

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

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WORKSHOP AGENDA*

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

January 30 – 31, 2020

**Hilton Palm Springs
400 E Tahquitz Canyon Way
Palm Springs, CA 92262**

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 and Government Code Section 54954.2, if you need special assistance to participate in a Commission meeting, please contact the Clerk of the Board at (951) 787-7141. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

The start times listed on the agenda are approximate and are included for guidance only. Agenda items may be taken out of the order listed on the agenda.

THURSDAY, JANUARY 30, 2020

PUBLIC COMMENTS – *Each individual speaker is limited to speak three (3) continuous minutes or less. The Commission may, either at the direction of the Chair or by majority vote of the Commission, 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. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Also, the Commission may terminate public comments if such comments become repetitious. Speakers may not yield their time to others without the consent of the Chair. Any written documents to be distributed or presented to the Commission 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 Commission should not take action on or discuss matters raised during public comment portion of the agenda that are not listed on the agenda. Commission members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.

1:00 p.m. – 2:00 p.m.

COMMISSION ROUNDTABLE – 2020 WHAT NEEDS OUR ATTENTION?

Ben J. Benoit, Chair

All Commissioners

2:00 p.m. – 2:40 p.m.

PREVIEW OF DEBT REFINANCING OPPORTUNITIES

Theresia Trevino, Chief Financial Officer

2:40 p.m. – 3:00 p.m.

BREAK

3:00 p.m. – 4:00 p.m.

RCTC AT WORK: PANEL DISCUSSION

*Moderated by Cheryl Donahue, Public Affairs Manager
Stephanie Blanco, Capital Projects Manager
Jennifer Crosson, Toll Operations Manager
Mark Lancaster, Capital Projects Manager
David Lewis, Capital Projects Manager
Bryce Johnston, Capital Projects Manager
David Thomas, Toll Project Manager*

4:00 p.m. – 5:00 p.m.

LEGISLATIVE PANEL – WHAT’S HAPPENING IN WASHINGTON, D.C. AND SACRAMENTO?

*Panel Moderated by David Knudsen, Legislative Affairs Manager
Mark Watts
Kathy Ruffalo
Cliff Madison*

5:00 p.m. – 5:15 p.m.

WRAP UP AND NEXT STEPS

Anne Mayer, Executive Director

5:15 p.m. – 6:00 p.m.

BREAK

6:00 p.m.

DINNER

6:30 p.m.

PRESENTATIONS ON SUNLINE AND NEW TECHNOLOGY

Lauren Skiver, CEO/General Manager SunLine Transit Agency

7:00 p.m.

ADJOURNMENT

The workshop will continue at 8:30 a.m., Friday, January 31, 400 E Tahquitz Canyon Way, Palm Springs, California

FRIDAY, JANUARY 31, 2020

- 7:30 a.m. – 8:30 a.m.** **BREAKFAST**
- 8:30 a.m. –9:00 a.m.** **COMMISSION MEETING (SEE SEPARATE AGENDA)**
- 9:00 a.m. – 10:00 a.m.** **SB 743 – VMT – THE FUTURE IN CALIFORNIA IS CHANGING**
Charity Schiller, Best Best & Krieger, LLP
- 10:00 a.m. – 10:15 a.m.** **BREAK**
- 10:15 a.m. – 10:45 a.m.** **ZERO FATALITIES TASK FORCE RECOMMENDATIONS**
Commissioner Lisa Middleton
- 10:45 a.m. – 11:15 a.m.** **HIGHWAY TECHNOLOGY UPDATE (AGENDA ITEM ATTACHED)**
Darren Henderson, WSP
This item is for the Commission to receive and discuss information on the use of technology for traffic relief strategies.
- 11:15 a.m. – 11:30 a.m.** **UPDATE ON PUBLIC ENGAGEMENT FOR TRAFFIC RELIEF PLAN (AGENDA ITEM ATTACHED)**
Aaron Hake, External Affairs Director
This item is for the Commission to receive information regarding recent and upcoming public engagement for the Draft Traffic Relief Plan.
- 11:30 a.m. – 11:45 a.m.** **RECAP AND FINAL THOUGHTS**
Chair Ben J. Benoit
Anne Mayer, Executive Director

PUBLIC COMMENTS

ADJOURNMENT

RULES FOR PUBLIC COMMENTS ON AGENDA AND NON AGENDA ITEMS. Each individual speaker is limited to speak three (3) continuous minutes or less. The Commission may, either at the direction of the Chair or by majority vote of the Commission, 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. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Also, the Commission may terminate public comments if such comments become repetitious. Speakers may not yield their time to others without the consent of the Chair. Any written documents to be distributed or presented to the Commission shall be submitted to the Clerk of the Board. This policy applies to Public Comments and comments on Agenda Items.

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RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	January 31, 2020
TO:	Riverside County Transportation Commission
FROM:	Marlin Feenstra, Project Delivery director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Highway Technology Update

This item is for the Commission to receive and discuss information on the use of technology for traffic relief strategies.

BACKGROUND INFORMATION:

In November of 2019 staff presented to the Traffic Relief Strategy Committee information about technology-based strategies used by various agencies around the world to manage traffic (as seen in the photographic examples below), in order to reduce congestion, reduce pollution, increase safety, and improve the quality of commutes. This presentation by Darren Henderson of WSP will build on that introduction.



Example of lane control sign from the U.K.



Example of lane control sign from Contra Costa County, CA

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	January 31, 2020
TO:	Riverside County Transportation Commission
FROM:	Aaron Hake, External Affairs Director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Public Engagement Update for Draft Traffic Relief Plan

This item is for the Commission to receive information regarding recent and upcoming public engagement for the Draft Traffic Relief Plan.

BACKGROUND INFORMATION:

Following the Commission's approval of the Draft Traffic Relief Plan (draft Plan) for public review and comment on January 8, 2020, Commission staff initiated public engagement activities as authorized by the Commission. Initial results from these engagement activities are arriving. RCTC will present interim metrics to the Traffic Relief Strategy Committee from February through May 2020 and a final public engagement report to the Commission by June 2020. This item is a brief status report on general engagement trends.

At the time of agenda publication, the following has occurred:

- Members of the public submitted more than 1,900 surveys through trafficroeliefplan.org.
- There have been more than 12,500 visits to trafficroeliefplan.org.
- RCTC social media accounts have served ads to over 260,000 county residents encouraging them to learn more about the draft Plan, read the draft Plan itself, and provide feedback.
- Riverside County residents began to hear ads requesting public input on the draft Plan via streaming radio services.
- The *Press-Enterprise*, *Desert Sun*, and several local versions of the *Patch* news website have published articles about the draft Plan.
- The draft Plan is available in Spanish at trafficroeliefplan.org.
- RCTC staff has received requests for presentations from the cities of La Quinta and Norco, the California Desert Association of Realtors, and several transportation industry organizations.
- RCTC staff presented the draft Plan and other transportation updates to the Riverside City Council and staff of the Morongo Band of Mission Indians at their request.

Through June 10, 2020, public engagement efforts will continue and increase in reach pursuant to the enhanced public engagement program authorized by the Commission in 2019. As stated by Commissioners in prior meetings, engagement efforts are intended to educate and engage

residents of Riverside County regarding their transportation needs and soliciting their input on the draft Plan that the Commission has developed and will consider adopting in mid-2020. Commissioners are invited to refer staff to organizations and individuals within their communities who would benefit from a presentation of the draft Plan.

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
CONTRACT FOR
REMEDIAL WORK ON STATE ROUTE 91,
IN RIVERSIDE COUNTY**

1. PARTIES AND DATE.

This Contract is made and entered into this 1st day of November, 2019 by and between the Riverside County Transportation Commission, a public agency of the State of California (“Commission”) and Atkinson/Walsh, a joint venture (“Contractor”). Commission and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Contract.

2. RECITALS.

2.1 Commission. Commission is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the Commission on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing the type or remedial work identified in the attached Exhibit “A” to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of Commission. The following license classifications are required for this Project: “A” General Engineering Contractor.

2.3 Project. Commission desires to engage Contractor to render such services for Remedial Work on State Route 91, in Riverside County (“Project”) as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, , a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Scope of Work (Exhibit “A”)
- Contractor’s Certificate Regarding Workers’ Compensation (Exhibit “B”)
- Public Works Contractor Registration Certification (Exhibit “C”)
- Payment Bond (Exhibit “D”)
- Addenda
- Change Orders executed by the Commission
- 2018 Edition of the Caltrans Standard Specifications, and Revised Standard Specifications (Excluding Division 1)
- Manual for Uniform Traffic Control Devices (MUTCD) California edition

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees to furnish to the Commission all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"). All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the Commission. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within fourteen (14) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances.

3.3 Period of Performance. Contractor shall perform and complete all Work under this Contract within ninety (90) days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the Commission.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the Commission, any work necessary to correct defects which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the Commission to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the Commission, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. Commission retains Contractor on an independent contractor basis and Contractor is not an employee of Commission. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 Commission's Basic Obligation. Commission agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as

otherwise provided in the Contract, the Commission shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, Commission agrees to pay Contractor up to the total not to exceed amount of Five Hundred Thousand Dollars (\$500,000.00) ("Total Not to Exceed Amount"), in accordance with the terms of this Contract. Such amount may not be exceeded without written approval of the Commission's Executive Director, or designee, and an amendment to this Contract or written change order(s) approved and signed in advance by the Commission's Executive Director.

(a) *Method of Payment.* Contractor shall be paid on a time and materials basis.

(b) *Excluded Costs.* Contractor shall be paid for direct costs only, without any markups or overhead costs. Excluded markups or overhead costs include, but are not limited to:

1. Home office overhead
2. Field office overhead (including superintendent/general foreman)
3. Profit
4. Other fixed or administrative costs that are not costs of labor, equipment, or materials used in the direct performance of the Work.

(c) *Permitted Costs.* Contractor shall be entitled to bond and insurance costs, which shall not be considered excluded overhead costs.

3.7.2 Tracking Time & Materials Work. For Work paid on a time & materials basis, Commission's designated engineer ("Engineer") shall compare Commission's records to Contractor's daily Work report. When Contractor and the Engineer agree on the contents of the daily Work reports, the Engineer accepts the report and Commission pays for the Work, in accordance with the terms of this Contract. If the records differ, Commission pays for the Work based only on the information shown on Commission's records.

3.7.3 Payment of Compensation. Commission will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the Commission an itemized application for payment in the format supplied by, or a format acceptable to the Commission indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the Commission may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the Commission and in such detail and form as the Commission shall request, showing the quantities, unit prices, and all other allowable expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.4 Prompt Payment. Commission shall review and pay all progress payment requests within thirty (30) days of receipt of an approved invoice. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.5 Other Retentions. The Commission may deduct from each progress payment an amount necessary to protect Commission from loss because of: (1) any sums expended by the Commission in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (2) defective Work not remedied; (3) stop notices as allowed by state law; (4) unsatisfactory prosecution of the Work by Contractor; (5) unauthorized deviations from the Contract; (6) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Commission during the prosecution of the Work; (7) erroneous or false estimates by Contractor of the value of the Work performed; (8) any sums representing expenses, losses, or damages as determined by the Commission, incurred by the Commission for which Contractor is liable under the Contract; and (9) any other sums which the Commission is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the Commission to deduct any of these sums from a progress payment shall not constitute a waiver of the Commission's right to such sums.

3.7.6 [Reserved.]

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the Commission at the time of payment. To the extent that title has not previously been vested in the Commission by reason of payments, full title shall pass to the Commission at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the Commission, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish Commission with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by Commission.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$25,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlse/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the offices of the Commission. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall

post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. If the Contract value exceeds \$35,000 and if Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. If the Contract value exceeds \$25,000, Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. If the Contract value exceeds \$25,000, Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to Commission, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. If the Contract value exceeds \$25,000, then pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "C" prior to contract execution. Notwithstanding the foregoing, the

contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance: Stop Orders. If the Contract value exceeds \$25,000, Contractor acknowledges that it is aware that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Commission. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work: Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. To the extent applicable, Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through difference phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage Commission, or local agency regarding discharges of storm water to separate storm drain

systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the Commission and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, Commission may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. Commission reserves the right to defend any enforcement action brought against the Commission for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the Commission for the costs (including the Commission's attorney's fees) associated with, any settlement reached between the Commission and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by Commission, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, Commission will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the Commission in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Contractor shall be solely responsible for all costs arising therefrom. Commission is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of Commission are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold Commission, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing any permits and licenses necessary to perform the Work described herein, and not provided by Commission, including, but not limited to, any required business license. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Contract value exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for Commission's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify Commission of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by Commission; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, Commission shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify

Commission against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify Commission in writing and shall furnish all labor and material releases required by this Contract. Commission shall thereupon inspect the Work. If the Work is not acceptable to the Commission, the Commission shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the Commission. Once the Work is acceptable to Commission, Commission shall pay to Contractor the remaining sums to be paid, less any amount which Commission may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the Commission, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Commission. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than the date of final payment. The Claim shall be submitted in writing to the Commission and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format (to the extent such format and sections are applicable to the claim):

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 Commission's Response. Upon receipt of a claim pursuant to this Section, Commission shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If Commission needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, Commission shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, Commission may request in writing additional documentation supporting the claim or relating to defenses or claims Commission may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Commission and the Contractor.

3.10.4.3 Commission's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater

than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes Commission's written response, or Commission fails to respond within the time prescribed, the Contractor may so notify Commission, in writing, either within 15 days of receipt of Commission's response or within 15 days of Commission's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, Commission shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, Commission shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after Commission issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with Commission and the Contractor sharing the associated costs equally. Commission and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by Commission and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If, following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Commission. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the Commission. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. Commission's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. Commission's failure to respond shall not waive Commission's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by Commission. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the Commission may terminate this Contract pursuant to Section 3.17.3; provided, however, that the Commission needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Commission, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the Commission or the Commission's agents, servants, or independent contractors who are directly responsible to the Commission, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Commission's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against Commission or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse Commission for the cost of any settlement paid by Commission or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Commission's attorney's fees and costs, including expert witness fees. Contractor shall reimburse Commission and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Commission, its officials, employees, agents and authorized volunteers.

3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Commission that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Commission that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Commission to terminate this Contract for cause.

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

3.13.2.1 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 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$5,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$5,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the Commission to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the Commission, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the Commission, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the Commission, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the Commission, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the Commission, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 All Coverages.

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Commission; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds; No Special Limitations.

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Commission, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the Commission. Contractor shall guarantee that, at the option of the Commission, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Commission, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the Commission guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the Commission. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage.

Contractor shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by this Contract 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, and shall be on forms supplied or approved by the Commission. All certificates and endorsements must be received and approved by the Commission before work commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13.8 Subcontractors.

All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the Commission, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the Commission in writing.

3.13.9 Reporting of Claims.

Contractor shall report to the Commission, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by Commission in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Commission concurrently with this Contract a Payment Bond in an amount required by the Commission and in a form provided or approved by the Commission. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the Commission.

3.14.3 Bond Provisions. Should, in Commission's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from Commission. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the Commission, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the Commission. To the extent, if any, that the Total Not to Exceed Amount is increased in accordance with the Contract, Contractor shall, upon request of the Commission, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Commission. If Contractor fails to furnish any required bond, the Commission may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the Commission.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Commission of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the Commission in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Commission, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Commission by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Commission. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the Commission, the Commission shall have the right, after providing AWJV with 30 days advance written notice, to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Commission for any expenses incurred hereunder upon demand. AWJV shall have no responsibility for the design of the Remedial Work. AWJV's warranty obligations shall extend only to the Remedial Work performed under this Contract.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's 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 Work. A certification form for this purpose, which is attached to this Contract as Exhibit "B" and incorporated herein by reference, shall be executed simultaneously with this Contract.

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

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.17 General Provisions.

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

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the Commission ("Contractor's Representative"). Following approval by the Commission, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the Commission, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the Commission, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the Commission's written approval.

3.17.3 Termination. This Contract may be terminated by Commission at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by Commission for any reason other than the fault of Contractor, Commission shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, Commission may terminate the Contract immediately

without notice, may reduce payment to Contractor in the amount necessary to offset Commission's resulting damages, and may pursue any other available recourse against Contractor. . In the event this Contract is terminated in whole or in part as provided, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, Commission may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Intentionally Omitted

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the Commission all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the Commission tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:
Atkinson/Walsh a Joint Venture
18201 Von Karman Avenue
Suite 800
Irvine, CA 92612
Attn: Timothy Stroud

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

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of Commission. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, Commission may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

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

3.17.10 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Riverside, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

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

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

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

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

**SIGNATURE PAGE
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
CONTRACT FOR
REMEDIAL WORK ON STATE ROUTE 91,
IN RIVERSIDE COUNTY**

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

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

ATKINSON/WALSH, A JOINT VENTURE

By: _____
Anne Mayer
Executive Director

By:  _____
Its: Project Manager

Printed Name: Timothy Stroud

APPROVED AS TO FORM:

By: _____
General Counsel

EXHIBIT "A"

SCOPE OF REMEDIAL WORK

To be Determined by Project Staff

EXHIBIT "B"

**CERTIFICATION
LABOR CODE**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

Atkinson/Walsh, a joint venture

By:


Signature

Timothy Stroud
Name (Print)

Project Manager
Title (Print)

EXHIBIT "C"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/PublicWorks/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: ATKINSON/WALSH, a Joint Venture

DIR Registration Number: 1000012600

DIR Registration Expiration: 06/30/2021

Small Project Exemption: Yes or X No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor Atkinson/Walsh, a Joint Venture

Signature 

Name and Title Timothy Stroud, Project Manager

Dated 12-23-19

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT "D"

PAYMENT BOND

[attached behind this page]

Exhibit D

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Riverside County Transportation Commission (hereinafter designated as the "Commission"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

Remedial Work on State Route 91, In Riverside County (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Commission in the penal sum of Two Hundred Thousand Dollars (\$200,000) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or

Exhibit D

attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Commission and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
 Corporate Officer

_____ Title(s)

_____ Title or Type of Document

- Partner(s) Limited
 General

_____ Number of Pages

- Attorney-In-Fact
 Trustee(s)
 Guardian/Conservator
 Other:

_____ Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____ Signer(s) Other Than Named Above