); HDR Engineering, Inc. (Riverside); ICF Jones & Stokes, Inc. (Corona); Impact Sciences, Inc. (Pasadena); LSA Associates, Inc. (Irvine); Sapphos Environmental, Inc. (Pasadena); Stantec Consulting Services, Inc. (San Bernardino); and Willdan Engineering (San Bernardino) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on August 22. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission and Bechtel staff.

As a result of the evaluation committee's assessment of the written statements of qualifications, the evaluation committee determined two firms – HDR Engineering, Inc. and LSA Associates, Inc. – to be the most qualified firms to provide on-call environmental consulting services.

Additionally, since the Commission intended to award up to three agreements for on-call environmental consulting services, the evaluation committee shortlisted and invited three firms – ICF Jones & Stokes, Inc.; Sapphos Environmental, Inc.; and Stantec Consulting Services, Inc. – to the interview phase of the evaluation and selection process. Interviews were conducted on

September 13. Subsequently, the evaluation committee determined Stantec Consulting Services, Inc. to be the most qualified firm from the interview phase to provide on-call environmental consulting services.

As a result of the evaluation committee’s assessment of the written statements of qualifications and interviews, the evaluation committee recommends contract awards to HDR Engineering, Inc; LSA Associates, Inc.; and Stantec Consulting Services, Inc. for a three-year term, and one, two-year option to extend the agreements, in the aggregate amount of \$1.5 million, as these firms earned the highest total evaluation scores.

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

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

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2018/19 FY 2019/20+	Amount:	\$ 200,000 \$1,300,000
Source of Funds:	Measure A and/or other local, state and federal funds			Budget Adjustment:	No N/A
GL/Project Accounting No.:	007201 81115 720 67 81101 007202 81115 720 67 81101 002320 81115 261 31 81101 654199 81115 265 33 81101 623999 81115 262 31 81101				
Fiscal Procedures Approved:	<i>Theresa Iuvino</i>			Date:	10/15/2018

Attachment: Draft On-Call Professional Services Agreement

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
[___CONSULTANT___]
FOR ON-CALL
ENVIRONMENTAL CONSULTING SERVICES**

Parties and Date.

This Agreement is made and entered into this ___ day of _____, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and [___NAME OF FIRM___] ("Consultant"), a [___LEGAL STATUS OF CONSULTANT e.g., 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 environmental consulting 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 environmental consulting 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. [**USE THIS PARAGRAPH IF NOTICE TO PROCEED OR LIMITED NOTICE TO PROCEED HAS BEEN ISSUED**] Commission has authorized Consultant to commence performance of the Services by a "Notice to Proceed" or "Limited Notice to Proceed" dated _____. Consultant agrees that Services already performed pursuant to the "Notice to Proceed" or "Limited Notice to Proceed" shall be governed by all the provisions of this Agreement, including all indemnification and insurance provisions.

[**USE THIS SENTENCE IF NO NOTICE TO PROCEED OR LIMITED NOTICE TO PROCEED HAS BEEN ISSUED**] 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. The Commission shall have the option to extend the term for one, two-year option. In no case shall the term of this Agreement exceed five (5) 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 [**INSERT NAME OR TITLE**] 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: [**LIST NAMES AND TITLES**], 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 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 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:

Attn: _____

COMMISSION:

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

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

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
ENVIRONMENTAL CONSULTING SERVICES**

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

<p>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</p> <p>By: _____ Anne Mayer</p> <p><i>Approved as to Form:</i></p> <p>By: _____ Best, Best & Krieger LLP General Counsel</p>	<p>CONSULTANT [INSERT NAME OF CONSULTANT]</p> <p>By: _____ Signature</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>ATTEST:</p> <p>By: _____</p> <p>Its: _____</p>
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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.

TO BE INSERTED FROM RFP:

EXHIBIT "A" - SCOPE OF SERVICES

EXHIBIT "E" - CONSULTANT DBE COMMITMENT

EXHIBIT "F" - FTA PROVISIONS

EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE

TO BE INSERTED FROM CONSULTANT PROPOSAL:

EXHIBIT "C"- COMPENSATION AND PAYMENT

Exhibit A

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 "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. COMMERCIALY 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, insured, 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

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Consultant Name: _____			
5. Contract DBE Goal %: _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %

AGENDA ITEM 8

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	October 22, 2018
TO:	Western Riverside County Programs and Projects Committee
FROM:	Mark Lancaster, Right of Way Manager
THROUGH:	Marlin Feenstra, Project Delivery Director
SUBJECT:	Agreements for On-Call Right of Way Phase I & Phase II Environmental Assessment Services

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Award the following agreements to provide on-call right of way phase I & phase II environmental assessment services for a three-year term, and two, one-year options to extend the agreements, in an amount not to exceed an aggregate value of \$300,000;
 - a) Agreement No. 18-31-098-00 to Leighton Consulting, Inc.;
 - b) Agreement No. 18-31-099-00 to Ninyo & Moore; and
 - c) Agreement No. 18-31-100-00 to Stantec Consulting Services, Inc.;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission;
- 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.

BACKGROUND INFORMATION:

The presence of hazardous substances within proposed rights of way and facilities for various Commission rail and highway projects is probable. It is, therefore, necessary for the Commission 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, 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 December 2015, 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 \$56,000 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. 18-31-098-00 for on-call right of way phase I & phase II environmental assessment services was released by staff on July 26, 2018. A public notice was advertised in the *Press Enterprise*, and the RFQ was posted on the Commission's Planet Bids website, which is accessible through the Commission's website. Through Planet Bids, 61 firms downloaded the RFQ; 14 of these firms are located in Riverside County. A pre-submittal meeting was held on August 7 and attended by 17 firms. Staff responded to all questions submitted by potential proposers prior to the August 21 clarification deadline. Twelve firms – ATC Group Services LLC (Monterey Park); Cardno, Inc. (Lake Forest); Converse Consultants (Monrovia); Dudek (Riverside); EFI Global (Los Angeles); ES Engineering Services, LLC (Irvine); Leighton Consulting, Inc. (Irvine); Ninyo & Moore (Fontana); SCS Engineers (Long Beach); SCST, Inc. (Riverside); Stantec Consulting Services, Inc. (San Bernardino); and Tetra Tech, Inc. (Irvine) – submitted responsive and responsible statements of qualifications prior to the 2:00 p.m. submittal deadline on September 5. Based on the evaluation criteria set forth in the RFQ, the firms were evaluated and scored by an evaluation committee comprised of Commission staff.

As a result of the evaluation committee's assessment of the written statements of qualifications, the evaluation committee recommends contract awards to Leighton Consulting, Inc.; Ninyo & Moore; and Stantec Consulting Services, Inc. for a three-year term, and two, one-year options to extend the agreements, in the aggregate amount of \$300,000, as these firms earned the highest total evaluation scores.

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

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

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2018/19 FY 2019/20+	Amount:	\$50,000 \$250,000
Source of Funds:	Measure A, State Transportation Improvement Program, Federal funds, Transportation Uniform Mitigation Fees			Budget Adjustment:	No N/A
GL/Project Accounting No.:	002302 81403 00067 0000 210 73 81402 005127 81403 00067 0000 210 72 81402 005104 81403 00067 0000 210 72 81402 003027 81403 00067 0000 262 31 81402 003038 81403 00067 0000 222 31 81402 002317 81403 00067 0000 261 31 81402 652402 81403 00067 0000 265 33 81402 004027 81403 00067 0000 265 33 81402 622402 81403 00067 0000 262 31 81402				
Fiscal Procedures Approved:	<i>Theresa Iuvino</i>			Date:	10/12/2018

Attachment: Draft On-Call Professional Services Agreement

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

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
[____CONSULTANT____]
FOR ON-CALL RIGHT OF WAY PHASE I & PHASE II
ENVIRONMENTAL ASSESSMENT SERVICES**

Parties and Date.

This Agreement is made and entered into this ____ day of _____, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and [____NAME OF FIRM____] ("Consultant"), a [____LEGAL STATUS OF CONSULTANT e.g., 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 phase I & phase II environmental 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. [**USE THIS PARAGRAPH IF NOTICE TO PROCEED OR LIMITED NOTICE TO PROCEED HAS BEEN ISSUED**] Commission has authorized Consultant to commence performance of the Services by a "Notice to Proceed" or "Limited Notice to Proceed" dated _____. Consultant agrees that Services already performed pursuant to the "Notice to Proceed" or "Limited Notice to Proceed" shall be governed by all the provisions of this Agreement, including all indemnification and insurance provisions.

[**USE THIS SENTENCE IF NO NOTICE TO PROCEED OR LIMITED NOTICE TO PROCEED HAS BEEN ISSUED**] 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. The Commission shall have the option to extend the term for one, two-year option. In no case shall the term of this Agreement exceed five (5) 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 [**INSERT NAME OR TITLE**] 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: [**LIST NAMES AND TITLES**], 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 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 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:

Attn: _____

COMMISSION:

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

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

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 PHASE I & PHASE II ENVIRONMENTAL ASSESSMENT SERVICES**

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

<p>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</p> <p>By: _____ Anne Mayer</p> <p><i>Approved as to Form:</i></p> <p>By: _____ Best, Best & Krieger LLP General Counsel</p>	<p>CONSULTANT [INSERT NAME OF CONSULTANT]</p> <p>By: _____ Signature</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>ATTEST:</p> <p>By: _____</p> <p>Its: _____</p>
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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.

TO BE INSERTED FROM RFP:

EXHIBIT "A" - SCOPE OF SERVICES

EXHIBIT "E" - CONSULTANT DBE COMMITMENT

EXHIBIT "F" - FTA PROVISIONS

EXHIBIT "G" – LOBBYING ACTIVITIES DISCLOSURE

TO BE INSERTED FROM CONSULTANT PROPOSAL:

EXHIBIT "C"- COMPENSATION AND PAYMENT

Exhibit A

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 "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. COMMERCIALY 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, insured, 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

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Consultant Name: _____			
5. Contract DBE Goal %: _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %

AGENDA ITEM 9

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	October 22, 2018
TO:	Western Riverside County Programs and Projects Committee
FROM:	Michelle McCamish, Management Analyst Brian Cunanan, Commuter and Motorist Assistance Manager
THROUGH:	Aaron Hake, Director of External Affairs
SUBJECT:	Amendments to Freeway Service Patrol Agreements

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Approve Agreement No. 18-45-131-01, Amendment No. 1 to Agreement No. 18-45-131-00, with Coastal Pride Towing (Coastal) to provide construction freeway service patrol (CFSP) services on Beat No. 2, for an additional amount of \$630,000, for a total amount not to exceed \$2,155,212;
- 2) Approve Agreement No. 15-45-060-02, Amendment No. 2 to Agreement No. 15-45-060-00, with Airport Mobil Towing (Airport) to provide CFSP services on Beat No. 25, for an additional amount of \$628,000, for a total amount not to exceed \$2,166,500;
- 3) Approve Agreement No. 15-45-061-04, Amendment No. 3 to Agreement No. 15-45-061-00, with Pepe’s Towing (Pepe’s) to provide CFSP services on Beat No. 26, for an additional amount of \$310,000, for a total amount not to exceed \$1,343,000;
- 4) Approve Agreement No. 16-45-082-02, Amendment No. 2 to Agreement No. 16-45-082-00, with Pepe’s Towing to provide CFSP services on Beat No. 4, for an additional amount of \$643,000, for a total amount not to exceed \$1,694,000;
- 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 (SAFE), is the principal agency in Riverside County, in partnership with Caltrans and the California Highway Patrol (CHP), managing the Freeway Service Patrol (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. Currently, as illustrated in Figure 1, the Commission contracts with three tow truck operators to provide

service on a total of 12 beats Monday through Friday during the peak commute hours, 5:30 a.m. to 8:30 a.m. and 2:30 p.m. (12:30 p.m. on Fridays) to 6:30 p.m.



Figure 1: FSP Beat Map

Incremental weekend FSP service funded by Mobile Source Air Pollution Reduction Review Committee grants, is also provided along beats in the cities of Corona, Moreno Valley, and Riverside. In addition to regular peak FSP and incremental weekend service hours, FSP is used to provide traffic congestion relief and to quickly address vehicle breakdowns and accidents within construction zones, all of which have the added benefit of reducing accidents and improving air quality during the construction of a project.

DISCUSSION:

The project teams for the Interstate 15 Express Lanes Project (I-15 ELP) and Pachappa Underpass project requested CFSP service to serve as a transportation mitigation strategy in their respective construction zones within FSP beats 2, 4, 25, and 26 (Figure 1). CFSP service

hours extend regular weekday peak AM and PM service with midday service on weekdays and weekend service (Monday – Thursday from 8:30 a.m. – 2:30 p.m.; Friday from 8:30 a.m. – 12:30 p.m.; Saturday and Sunday from 10 a.m. – 6 p.m.). As such, several agreements, as shown in the table below, will need to be amended to add funds to provide CFSP service for the I-15 ELP and Pachappa Underpass projects; construction is expected to be completed within the remaining agreement terms of the towing contracts, including option years.

Construction Project	CFSP Beat Coverage	Contractor/ Agreement No.	Amendment Amount
I-15 ELP	Beat 2: I-15 from Hidden Valley Parkway to Jurupa Avenue	Coastal 18-45-131-01	\$630,000
	Beat 25: I-15/SR-91 Interchanges	Airport 15-45-060-02	\$628,000
	Beat 26: I-15 from Magnolia Avenue to Indian Truck Trail	Pepe’s 15-45-061-04	\$310,000
Pachappa Underpass Project	Beat 4: SR-91 from Magnolia Avenue to the 60/91/215 Interchange	Pepe’s 16-45-082-02	\$643,000

Staff recommends approval of the four FSP amendments as outlined in the staff recommendation. Hourly rates for the FSP services in the aforementioned contracts will remain unchanged.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2018/19 FY 2019/20+	Amount:	\$ 674,300 \$1,536,700
Source of Funds:	2017A Sales Tax Bond Proceeds, 2009 Measure A 2009 Western County Highway Funds, and federal CMAQ		Budget Adjustment:	No N/A	
GL/Project Accounting No.:	003027 81014 00000 0000 262 31 81002 003038 81014 00000 0000 222 31 81002				
Fiscal Procedures Approved:	<i>Theresa Iuvone</i>			Date:	10/12/2018

Attachments:

- 1) Draft Coastal Agreement No. 18-45-131-01
- 2) Draft Airport Agreement No. 15-45-060-02
- 3) Draft Pepe’s Agreement No. 16-45-082-02
- 4) Draft Pepe’s Agreement No. 15-45-061-04

Agreement No. 18-45-131-01

**AMENDMENT NO. 1 TO
AGREEMENT FOR FREEWAY EMERGENCIES,
FOR
FREEWAY SERVICE PATROL FOR BEAT # 1 AND # 2 WITHIN RIVERSIDE
COUNTY
WITH COASTAL PRIDE TOWING, INC.**

1. PARTIES AND DATE

This Amendment No. 1 is made and entered into as of November 15, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") acting in its capacity as the RIVERSIDE SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE"), a public entity, and COASTAL PRIDE TOWING, INC., a California corporation (referred to herein as "CONTRACTOR").

2. RECITALS

- 2.1 SAFE and CONTRACTOR have entered into an agreement dated August 21, 2018 for the provision of freeway patrol services on Beat No. 1 & 2 within Riverside County on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to provide additional compensation in order to provide additional FSP services, on a temporary basis, as further described herein.

3. TERMS

- 3.1 The Scope of Services of the Master Agreement shall be amended to include construction freeway service patrol services for Beat No. 2.
- 3.2 Services for construction freeway patrol services for Beat No. 2 shall be performed and compensated pursuant to and in accordance with the terms of the Master Agreement.
- 3.3 The maximum compensation for construction freeway service patrol Services, shall be Six Hundred Thirty Thousand Dollars (\$630,000.00).
- 3.4 The total not-to-exceed amount of the Master Agreement, as amended by this Amendment No. 1, shall be increased from One Million Five Hundred Twenty-Five Thousand Two Hundred Twelve Dollars (\$1,525,212.00) to Two Million One Hundred Fifty-Five Thousand Two Hundred Twelve Dollars (\$2,155,212.00).

- 3.5 Except as amended by this Amendment No. 1, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1.
- 3.6 This Amendment No. 1 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
Agreement No. 18-45-131-01**

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

RIVERSIDE COUNTY

**COASTAL PRIDE TOWING, INC., a
California corporation**

**TRANSPORTATION COMMISSION
ACTING IN ITS CAPACITY AS THE
RIVERSIDE COUNTY SERVICE
AUTHORITY FOR FREEWAY
EMERGENCIES**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

***ATTEST:**

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

By: _____
Signature

Title: _____

*** A corporation requires the signatures of two corporate officers.**

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

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

Agreement No. 15-45-060-02

**AMENDMENT NO. 2 TO
AGREEMENT FOR FREEWAY EMERGENCIES,
FOR
FREEWAY SERVICE PATROL FOR BEAT #25 WITHIN RIVERSIDE COUNTY
WITH AIRPORT MOBIL TOWING, INC.**

1. PARTIES AND DATE

This Amendment No. 2 is made and entered into as of November 15, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") acting in its capacity as the RIVERSIDE SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE"), a public entity, and AIRPORT MOBILE, INC., a California corporation (referred to herein as "CONTRACTOR").

2. RECITALS

- 2.1 SAFE and CONTRACTOR have entered into an agreement dated August 31, 2015 for the provision of freeway patrol services on Beat No. 25 within Riverside County on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE and CONTRACTOR amended the Master Agreement in order to extend the term of the Master Agreement to October 31, 2019 and to increase the hourly rate for the continued provision of freeway service patrol services.
- 2.3 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to provide additional compensation in order to provide additional FSP services, on a temporary basis, as further described herein.

3. TERMS

- 3.1 The Scope of Services of the Master Agreement shall be amended to include construction freeway service patrol services for Beat No. 25.
- 3.2 Services for construction freeway patrol services for Beat No. 25 shall be performed and compensated pursuant to and in accordance with the terms of Amendment 1 of the Master Agreement.
- 3.3 The maximum compensation for construction freeway service patrol Services, shall be Six Hundred Twenty-Eight Thousand Dollars (\$628,000.00).

- 3.4 The total not-to-exceed amount of the Master Agreement, as amended by this Amendment No. 2, shall be increased from One Million Five Hundred Thirty-Eight Thousand Five Hundred Dollars (\$1,538,500.00) to Two Million One Hundred Sixty-Six Thousand Five Hundred Dollars (\$2,166,500.00).
- 3.5 Except as amended by this Amendment No. 2, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2.
- 3.6 This Amendment No. 2 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 This Amendment No. 2 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
Agreement No. 15-45-060-02**

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

RIVERSIDE COUNTY

AIRPORT MOBIL, INC., a California corporation

**TRANSPORTATION COMMISSION
ACTING IN ITS CAPACITY AS THE
RIVERSIDE COUNTY SERVICE
AUTHORITY FOR FREEWAY
EMERGENCIES**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

***ATTEST:**

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

By: _____
Signature

Title: _____

*** A corporation requires the signatures of two corporate officers.**

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

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

Agreement No. 16-45-082-02**AMENDMENT NO. 2 TO
AGREEMENT FOR FREEWAY EMERGENCIES,
FOR
FREEWAY SERVICE PATROL FOR BEAT NO. 4
WITH PEPE'S TOWING SERVICE****1. PARTIES AND DATE**

This Amendment No. 2 is made and entered into as of November 15, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") acting in its capacity as the RIVERSIDE SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE"), a public entity, and PEPE'S, INC., a California corporation (referred to herein as "CONTRACTOR").

2. RECITALS

- 2.1 SAFE and CONTRACTOR have entered into an agreement dated October 31, 2016 for the provision of freeway patrol services on Beat No. 4 within Riverside County on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE and CONTRACTOR amended the Master Agreement on July 3, 2018 to include an option for as needed weekend service on Saturdays and Sundays for Beat #4, and to provide additional compensation for such freeway service patrol services.
- 2.3 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to provide additional compensation in order to provide additional FSP services, on a temporary basis, as further described herein.

3. TERMS

- 3.1 The Scope of Services of the Master Agreement shall be amended to include construction freeway service patrol services for Beat No. 4.
- 3.2 Services for construction freeway patrol services for Beat No. 4 shall be performed and compensated pursuant to and in accordance with the terms of the Master Agreement.
- 3.3 The maximum compensation for construction freeway service patrol Services, shall be Six Hundred Forty-Three Thousand Dollars (\$643,000.00).

- 3.4 The total not-to-exceed amount of the Master Agreement, as amended by this Amendment No. 2, shall be increased from One Million Fifty-One Thousand Dollars (\$1,051,000.00) to One Million Six Hundred Ninety-Four Thousand Dollars (\$1,694,000.00).
- 3.5 Except as amended by this Amendment No. 2, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2.
- 3.6 This Amendment No. 2 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 This Amendment No. 2 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
Agreement No. 16-45-082-02**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION
ACTING IN ITS CAPACITY AS THE
RIVERSIDE COUNTY SERVICE
AUTHORITY FOR FREEWAY
EMERGENCIES**

**PEPE'S INC., a California corporation
d/b/a PEPE'S TOWING SERVICE**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

***ATTEST:**

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

By: _____
Signature

Title: _____

*** A corporation requires the signatures of two corporate officers.**

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

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

Agreement No. 15-45-061-04**AMENDMENT NO. 3 TO
AGREEMENT FOR FREEWAY EMERGENCIES,
FOR
FREEWAY SERVICE PATROL FOR BEAT NO. 26
WITH PEPE'S TOWING SERVICE****1. PARTIES AND DATE**

This Amendment No. 3 is made and entered into as of November 15, 2018, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("Commission") acting in its capacity as the RIVERSIDE SERVICE AUTHORITY FOR FREEWAY EMERGENCIES ("SAFE"), a public entity, and PEPE'S, INC., a California corporation (referred to herein as "CONTRACTOR").

2. RECITALS

- 2.1 SAFE and CONTRACTOR have entered into an agreement dated June 10, 2015, for the provision of freeway patrol services on Beat No. 26 within Riverside County on behalf of the SAFE (the "Master Agreement").
- 2.2 SAFE has issued Change Order No. 1, effective as of August 19, 2015, to change the limits of Beat No. 26.
- 2.3 SAFE and CONTRACTOR have entered into an Amendment No. 1 dated February 18, 2016 in order to provide additional FSP services, on a temporary basis, for the State Route 91 Corridor Improvement Project.
- 2.4 SAFE and CONTRACTOR have entered into an Amendment No. 2 on August 1, 2018 to exercise the first renewal option to extend the term of the contract and provide additional compensation.
- 2.5 SAFE and CONTRACTOR now desire to amend the Master Agreement in order to provide additional compensation in order to provide additional FSP services, on a temporary basis, as further described herein.

3. TERMS

- 3.1 The Scope of Services of the Master Agreement shall be amended to include construction freeway service patrol services for Beat No. 26.

- 3.2 Services for construction freeway patrol services for Beat No. 26 shall be performed and compensated pursuant to and in accordance with the terms of the Master Agreement.
- 3.3 The maximum compensation for construction freeway service patrol Services, shall be Three Hundred Ten Thousand Dollars (\$310,000.00).
- 3.4 The total not-to-exceed amount of the Master Agreement, as amended by this Amendment No. 3, shall be increased from One Million Thirty-Three Thousand Dollars (\$1,033,000.00) to One Million Three Hundred Forty-Three Thousand Dollars (\$1,343,000.00).
- 3.5 Except as amended by this Amendment No. 3, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the parties under this Amendment No. 3.
- 3.6 This Amendment No. 3 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.7 This Amendment No. 3 may be signed in counterparts, each of which shall constitute an original.

[Signatures on following page]

**SIGNATURE PAGE
TO
Agreement No. 15-45-061-04**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION
ACTING IN ITS CAPACITY AS THE
RIVERSIDE COUNTY SERVICE
AUTHORITY FOR FREEWAY
EMERGENCIES**

**PEPE'S INC., a California corporation
d/b/a PEPE'S TOWING SERVICE**

By: _____
Anne Mayer, Executive Director

By: _____
Signature

Name

Title

APPROVED AS TO FORM:

***ATTEST:**

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

By: _____
Signature

Title: _____

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