

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	March 12, 2008
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Budget and Implementation Committee Michele Cisneros, Accounting and Human Resources Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreements with McGladrey and Pullen, LLP and Mayer Hoffman McCann P.C. for Audit Services for the Commission and for the Measure A Recipients/Transportation Development Act Claimants

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

This item is for the Commission to:

- 1) Award Agreement No. 08-19-075-00 to McGladrey and Pullen, LLP to perform audit services related to the Commission in the amount of \$363,950, plus a contingency amount of \$36,050 for additional services that may be required in connection with debt offerings and other transactions, for a total contract award of \$400,000;
- 2) Award Agreement No. 08-19-074-00 to Mayer Hoffman McCann P.C. to perform audit services related to the Commission's Measure A recipients/Transportation Development Act (TDA) claimants in the amount of \$589,218, plus a contingency amount of \$50,782 for additional services that may be required due to additional recipients or claimants to be audited, for a total contract award of \$640,000; and
- 3) Authorize the Chair, pursuant to legal counsel review, to execute the agreements on behalf of the Commission.

**BACKGROUND INFORMATION:**

The Commission's last request for proposal (RFP) for audit services was issued on January 22, 2003. The Commission approved the selection of McGladrey and Pullen, LLP to perform audit services for the Commission and Caporicci and Larson to perform the audit services for the Measure A recipients/TDA claimants. The term limits on the five-year contract for McGladrey and Pullen, LLP and Caporicci and Larson expired with the conclusion of the FY 2006/07 audits.

On January 9, 2008, the Commission's Audit Ad Hoc Committee met with the Commission's current auditor, McGladrey and Pullen, LLP to review the audit results for FY 2006/07. At that time, the Audit Ad Hoc Committee was informed

by staff that the FY 2006/07 was the last engagement under the contract for McGladrey and Pullen, LLP and that the Commission would be releasing an RFP for audit services. During the discussion of required communications to the Audit Ad Hoc Committee, McGladrey and Pullen, LLP identified new auditing standards that would be effective for the FY 2007/08 audit. These new auditing standards known as "Risk Assessment Standards" require the auditors to obtain a more robust understanding of their clients' operations, business objectives, and processes for identifying and managing the risks inherent in achieving those objectives. The standards require that auditors develop a deeper understanding of their clients' internal controls and perform more thorough assessments of the risks of material misstatements of financial statements.

On December 5, 2007, the Commission released two RFPs for audits services: the Commission and the Measure A/TDA. The RFPs were distributed by mail to 24 audit firms and was posted on the Commission's website. The Calendar of Events was as follows:

**Calendar of Events**

Distribution of RFP	December 5, 2007
Proposals were Delivered to the Commission by 2 p.m.	January 14, 2008
Evaluation Committee's Review of Proposals	January 24, 2008
Interview of Firms	February 7, 2008
Staff Recommendation to Committee	February 25, 2008
Staff Recommendation to Commission	March 12, 2008

**Selection Process**

The Commission received three proposals for the Commission's audit services and two proposals for the Measure A/TDA audit services. Selection panels for each RFP were assembled: three representatives from the Commission and a representative from the Orange County Transportation Authority for the Commission's audit services; three representatives from the Commission and a representative from SunLine Transit Agency for the Measure A/TDA audit services. The selection panels reviewed the proposals in accordance with the criteria provided in the RFPs and the Commission's procurement procedures. After the reviews the panel recommended to interview all three firms.

The RFP evaluation criteria were based on the following:

<b>Criteria</b>	<b>Commission Audit %</b>	<b>Measure A and TDA Recipient Audit %</b>
Qualifications of the Consultant	30%	30%
Staffing and Project Organization	25%	20%
Work Plan	30%	30%
Cost and Price	10%	15%
Completeness of Response	5%	5%

After the interviews, the panel ranked the firms as follows with an indication of the proposed audit fees for the three-year contract term:

<b>Auditing Firm</b>	<b>Interview Ranking</b>	<b>Commission Audit Fee</b>
McGladrey & Pullen, LLP	1	\$ 363,950
Mayer Hoffman McCann P.C.	2	320,908
Vavrinek, Trine, Day & Co, LLP	3	309,146

<b>Auditing Firm</b>	<b>Interview Ranking</b>	<b>Measure A Recipient and TDA Claimant Audit Fee</b>
Mayer Hoffman McCann P.C.	1	\$ 589,218
Vavrinek, Trine, Day & Co, LLP	2	1,051,700

Upon completion of the interviews, the evaluation panels unanimously recommended selecting McGladrey and Pullen, LLP to conduct the Commission's audit and Mayer Hoffman McCann P.C. to conduct the Measure A/TDA audits for three-year contract terms with two one-year options. At this time, staff is negotiating the terms and cost with the firms and expects to bring final contracts to the Commission meeting. Additionally, after a discussion, the evaluation panels concurred that it was in the Commission's best interest to continue with the practice of separate firms responsible the Commission and the Measure A/TDA audit services.

While McGladrey and Pullen, LLP's cost proposal was slightly higher than the other two firms, the evaluation criteria only weighted the cost criteria at 10% and the cost was comparable to that charged for the FY 2006/07 audit. Due to the required implementation of the new "Risk Assessment Standards" noted above, the Commission audit evaluation panel determined that the transition cost to a new firm and the impact on Commission staff resources would likely be greater than any savings in audit fees. Additionally, the Commission's current bond indenture requires us to obtain a report and opinion of a nationally recognized public accounting firm, such as McGladrey and Pullen, LLP, stating that the financial

statements have been prepared in accordance with generally accepted accounting principles and that such accountant's examination of the financial statements was performed in accordance with generally accepted auditing standards. Finally, McGladrey and Pullen, LLP is located in Riverside about one block from the Commission's office.

Mayer Hoffman McCann P.C. proposed on both the Commission's audit and the Measure A/TDA audits. While the evaluation panels were impressed by both proposals and presentations and felt that Mayer Hoffman McCann P.C. was qualified to perform both audit services, its understanding of the scope and requirements related to the Measure A/TDA audit services was outstanding. Furthermore, its cost proposal for the Measure A/TDA audit services was comparable to the fees for the FY 2006/07 services by Caporicci and Larson. Accordingly, the evaluation panel felt that Mayer Hoffman McCann P.C. would be better utilized as the Measure A/TDA auditor.

Based on the results of the evaluation process for the required audit services, staff recommends approval of these two audit firms. The FY 2007/08 budget for audit services expenditures is adequate, and no budget adjustment is required.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2007/08 FY 2008/09 +	Amount:	\$50,000 \$903,168
Source of Funds:	Measure A, LTF, FSP, SAFE			Budget Adjustment:	No N/A
GLA No.:	S 19 65401 P1001 01 \$363,950 S 19 65401 P1001 02 \$589,218				
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	02/14/2008

Attachments:

- 1) Mayer Hoffman McCann P.C. Agreement No. 08-19-074-00
- 2) McGladrey and Pullen, LLP Agreement No. 08-19-075-00

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT FOR MEASURE A RECIPIENT AND TRANSPORTATION  
DEVELOPMENT ACT CLAIMANT AUDIT AND RELATED SERVICES  
WITH MAYER HOFFMAN MCCANN P.C.**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2008, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and Mayer Hoffman McCann P.C. ("Consultant"), a professional corporation.

**2. RECITALS.**

2.1 Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing audit services to public sector clients, is licensed in the State of California, and is familiar with the plans of Commission.

2.2 Commission desires to engage Consultant to render certain consulting services for the Measure A recipient and Transportation Development Act claimants ("Project") as set forth herein.

**3. TERMS.**

3.1 General Scope of Services. Consultant promises and agrees to furnish to Commission all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide professional consulting services and advice on various issues affecting the decisions of Commission regarding the Project and on other programs and matters affecting Commission, hereinafter referred to as "Services". The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall be from April 1, 2008 to March 31, 2011, with an option of performing audit and other services for two additional one-year periods through March 31, 2013, 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.

3.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with a schedule to be mutually agreed upon by both parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.4 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant under its supervision. Consultant will determine the means, method and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and Consultant is not an employee of 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 not be employees of Commission and 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 under this Agreement and as required by law. Consultant 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.

3.5 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Commission.

3.6 Substitution of Key Personnel. Consultant has represented to 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 and experience upon written approval of Commission. In the event that Commission and Consultant cannot agree as to the substitution of key personnel, Commission shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.16 of this Agreement. The key personnel for performance of this Agreement are as follows: Marcus D. Davis, shareholder, and Sam Perera, Manager.

3.7 Commission's Representative. Commission hereby designates Chief Financial Officer, or his or her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's representative shall have

the power to act on behalf of Commission for all purposes under this Agreement. Consultant shall not accept direction from any person other than Commission's Representative or his or her designee.

3.8 Consultant's Representative. Consultant hereby designates Marcus D. Davis, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.9 Coordination of Services. Consultant agrees to work closely with Commission staff in the performance of Services and shall be available to Commission's staff, consultants and other staff at all reasonable times.

3.10 Standard of Care; Licenses. Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from 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.

3.11 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. 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 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.

### 3.12 Insurance.

3.12.1 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 addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.12.2 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); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, 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.

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

3.12.3 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. Such insurance shall be in an amount not less than \$1,000,000 per claim.

3.12.4 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. The general liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations



performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

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

(C) Workers' Compensation and Employers Liability Coverage. 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. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Commission; and, (B) 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 directors, officials, officers, employees and agents.

3.12.5 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 expenses.

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

3.12.7 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.

3.13 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.

### 3.14 Fees and Payment.

3.14.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto. The total compensation shall not exceed **five hundred eighty-nine thousand two hundred eighteen (\$589,218)** without written approval of Commission's Executive Director ("Total Compensation"). Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.14.2 Payment of Compensation. Consultant shall submit to Commission a monthly statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Commission shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.14.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Commission.

3.14.4 Extra Work. At any time during the term of this Agreement, Commission may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Commission to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be

necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Commission's Executive Director.

3.15 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Commission during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.16 Termination of Agreement.

3.16.1 Grounds for Termination. Commission may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated only for those services which have been fully and adequately rendered to Commission through the effective date of the termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.16.2 Effect of Termination. If this Agreement is terminated as provided herein, Commission may require Consultant to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.16.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

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

**CONSULTANT:**  
Mayer Hoffman McCann P.C.  
2301 Dupont Drive  
Suite 200  
Irvine, CA 92612  
Attn: Marcus D. Davis, CPA

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

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

### 3.18 Ownership of Materials/Confidentiality.

3.18.1 Audit Reports. All final and draft, if any, audit reports, and exhibits thereto, fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of Consultant under this Agreement (“Audit Reports”) shall become the property of Commission upon the completion of the term of this Agreement. Consultant shall have the right to retain copies of all such Audit Reports for its records but may not use any such Audit Reports other than in the performance of services under this Agreement without the separate written consent of the Executive Director of the Commission, unless otherwise required by federal or state law. All documents pertaining to Services under this Agreement, including audit workpapers, will be made available to Commission for viewing or copying upon request, during normal business hours. Notwithstanding the foregoing, in accordance with applicable state and federal guidelines, any audit workpapers of a proprietary nature will be available only for viewing and not for copying.

The working papers for this engagement are the property of the Consultant. However, other government audit staffs and the U.S. General Accounting Office may request access to the audit working papers. In that event, Consultant shall advise the Commission in writing that the regulator has requested access to (and possibly copies of the audit documentation and whether the Consultant intends to comply with such request. Any compliance with such request shall be in conformity with American Institute of Certified Public Accountants Professional Standards, particularly AU Section 9339, as amended. Consultant shall maintain the working papers for a period of at least three years after the date of the issuance of the report, or for a longer period if Consultant is requested to do so by the cognizant or oversight agency. Access to requested workpapers will be provided under the supervision of the Consultant audit personnel and at a location designated by Consultant.

3.18.3 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 and all Audit Reports created by 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.

3.19 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.20 Attorney's Fees. 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 attorney's fees and costs of such actions.

3.21 Indemnification. Consultant shall defend, indemnify and hold Commission, its directors, officials, officers, employees, consultants, agents and volunteers 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 any 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 all consequential damages 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 or its directors, officials, officers, employees, consultants, agents and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its directors, officials, officers, employees, consultants, agents and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission and its directors, officials, officers, employees, consultants, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission or its directors, officials, officers, employees, consultants, agents and volunteers.

The indemnification language above shall apply except as to design professional services, as defined in Civil Code section 2782.8, including any architect, landscape architect, engineer or land surveyor services, provided pursuant to this Agreement. As to such Services, to the fullest extent permitted by law, Consultant shall defend, indemnify and hold Commission, its 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 any alleged negligence, recklessness, 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, including without limitation the payment of all 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 the Commission, its directors, officials, officers, agents, consultants, employees and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Commission or its directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse the Commission and its directors, officials, officers, agents, consultants, employees and 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 indemnity shall not be restricted to insurance proceeds, if any, received by the Commission or its directors, officials, officers, agents, consultants, employees and volunteers.

3.22 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.23 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

3.25 Commission's Right to Employ Other Consultants. The Commission reserves the right to employ other consultants in connection with this Project.

3.26 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.

3.27 Prohibited Interests.

3.27.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this

Agreement. For breach or violation of this warranty, Commission shall have the right to rescind this Agreement without liability.

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

3.28 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any 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. Consultant shall also comply with all relevant provisions of Commission's Disadvantaged Business Enterprise program, Affirmative Action Plan or other related Commission programs or guidelines currently in effect or hereinafter enacted.

3.29 Subcontracting. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of the Commission. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.30 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  
AGREEMENT FOR AUDIT SERVICES**

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

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**MAYER HOFFMAN MCCANN P.C.**

By: \_\_\_\_\_  
Jeff Stone  
Chairman

By: \_\_\_\_\_  
Marcus D. Davis  
Shareholder

*Approved as to Form:*

By: \_\_\_\_\_  
Best, Best & Krieger LLP  
General Counsel



## EXHIBIT "A"

### SCOPE OF SERVICES

#### A. General

The Commission is securing services from a Consultant to perform financial and compliance audits of the Commission's Transportation Development Act (TDA) claimants and agreed-upon procedures for the Commission's Measure A recipients for the fiscal years ending June 30, 2008, 2009, and 2010, with the options of performing such services for two (2) additional one-year terms.

The Consultant will be responsible for the audits and agreed-upon procedures for the jurisdictions presented in Section I.A. Abstract and report directly to the audit oversight committee designated by the Commission. The Chief Financial Officer is designated as the coordinator of the work and may appoint the Accounting and Human Resources Manager to coordinate day-to-day oversight. The Chief Financial Officer will serve as the liaison to the audit oversight committee designated by the Commission.

The audits are to be performed by the Consultant in accordance with generally accepted auditing standards, including use of the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO) *Government Auditing Standards*;
- The provisions of the federal Single Audit Act of 1984, the Single Audit Act Amendments of 1996, the U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*;
- Measure A conformance requirements; and
- Transportation Development Act regulations.

#### B. Scope of Work to be Performed

TDA funding is provided for transit operators (Article 4 and State Transit Assistance), bicycle and pedestrian projects (Article 3), and local streets and roads (Article 8), while Measure A funding is provided for local streets and roads and for specialized transit. Funding allocations are determined as follows:

- TDA Transit operating and capital allocations are approved annually by the Commission in July based on the submittal of each transit operators Short-Range Transit Plans. (Two of these transit operators, Riverside Transit Agency and city of Beaumont, have elected to engage their own auditors and are not included in the scope of services.)
- TDA bicycle and pedestrian project allocations are approved annually by the Commission in July based on a call for projects. Claimants may request

disbursement of their allocations by the Commission upon award of a construction contract or reimbursement request.

- TDA local streets and roads funding is allocated only to the Palo Verde Valley area (city of Blythe and County of Riverside for unincorporated area) after an unmet transit needs hearing is held in the Palo Verde Valley.
- Measure A local streets and roads funding is allocated to the cities and the county of Riverside, as specified in Measure A. (City of Beaumont is not included in scope of services as noted above.)
- Measure A specialized transit allocations are approved biennially by the Commission in May based on a call for projects.

The selected Consultant will be required to perform the following tasks:

- Audit of the transit (Article 4 and State Assistance funding) and transportation (Articles 3 and 8 funding) financial statements of the jurisdictions receiving TDA funds in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the California Code of Regulations Sections 6661 and 6751 (TDA). Apply certain limited procedures on the methods of measurement and presentation of the management discussion and analysis (MDA) and the required supplementary information (RSI) for SunLine Transit Agency (SunLine).
- Audit of SunLine to satisfy the requirements imposed by the Single Audit Act, as amended, and U.S. Office of Management and Budget (OMB) Circular A-133 and OMB's Compliance supplement titled *Uniform Requirements for Grants to State and Local Governments*, assuming a single major program.
- Performance of agreed-upon procedures similar to those performed for the Fiscal Year 2006/07 solely to assist the Commission in evaluating the applicable jurisdictions' Measure A Transportation Funds and degree of their compliance with the Commission's requirements of the Measure A local streets and roads program.
- Performance of agreed-upon procedures similar to those performed for the Fiscal Year 2006/07 solely to assist the Commission in evaluating the applicable jurisdictions'/agencies' Measure A Specialized Transit Funds and degree of their compliance with the Commission's requirements of the Measure A specialized transit program.
- Summarization of the results of the audits and agreed-upon procedures, including findings and observations, for discussion with audit oversight committee designated by the Commission.

### **C. Reports to be Issued**

Following completion of the audits and agreed-upon procedures and a review of the draft reports by the Commission, the Consultant shall issue:

- A Management Letter addressed to the SunLine for distribution to the Commission setting forth recommendations (as applicable) for improvements in SunLine's accounting systems. A draft of the management letter will be provided to the SunLine and the Commission's management for review prior to publication.
- A report on the fair presentation of the Financial Statements for the SunLine and the TDA claimants in conformity with generally accepted accounting principles.
- A report on the agreed-upon procedures related to the Measure A recipients of local streets and roads funding.
- A report on the agreed-upon procedures related to the Measure A recipients of specialized transit funding.
- A single audit report on SunLine's internal control and compliance with laws and regulations related to audit of the financial statements and federal awards. The report shall include the provisions of the *Government Auditing Standards* and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- A Board of Commissioners or equivalent letter as promulgated by the reporting standards of the *Government Auditing Standards*.

#### **D. Required Communications**

Significant Deficiencies – In the required reports on compliance and internal controls, the Consultant shall communicate any significant deficiencies found during the audit of the TDA claimants. A significant deficiency shall be defined as a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

Significant deficiencies that are also material weaknesses shall be identified as such in the report. Other control deficiencies discovered by the Consultant may be reported in a separate letter to management, which shall be referred to in the reports on compliance and internal controls, except that other control deficiencies discovered by the Consultant for SunLine shall be reported in a separate letter to management.

The report on compliance and internal controls shall include all material instances of noncompliance. All nonmaterial instances of noncompliance may be reported in a separate management letter, which shall be referred to in the report on compliance and internal controls, except that nonmaterial instances of noncompliance for SunLine shall be reported

in a separate letter to management.

Irregularities and illegal acts – The Consultant shall be required to make an immediate, written report of all irregularities and illegal acts or indication of illegal acts of which they become aware to the jurisdiction/agency and Commission’s audit oversight committee, Executive Director, and Chief Financial Officer.

Planning meetings – The Consultant shall meet with the audit oversight committee designated by the Commission at least once a year upon completion of the audits and agreed-upon procedures. The audit oversight committee will be informed of each of the following:

- 1) The Consultant’s responsibility under generally accepted auditing standards;
- 2) The Consultant’s approach to the work performed;
- 3) Disagreements with management;
- 4) Management consultation with other accountants;
- 5) Major issues discussed with management prior to retention;
- 6) Difficulties encountered in performing the work; and
- 7) Results of the work performed.

#### **E. Audit Schedule**

The work to be performed at the jurisdictions and agencies shall be arranged with the individual jurisdiction or agency after the conclusion of a planning meeting with the Commission and the Commission’s issuance of audit notification letters to each jurisdiction and agency. While some entities may be ready for the initiation of the work activities in August, the work should be scheduled for no later than November 15 of each year. Barring unforeseen circumstances, the Consultant must conduct the work activities and provide all required reports and information to the Commission no later than December 31 of each year. The TDA audits are required to be submitted to the State Controller by December 31 of each year; however, an extension may be granted by the Commission for no more than 90 days. The Commission’s policy for Measure A reports follows the TDA requirement; however, a formal extension is generally not issued. The Consultant shall keep the Commission apprised on the status of the audits and any issues which have been encountered. The Commission will provide assistance, to the extent necessary and/or possible, to resolve such issues.

**EXHIBIT "B"**

**COMPENSATION**

Fees, excluding travel costs, for audit services for the fiscal years ending June 30, 2008, 2009, 2010, 2011, and 2012 shall be the following:

Fiscal Year Ending June 30	
2008	\$ 190,390
2009	196,406
2010	202,422
2011	208,458
2012	214,594

Should the Commission require additional services by Consultant as a result of additional claimants or recipients, the fees for the fiscal year ending June 30, 2008 shall be \$2,850 for each additional Measure A local streets and roads and specialized transit recipient and \$3,455 for each additional TDA claimant. In subsequent years, the fees may be increased by no more than 5% each year.

Should the Commission require additional services by Consultant, the Consultant shall provide to the Commission the estimated fees for such services. The fees shall be based on the Consultant's hourly rates, which are fully loaded and include all overhead, as follows:

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Shareholder	\$ 140	\$ 144	\$ 148	\$ 152	\$ 157
Senior Manager	120	124	128	132	136
Manager	110	113	116	119	123
Senior Associate	95	98	101	104	107
Associate	85	88	91	94	97

Consultant shall not commence any additional services without the written authorization from the Commission's Executive Director.

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT FOR AUDIT SERVICES  
WITH MCGLADREY & PULLEN, LLP**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2008, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and McGladrey & Pullen LLP ("Consultant"), a limited liability partnership.

**2. RECITALS.**

2.1 Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing audit services to public sector clients, is licensed in the State of California, and is familiar with the plans of Commission.

2.2 Commission desires to engage Consultant to render certain consulting services for the audit services for the Commission ("Project") as set forth herein.

**3. TERMS.**

3.1 General Scope of Services. Consultant promises and agrees to furnish to Commission all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide professional consulting services and advice on various issues affecting the decisions of Commission regarding the Project and on other programs and matters affecting Commission, hereinafter referred to as "Services". The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall be from April 1, 2008 to March 31, 2011, with an option of performing audit and other services for two additional one-year periods through March 31, 2013, 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.

3.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with a schedule to be mutually agreed upon by both parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.4 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant under its supervision. Consultant will determine the means, method and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and Consultant is not an employee of 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 not be employees of Commission and 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 under this Agreement and as required by law. Consultant 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.

3.5 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Commission.

3.6 Substitution of Key Personnel. Consultant has represented to 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 and experience upon written approval of Commission. In the event that Commission and Consultant cannot agree as to the substitution of key personnel, Commission shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.16 of this Agreement. The key personnel for performance of this Agreement are as follows: Rod LeMond, Partner; Jeff Altshuler, Partner; Peter George, Manager; and Wendy Sullivan, Supervisor.

3.7 Commission's Representative. Commission hereby designates Chief Financial Officer, or his or her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's representative shall have the power to act on behalf of Commission for all purposes under this Agreement.

Consultant shall not accept direction from any person other than Commission's Representative or his or her designee.

3.8 Consultant's Representative. Consultant hereby designates Rod LeMond, or his or her designee, including Jeff Altshuler, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.9 Coordination of Services. Consultant agrees to work closely with Commission staff in the performance of Services and shall be available to Commission's staff, consultants and other staff at all reasonable times.

3.10 Standard of Care; Licenses. Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from 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.

3.11 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. 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 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.



### 3.12 Insurance.

3.12.1 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 addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.12.2 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); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, 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.

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

3.12.3 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. Such insurance shall be in an amount not less than \$1,000,000 per claim.

3.12.4 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. The general liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations

performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

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

(C) Workers' Compensation and Employers Liability Coverage. 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. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Commission; and, (B) 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 directors, officials, officers, employees and agents.

3.12.5 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 expenses.

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

3.12.7 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.

3.13 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.

### 3.14 Fees and Payment.

3.14.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto. The total compensation shall not exceed **three hundred sixty-three thousand nine hundred fifty (\$363,950)** without written approval of Commission's Executive Director ("Total Compensation"). Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.14.2 Payment of Compensation. Consultant shall submit to Commission a monthly statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Commission shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.14.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Commission.

3.14.4 Extra Work. At any time during the term of this Agreement, Commission may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Commission to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be

necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Commission's Executive Director.

3.15 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Commission during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.16 Termination of Agreement.

3.16.1 Grounds for Termination. Commission may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated only for those services which have been fully and adequately rendered to Commission through the effective date of the termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.16.2 Effect of Termination. If this Agreement is terminated as provided herein, Commission may require Consultant to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.16.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

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

**CONSULTANT:**  
McGladrey & Pullen, LLP  
3880 Lemon Street  
Suite 400  
Riverside, CA 92501  
Attn: Rod LeMond, Partner

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

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

### 3.18 Ownership of Materials/Confidentiality.

3.18.1 Audit Reports. All final and draft, if any, audit reports, and exhibits thereto, fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of Consultant under this Agreement (“Audit Reports”) shall become the property of Commission upon the completion of the term of this Agreement. Consultant shall have the right to retain copies of all such Audit Reports for its records but may not use any such Audit Reports other than in the performance of services under this Agreement without the separate written consent of the Executive Director of the Commission, unless otherwise required by federal or state law. All documents pertaining to Services under this Agreement, including audit workpapers, will be made available to Commission for viewing or copying upon request, during normal business hours. Notwithstanding the foregoing, in accordance with applicable state and federal guidelines, any audit workpapers of a proprietary nature will be available only for viewing and not for copying.

The working papers for this engagement are the property of the Consultant. However, other government audit staffs and the U.S. General Accounting Office may request access to the audit working papers. In that event, Consultant shall advise the Commission in writing that the regulator has requested access to (and possibly copies of the audit documentation and whether the Consultant intends to comply with such request. Any compliance with such request shall be in conformity with American Institute of Certified Public Accountants Professional Standards, particularly AU Section 9339, as amended. Consultant shall maintain the working papers for a period of at least three years after the date of the issuance of the report, or for a longer period if Consultant is requested to do so by the cognizant or oversight agency. Access to requested workpapers will be provided under the supervision of the Consultant audit personnel and at a location designated by Consultant.

3.18.2 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 and all Audit Reports created by 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.

3.19 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.20 Attorney's Fees. 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 attorney's fees and costs of such actions.

3.21 Indemnification. Consultant shall defend, indemnify and hold Commission, its directors, officials, officers, employees, consultants, agents and volunteers 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 any 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 all consequential damages 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 or its directors, officials, officers, employees, consultants, agents and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its directors, officials, officers, employees, consultants, agents and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse Commission and its directors, officials, officers, employees, consultants, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission or its directors, officials, officers, employees, consultants, agents and volunteers. In the event a court of competent jurisdiction enters a judgment finding the Commission liable and the Consultant not liable on any cause of action, Consultant shall be entitled to reimbursement from the Commission for all costs and expenses of indemnification under this paragraph incurred by Consultant to defend the Commission for those causes of action under which the Commission was found liable and the Consultant not liable.

3.22 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.23 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

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

3.25 Commission's Right to Employ Other Consultants. The Commission reserves the right to employ other consultants in connection with this Project.

3.26 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.

3.27 Prohibited Interests.

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

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

3.28 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any 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. Consultant shall also comply with all relevant provisions of Commission's Disadvantaged Business Enterprise program, Affirmative Action Plan or other related Commission programs or guidelines currently in effect or hereinafter enacted.

3.29 Subcontracting. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without

prior written approval of the Commission. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.30 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  
AGREEMENT FOR AUDIT SERVICES**

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

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**MCGLADREY & PULLEN, LLP**

By: \_\_\_\_\_  
Jeff Stone  
Chairman

By: \_\_\_\_\_  
Rod LeMond  
Partner

*Approved as to Form:*

By: \_\_\_\_\_  
Best, Best & Krieger LLP  
General Counsel

## EXHIBIT "A"

### SCOPE OF SERVICES

The Consultant will be responsible for the audit of the Commission's financial statements and report directly to the audit oversight committee designated by the Commission. The Accounting and Human Resources Manager is designated as the coordinator of the audit and may appoint the Accounting Supervisor to coordinate the day to day work; the Chief Financial Officer will serve as the liaison to the audit oversight committee designated by the Commission.

The audits are to be performed by the Consultant in accordance with generally accepted auditing standards, including use of the most current version of each of the following standards and guidelines:

- The standards set forth for financial audits in the General Accounting Office's (GAO) *Government Auditing Standards*;
- The provisions of the federal Single Audit Act of 1984, the Single Audit Act Amendments of 1996, the U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*;
- Measure A conformance requirements; and
- Transportation Development Act regulations.

#### **B. Scope of Work to be Performed**

The Commission desires to provide the public and its constituents with an annual comprehensive financial report that provides complete, accurate, and understandable information about the Commission's financial condition. The selected Consultant will be required to perform the following tasks:

- Audit of the Commission's basic financial statements in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Apply certain limited procedures on the methods of measurement and presentation of the management discussion and analysis (MDA) and the required supplementary information (RSI).
- Audit of the Riverside County Local Transportation Fund (LTF) in accordance with California Code of Regulations Section 6661.
- Audit of the Riverside County State Transit Assistance Fund (STAF) in accordance with California Code of Regulations Section 6751 for STAF.
- Audit to satisfy the requirements imposed by the Single Audit Act, as amended, and U.S. Office of Management and Budget (OMB) Circular A-133 and OMB's

Compliance supplement titled *Uniform Requirements for Grants to State and Local Governments*, assuming a single major program.

- Performance of procedures solely to assist the Commission in meeting the requirements of Section 1.5 as presented in the publication entitled *Agreed-upon Procedures Applied to the Appropriations Limitation Prescribed by Article XIII-B of the California Constitution*. The Commission's management is responsible for the Appropriations Limit Calculation.
- Performance of agreed upon procedures similar to those performed for the Fiscal Year 2006/07 solely to assist the Measure A Commuter Assistance Program administered by the Inland Transportation Services (ITS). Additional procedures may include: Review of script check orders, delivery, and storage; review procedures for non-delivered, lost, or stolen script.
- Completion of the Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations.
- Provision of consultation to the Commission regarding the Commission's participation in the Certificate Program, including advice concerning the early implementation of new authoritative pronouncements and implementation of financial reporting formats consistent with the Government Finance Officer's Association (GFOA).

In connection with the issuance of debt, the Commission may be required to obtain a report from Consultant on the amount of sales tax revenues received for a 12-month period compared to maximum annual debt service.

### **C. Reports to be Issued**

Following completion of the audit and preparation of the fiscal year's comprehensive financial statements and special purpose audits, the Consultant shall issue:

- A Management Letter addressed to the Commission setting forth recommendations (as applicable) for improvements in the Commission's accounting systems. A draft of the management letter will be provided to the Commission's management for review prior to publication.
- A report on the fair presentation of the Basic Financial Statements for the Commission in conformity with generally accepted accounting principles.
- A report on the fair presentation of the LTF financial statements in conformity with generally accepted accounting principles.
- A report on the fair presentation of the STAF financial statements in conformity with generally accepted accounting principles.

- A report on the compliance with the covenants and provisions of the Reimbursement Agreement with Bank of America relating to the Commercial Paper Notes (Limited Tax Bonds) Series A & B.
- A report on the agreed-upon procedures related to the Measure A Commuter Assistance Program administered by ITS.
- A report on the Appropriations Limit Calculation, as required by Article XIII-B of the California Constitution.
- A single audit report on the Commission's internal control and compliance with laws and regulations related to audit of the financial statements and federal awards. The report shall include the provisions of the *Government Auditing Standards* and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- A Board of Commissioners or equivalent letter as promulgated by the reporting standards of the *Government Auditing Standards*.

Use of or reference to audited financial statements – When delivered to the Commission, the audit reports and financial statements produced under this RFP are public records and will be used (a) to fulfill the requirements of continuing disclosure under SEC rule 15c2-12, (b) as inserts or incorporated by reference in offering documents issued by the Commission, and (c) for any lawful purpose of the Commission, all without subsequent consent, except for (b) as the Consultant shall conduct a post-audit review of the final audit report and review the draft official statement.

#### **D. Required Communications**

Significant Deficiencies – In the required reports on compliance and internal controls, the Consultant shall communicate any significant deficiencies found during the audit of the Commission. A significant deficiency shall be defined as a control deficiency, or combination of control deficiencies, that adversely affects the Commission's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Commission's financial statements that is more than inconsequential will not be prevented or detected by the Commission's internal control.

Significant deficiencies that are also material weaknesses shall be identified as such in the report. Other control deficiencies discovered by the Consultant shall be reported in a separate letter to management, which shall be referred to in the reports on compliance and internal controls.

The report on compliance and internal controls shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance and

internal controls.

Irregularities and illegal acts – The Consultant shall be required to make an immediate, written report of all irregularities and illegal acts or indication of illegal acts of which they become aware to the Commission’s audit oversight committee, Executive Director, and Chief Financial Officer.

Planning meetings – The Consultant shall meet with the audit oversight committee designated by the Commission at least once a year upon completion of the audit. The audit oversight committee will be informed of each of the following:

- 1) The Consultant’s responsibility under generally accepted auditing standards;
- 2) Significant accounting policies;
- 3) Management judgments and accounting estimates;
- 4) Significant audit adjustments;
- 5) Other information in documents containing audited financial statements;
- 6) Disagreements with management;
- 7) Management consultation with other accountants;
- 8) Major issues discussed with management prior to retention; and
- 9) Difficulties encountered in performing the audit.

#### **E. Audit Schedule**

The Commission shall provide draft financial statements for the initiation of audit activities no later than October 1 of each year. Barring unforeseen circumstances, the Consultant must conduct the audit activities and provide all required reports and information to the Commission no later than November 1 of each year.

## EXHIBIT "B"

### COMPENSATION

All-inclusive maximum fees for audit services for the fiscal years ending June 30, 2008, 2009 and 2010 shall be the following:

	FY 2008	FY 2009	FY 2010
Audit of Commission's basic financial statements	\$ 52,630	\$ 55,250	\$ 58,000
Single Audit	24,310	25,525	26,800
Audit of Local Transportation Fund	13,375	14,000	14,725
Audit of State Transit Assistance Fund	10,335	10,850	11,375
Proposition 111 Agreed-upon Procedures	2,625	2,750	2,900
Opinion in connection with Reimbursement Agreement covenants	1,575	1,650	1,725
Measure A Commuter Assistance Agreed-Upon Procedures	10,650	11,175	11,725
Total All-inclusive Maximum Price	\$ 115,500	\$ 121,200	\$ 127,250

For each of the option years (FY 2011 and FY 2012), the total all-inclusive maximum price may be adjusted, upon Commission approval, by no more than 5%.

Should the Commission require additional services by Consultant, the Consultant shall provide to the Commission the estimated fees for such services. The fees shall be based on the Consultant's hourly rates, which are fully loaded and include all overhead, as follows:

	FY 2008	FY 2009	FY 2010
Partner	\$ 310	\$ 325	\$ 342
Manager	212	222	233
Supervisory Staff	132	138	145
Staff	109	114	120
Other (clerical support)	90	93	98

Consultant shall not commence any additional services without the written authorization from the Commission's Executive Director.

For each of the option years (FY 2011 and FY 2012), the hourly rates may be adjusted, upon Commission approval, by no more than 5%.

Should the Commission require the inclusion of the auditor's report in the official statement of new debt issues or require a report on the amount of sales tax revenues received for a 12-month period compared to maximum annual debt service, additional charges for these efforts shall range from \$8,000 to \$13,500 for each new debt issue.