

| <i>RIVERSIDE COUNTY TRANSPORTATION COMMISSION</i> | |
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| DATE: | June 8, 2011 |
| TO: | Riverside County Transportation Commission |
| FROM: | Western Riverside County Programs and Projects Committee Greg Moore, Procurement and Assets Manager |
| THROUGH: | Anne Mayer, Executive Director |
| SUBJECT: | Agreements with C.T. Georgiou Painting Co., Brock Service California, and U.S. National Corporation to Provide On-Call Painting Services for Commission-Owned Commuter Rail Stations |

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Award the following agreements to provide on-call painting services for a three-year term, and two one-year options to extend the agreements, in an amount not to exceed an aggregate value of \$750,000;
 - a) Agreement No. 11-24-056-00 with C.T. Georgiou Painting Co.;
 - b) Agreement No. 11-24-112-00 with Brock Service California; and
 - c) Agreement No. 11-24-113-00 with U.S. National Corporation;
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreements, including option years, on behalf of the Commission; and
- 3) Authorize the Executive Director to execute task orders awarded to contractors under the terms of the agreements.

BACKGROUND INFORMATION:

The Commission owns and operates five Metrolink commuter rail stations in Riverside County (Downtown Riverside, La Sierra, North Main Corona, Pedley, and West Corona) with plans to add up to four additional stations with the completion of the Perris Valley Line extension project. Station maintenance services are essential to provide clean, safe, and well-maintained facilities for the benefit of station patrons, as well as preserving the property investments of the Commission.

The Commission requires the services of up to three qualified painting contractors to provide on-call painting services for Commission-owned stations, properties, fixtures, and appurtenances, including station canopies, light standards, bollards fencing, platforms, and signage. The on-call painting services would be utilized on

an as-needed basis, and priced based upon fixed labor rates and materials markup proposed by the successful proposers. Staff sought a competitive solution to satisfy its requirements.

Procurement Process

Staff determined the weighted factor method of source selection to be the most appropriate for this procurement, as it allows the Commission to identify the most advantageous proposals with price and technical factors considered. Non-price, technical factors include elements such as experience, qualifications, personnel, and a proposer's ability to respond to the requirements set forth under the terms of Request for Proposals (RFP) No. 11-24-056-00.

RFP No. 11-24-056-00 was released by staff and advertised on February 17. A pre-proposal conference was conducted on March 2, and staff responded to all requests for clarifications submitted by potential proposers. Six firms:

- U.S. National Corp.
- A.J. Fistes Corporation
- B/C Star Painting Co.
- Brock Service California, Inc.
- C.T. Georgiou Painting Co.
- Vizion's West, Inc.

submitted a responsive proposal prior to the stated deadline date. One of these firms was eliminated from further consideration because its proposal was deemed non-responsive based on the minimum requirements set forth in the RFP. Additionally, one firm was omitted from the competitive process entirely for submitting a late proposal.

The remaining firms' proposals were evaluated and scored by an evaluation committee comprised of Commission staff. Scoring was based entirely upon the evaluation criteria set forth in the RFP. The firms, in descending order, ranked as follows:

- 1) C.T. Georgiou Painting Co.
- 2) Brock Service California, Inc.
- 3) U.S. National Corp.
- 4) Vizion's West, Inc.
- 5) B/C Star Painting Co.

Since the Commission reserved the right to award a contract to up to three firms under the terms of the RFP, the evaluation committee recommends a contract award to the three firms earning the highest total evaluation scores: C.T. Georgiou Painting Co.; Brock Service California, Inc.; and U.S. National Corp.

The recommended firms' labor rates were considered fair and reasonable based upon adequate price competition under the above referenced procurement process, and staff evaluation of historical costs paid by the Commission for the same or similar services. The recommended awardees offered the most advantageous combination of pricing, experience, and relevant qualifications. It will be the responsibility of staff to select the proper contractor for individual task orders awarded under the agreements, and monitor the selected contractor's work to ensure services are completed in a professional and cost-effective manner. Adequate management and cost control will be a priority in ensuring the overall value of all the contracts will be kept under the stated not to exceed amount.

Funding

In the FY 2011/12 budget to be approved in June 2011, \$150,000 in Local Transportation Fund (LTF) funds is budgeted for on-call painting services, and a similar budget amount is anticipated for each of the subsequent years included in the period of performance. The multiple award, on-call, task order type contracts do not guarantee work to any of the awardees; therefore, no funds are guaranteed to any consultant. Services will be provided through the Commission's issuance of contract task orders to the contractors on an as-needed basis. The successful contractors will be selected for specific tasks based on their respective workload, price, availability, and expertise. The Commission's standard form professional services agreement, in substantially the form attached hereto, will be entered into with the contractors subject to any changes approved by the Executive Director, and pursuant to legal counsel review.

| Financial Information | | | | | |
|-----------------------------|--|-------|----------------------------|--------------------|------------------------|
| In Fiscal Year Budget: | N/A N/A | Year: | FY 2011/12 FY 2012/13 + | Amount: | \$150,000 \$600,000 |
| Source of Funds: | LTF | | | Budget Adjustment: | N/A N/A |
| GL/Project Accounting No.: | 244001 73304 00000 0000 103 24 73301 244002 73304 00000 0000 103 24 73301 244003 73304 00000 0000 103 24 73301 244004 73304 00000 0000 103 24 73301 244006 73304 00000 0000 103 24 73301 | | | | |
| Fiscal Procedures Approved: | <i>Theresa Irujo</i> | | | Date: | 05/15/11 |

Attachment: Standard Form Professional Services Agreement

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT FOR ON-CALL PAINTING SERVICES
WITH CONTRACTOR**

1. PARTIES AND DATE.

This Agreement is made and entered into this [] day of [], 201[], by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and [NAME OF FIRM] ("Consultant"), a [LEGAL STATUS OF CONSULTANT e.g., 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 and in the task order(s) to be issued pursuant to this Agreement and executed by the Commission and Consultant ("Task Order"). Consultant represents that it is a professional consultant, experienced in providing on-call [INSERT TYPE OF SERVICES] services to public 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 [INSERT TYPE OF SERVICES] services, on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein (each such project shall be designated a "Project" under this Agreement).

2.3 A source of funding for payment for professional services provided under this Agreement may include federal funds from the United States Department of Transportation. This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibits "D" and "E" attached hereto and incorporated herein by reference, are executed and incorporated in this Agreement.

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, on an on-call basis, as 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 types of Services to be provided are generally described in Exhibit "A" attached hereto and incorporated herein by

reference. The Services shall be more particularly described in the individual Task Order issued by the Commission's Executive Director or designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall be from [REDACTED] to [REDACTED], 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 set forth in the Task Order.

3.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant will be required to commence work within five days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, the Commission shall respond to Consultant's submittals in a timely manner. Upon the Commission's request, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant 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: **[INSERT NAME]**.

3.7 Commission's Representative. Commission hereby designates the **[INSERT NAME OR TITLE]**, 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 **[INSERT NAME]**, 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 and as described in the relevant Task Order.

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. **[INCLUDE ONLY IF APPLICABLE - DELETE OTHERWISE]** 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 **[INCREASE IF NECESSARY - OTHERWISE LEAVE AS IS AND DELETE THIS NOTE]** 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. **IF THERE IS A MAXIMUM COMPENSATION AMOUNT TO BE PROVIDED IN THE AGREEMENT, INCLUDING ANY TASK ORDERS, INSERT THE FOLLOWING LANGUAGE:** 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 maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation to be provided under this Agreement, in the aggregate, shall not exceed **[INSERT WRITTEN DOLLAR AMOUNT] [INSERT NUMERICAL DOLLAR AMOUNT]** ("Total Compensation") without written approval of the Commission's Executive Director. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

IF THERE IS NOT A MAXIMUM COMPENSATION AMOUNT TO BE PROVIDED IN THE AGREEMENT, THEN INSERT THE FOLLOWING LANGUAGE:

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 per Task Order shall be set forth in the relevant Task Order, and shall not exceed said amount without written approval of the Commission's Executive Director. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

NOTE: USE ONLY THE APPLICABLE PROVISION AND DELETE THE OTHER.

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:

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COMMISSION:

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

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

3.18 Ownership of Materials/Confidentiality.

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

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

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

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

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

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

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

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

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

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 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 Prevailing Wages. By its execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The Commission shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.31 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race,

creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

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

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

3.32 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.

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

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT FOR ON-CALL [DESCRIPTION OF SERVICES] SERVICES WITH
[INSERT CONSULTANT]**

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

[INSERT CONSULTANT]

By: _____
Gregory S. Pettis, Chair

Signature

Name

Title

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger LLP
General Counsel

EXHIBIT "A"
SCOPE OF SERVICES

On-Call and As-Needed [INSERT DESCRIPTION OF SERVICES] Services

Such [INSERT DESCRIPTION OF SERVICES] services may include, but are not limited to, the following work activities:

[INSERT SERVICES]

EXHIBIT "B"
COMPENSATION

[INSERT]

EXHIBIT "C"

Sample Task Order Form

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

TASK ORDER

Task Order No. _____

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

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

List any attachments: (Please provide if any.)

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

Completion Date: _____, 200__

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

Riverside County Transportation Commission

Consultant

Dated:_____

Dated:_____

By: _____
Anne Mayer, Executive Director

By: _____

EXHIBIT "D"

CERTIFICATE OF CONSULTANT

I HEREBY CERTIFY that I am the _____ and duly authorized representative of the firm of _____ whose address is _____, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

By:

Signature

Name

Title

Date

EXHIBIT "E"

CERTIFICATE OF COMMISSION

I HEREBY CERTIFY that I am the _____ of the RIVERSIDE COUNTY TRANSPORTATION COMMISSION, and that the consulting firm of _____ or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person; or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

By:

Signature

Name

Title

Date