

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	July 14, 2010
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects Committee Edda Rosso, Capital Projects Manager Richard Bryan, Bechtel Rail Projects Manager Erik Galloway, Bechtel Project Coordinator
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreement with HDR Engineering Inc. for Construction Management Services for the Perris Valley Line Project

**WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:**

This item is for the Commission to:

- 1) Award Agreement No. 10-31-058-00 to HDR Engineering Inc. (HDR), to provide construction management (CM) services for the Perris Valley Line (PVL) project for a base amount of \$15,950,146, plus a contingency amount of \$1.6 million, for a total not to exceed amount of \$17,550,146;
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;
- 3) Authorize the Executive Director to approve contingency work as may be required for the project; and
- 4) Authorize the Executive Director, pursuant to legal counsel review, to execute related utility and other local agency agreements necessary for the design and construction of the project.

**BACKGROUND INFORMATION:**

The PVL Metrolink extension continues to be one of the Commission's top priorities. The PVL project was included in both Measure A expenditure plans and has received significant approvals and funding from the Federal Transit Administration (FTA) and Congress, which appropriated \$75 million for the project. Most importantly, the project offers an important opportunity for renewed transportation investment that establishes a strong transit backbone for Western Riverside County while offering an alternative to vehicular travel on Interstate 215.

At its September 12, 2007 meeting, the Commission awarded an agreement to STV Inc. (STV) to provide planning, environmental, and preliminary engineering services for the PVL. STV completed the preliminary engineering phase of its services on June 1, 2009, with the submittal of the 30% design deliverable.

At its May 13, 2009 meeting, the Commission approved an amendment to STV's agreement for advanced preliminary engineering, final design, support for procurement of construction materials, and design support during construction of the PVL. In addition, the Commission approved the development of a federal supplemental environmental assessment (SEA) and an environmental impact report (EIR) for the PVL project.

On April 5, 2010, the draft EIR was issued for public comment. Public hearings were held on April 14 and 22 and May 17, and the public comment period closed on May 24, 2010. Once the EIR and SEA are finalized and the finding of no significant impact and notice of determination are issued and approval is received from FTA in the form of a project construction grant agreement, the Commission can commence with final design and start construction of the project, respectively. It is anticipated that when the project receives environmental approval, the project will be advertised for construction in early 2011.

Prior to advertisement of the project for construction, staff plans to establish an agreement with a qualified CM consultant to perform the following tasks:

### **Phase I: Preconstruction**

- Develop a number of required manuals and plans (i.e. CM procedures manual and safety program, QA/QC audit plan, environmental control plan, project control plan, project procedures manual);
- Perform a constructability and design review of the preliminary and final plans and estimate;
- Develop a constructability analysis report that will include construction phasing plan and project master schedule; and
- Assist in the prequalification of potential construction contractors, and support the bid/award process.

### **Phase II: Construction**

- Perform all CM duties;
- Coordinate flagging: Schedule Southern California Regional Rail Authority (SCRRA) flagging, assign watch persons for protection of workers and equipment under CM purview, assure that all CM field personnel complete, and stay current with freight railroad safety training; and
- Conduct systems inspection, testing, commissioning, and start-up.

### **Phase III: Post Construction**

- Perform contract close-out duties;
- Monitor and track warranties; and
- Coordinate station turn over to Commission and its maintenance contractors.

The phasing of CM services is the preferred practice on large infrastructure projects and many of the pre-construction phase services are specifically required by FTA.

FTA will only allow a notice to proceed (NTP) for the pre-construction phase services prior to environmental clearance; however, staff has negotiated the complete scope of work for all phases of the project. The scope, cost, and schedule has been broken up to reflect the phasing of the project and to allow NTP's to be issued for the separate phases.

### **Selection Process**

A request for qualifications for construction management services for the PVL project was issued on January 14, 2010, and a pre-submittal conference was held on February 2, to present the project and answer any questions for the interested parties. Five consultants' statements of qualifications (SOQ) were submitted prior to the March 25 deadline.

An evaluation committee was appointed to review the five submitted SOQ's received and to conduct interviews of the short listed firms. The evaluation committee members included two representatives from the Commission staff, and one representative each from Bechtel, SCRRA, and Burlington Northern Santa Fe Railway. After evaluation of the SOQ's by the evaluation committee, three firms were short listed and notified on April 22, 2010, that they would be interviewed. The firms included:

- HDR Engineering, Inc.
- Hill International, Inc.
- PB Americas, Inc.

Interviews of firms were conducted on May 12, and HDR was selected by the evaluation committee as the most qualified consultant.

Commission staff has negotiated with HDR to ensure their rates and fees are comparable to other consultants for similar types of work and that the costs reflect the current economic conditions. The contract has been negotiated consistent with requirements for federal funding participation. In the course of the negotiations,

the consultant agreed to the following reductions: Fee from 10% to 8%, escalation allowance from 4% to 2% and markup on subcontractors from 5% to 3%. In addition, the consultant has represented a 10.74% commitment to Disadvantaged Business Enterprises (DBE) program.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2010/11	Amount:	\$1,800,000
	No		FY 2010/11		\$3,057,680
	N/A		FY 2011/12		\$9,500,000
	N/A		FY 2012/13		\$3,192,466
Source of Funds:	Measure A Rail Funds, FTA 5307		Budget Adjustment:	Yes - \$3,057,680	
GL/Project Accounting No.:	003800 81302 221 33 81301 - \$1,146,200 003823 81302 221 33 81301 - \$16,403,946				
Fiscal Procedures Approved:	<i>Sherissa Iervino</i>			Date:	07/06/10

Attachment: Agreement with HDR

**PROFESSIONAL SERVICES AGREEMENT  
WITH FEDERAL TRANSIT ADMINISTRATION ASSISTANCE**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
AGREEMENT WITH  
HDR CONSTRUCTION CONTROL CORPORATION  
FOR  
CONSTRUCTION MANAGEMENT, MATERIALS TESTING AND CONSTRUCTION  
SERVEYING SERVICES  
FOR THE  
PERRIS VALLEY LINE METROLINK IMPROVEMENT PROJECT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (“the Commission”) and HDR CONSTRUCTION CONTROL CORPORATION (“Consultant”), a Nevada corporation.

**2. RECITALS.**

2.1 On November 8, 1988, the voters of Riverside County approved Measure A authorizing the collection of a one-half percent (½%) retail transactions and use tax to fund transportation programs and improvements within the County of Riverside, and adopting the Riverside County Transportation Improvement Plan (the “Plan”).

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

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

2.4 A source of funding for payment for professional services provided under this Agreement is federal funds from the Federal Transit Administration (“FTA”). This Agreement shall not be deemed to be approved by the Commission until the certifications shown in Exhibits “E” and “F,” attached hereto and incorporated herein by reference, are executed.

2.5 Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **construction management, materials testing, and construction surveying services** to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

2.6 The Commission desires to engage Consultant to render such services for the **Perris Valley Line Metrolink Improvement Project** ("Project"), as set forth in this Agreement.

2.7 The Commission intends to authorize performance of the Services, as that term is defined in this Agreement, in at least two Notices-to-Proceed ("NTP") identified as follows: Pre-Construction Phase Services and Construction Phase Services. Consultant acknowledges and agrees that issuance of an NTP for the Construction Phase Services will be contingent on execution of a Construction Grant Agreement by and between the Commission and the FTA.

### 3. TERMS.

3.1 General Scope of Services. Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise, and incidental and customary work necessary to fully and adequately supply the construction management, materials testing, and construction surveying services necessary for the Project ("Services"). The Pre-Construction Phase Services are more particularly described in Exhibit "A" Part 1, attached hereto and incorporated herein by reference. The Construction Phase Services are more particularly described in Exhibit "A" Part 2, 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 Commencement of Services.

3.2.1 Pre-Construction Phase Services. The Consultant shall commence performance of the Pre-Construction Services upon receipt of a written NTP or "Limited NTP" from Commission. As a result of the federal funding for this Project, and to the extent the FTA or the California Department of Transportation ("Caltrans") procedures apply in connection therewith, issuance of a NTP is conditional until completion and approval of a post award audit. The attached Exhibit "C" and the Consultant's cost proposal for the Services are subject to a post award audit. After any post award audit recommendations are received, the attached Exhibit "C" and the Consultant's cost proposal shall be adjusted by the Consultant and approved by the Commission's Executive Director or his designee to conform to the audit recommendations. The Consultant agrees that individual items of cost may be

incorporated into the Agreement at the Commission's sole discretion. Refusal by the Consultant to incorporate the interim audit or post award recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement. The federal aid provided under this Agreement is contingent on meeting all Federal requirements and could be withdrawn, thereby entitling the Commission to terminate this Agreement, if the procedures are not completed. The Consultant's files shall be maintained in a manner to facilitate Federal and State process reviews. In addition, the applicable federal agency, or Caltrans acting on behalf of a federal agency, may require that prior to performance of any work for which Federal reimbursement is requested and provided, that said federal agency or Caltrans must give to Commission an "Authorization to Proceed".

3.2.2 Construction Phase Services. The Consultant shall not commence performance of the Construction Phase Services until Consultant receives a written NTP or "Limited NTP" from the Commission for the Construction Phase Services. Consultant shall not be entitled to compensation for any Construction Phase Services rendered prior to the issuance by the Commission of a written NTP or Limited NTP specifically for the Construction Phase Services. As applicable, the above referenced provisions regarding federal procedures and requirements shall apply to this Section 3.2.2.

3.3 Term. The term of this Agreement shall be from the date of execution of this Agreement or the date of issuance of the "Notice to Proceed" by the Commission, whichever occurs first, to the issuance by the Commission to Consultant of a Notice of Final Acceptance, as defined in paragraph 3.12 below, or October 30, 2013, whichever occurs earlier, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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

3.5 Consultant's Representative. Consultant hereby designates Brent Felker, Senior Vice President, to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his

professional skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Consultant shall work closely and cooperate fully with Commission's Representative and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the Commission staff at all reasonable times. Any substitution in Consultant's Representative shall be approved in writing by Commission's Representative.

3.6 Substitution of Key Personnel. Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval by the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of the key personnel, the Commission shall be entitled to terminate this Agreement for cause, pursuant to the provisions of Section 3.14. The key personnel for performance of this Agreement are:

Project Director - Brent Felker  
Project Manager - Marc McIntyre  
Project Controls - Manager Chris Okerstrom  
Resident Engineer - Len Beystrom  
Commissioning/Startup Manager - Noel Peck  
Signals/Systems Lead - Glenn Breindel  
Safety/RR Coordinator - Roberto Becerra

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

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



3.9 Standard of Care; Licenses. Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Commission that its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the Commission, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein, and shall be fully responsible to the Commission for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Consultant's errors and omissions. Any employee of Consultant or its sub-consultants who is determined by the Commission to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Commission, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.10 Opportunity to Cure. Commission may provide Consultant an opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by the Commission, and the cost thereof charged to Consultant.

3.11 Inspection of Work. Consultant shall allow the Commission's Representative to inspect or review Consultant's work in progress at any reasonable time.

3.12 Final Acceptance. Upon determination by the Commission that Consultant has satisfactorily completed the Services required under this Agreement and within the term set forth in Section 3.3, the Commission shall give Consultant a written Notice of Final Acceptance. Upon receipt of such notice, Consultant shall incur no further costs hereunder, unless otherwise specified in the Notice of Final Acceptance. Consultant may request issuance of a Notice of Final Acceptance when, in its opinion, it has satisfactorily completed all Services required under the terms of this Agreement. In the event copyrights are permitted under this Agreement, then in connection with federal funding, it is hereby acknowledged and agreed that the FTA shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

3.13 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, previous commitments that must be incorporated in the design of the Project, and administrative controls including those of the FTA. Compliance with federal procedures may include completion of the applicable environmental documents and approval by the FTA. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the FTA. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

Further, and to the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify the Commission against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its Subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### 3.14 Termination.

3.14.1 Notice; Reason. Commission may, by written notice to Consultant, terminate this Agreement, in whole or in part, at any time by giving written notice to Consultant of such termination, and specifying the effective date thereof ("Notice of Termination"). Such termination may be for Commission's convenience or because of Consultant's failure to perform its duties and obligations under this Agreement, including, but not limited to, the failure of Consultant to timely perform Services pursuant to the Schedule of Services described in Section 3.15 of this Agreement. Consultant may not terminate this Agreement except for cause.

3.14.2 Discontinuance of Services. Upon receipt of the written Notice of Termination, Consultant shall discontinue all affected Services as directed in

the Notice or as otherwise provided herein, and deliver to the Commission all Documents and Data, as defined in this Agreement, as may have been prepared or accumulated by Consultant in performance of the Services, whether completed or in progress.

3.14.3 Effect of Termination For Convenience. If the termination is to be for the convenience of the Commission, the Commission shall compensate Consultant for Services fully and adequately provided through the effective date of termination. Such payment shall include a prorated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services. Consultant shall provide documentation deemed adequate by Commission's Representative to show the Services actually completed by Consultant prior to the effective date of termination. This Agreement shall terminate on the effective date of the Notice of Termination.

3.14.4 Effect of Termination for Cause. If the termination is for cause, Consultant shall be compensated for those Services which have been fully and adequately completed and accepted by the Commission as of the date the Commission provides the Notice of Termination. In such case, the Commission may take over the work and prosecute the same to completion by contract or otherwise. Further, Consultant shall be liable to the Commission for any reasonable additional costs incurred by the Commission to revise work for which the Commission has compensated Consultant under this Agreement, but which the Commission has determined in its sole discretion needs to be revised, in part or whole, to complete the Project because it did not meet the standard of care established in Section 3.9. Termination of this Agreement for cause may be considered by the Commission in determining whether to enter into future agreements with Consultant.

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

3.14.6 Procurement of Similar Services. In the event this Agreement is terminated, in whole or in part, as provided by this Section, the Commission may procure, upon such terms and in such manner as it deems appropriate, services similar to those terminated.

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

### 3.15 Schedule and Progress of Services.

3.15.1 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of

Services for the Pre-Construction Phase Services as set forth in Exhibit "B" Part 1, and for the Construction Phase Services as set forth in Exhibit "B" Part 2, both attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedules for the Pre-Construction Phase Services and the Construction Phase Services, the Commission shall respond to Consultant's submittals in a timely manner. Upon request of Commission's Representative, Consultant shall provide a more detailed schedule of anticipated performance to meet each Schedule of Services.

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

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

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

### 3.16 Delay in Performance.

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

3.16.2 Written Notice. If Consultant believes it is entitled to an extension of time due to conditions set forth in subsection 3.16.1, Consultant shall provide written notice to the Commission within seven (7) working days from the time

Consultant knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of Consultant to provide such timely notice shall constitute a waiver by Consultant of any right to an excusable delay in time of performance.

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

### 3.17 Status of Consultant/Subconsultants.

3.17.1 Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and not as an employee, agent or representative of the Commission. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and as required by law. Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.17.2 Prevailing Wages. By its execution of this Agreement, Consultant certifies 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. Copies of the prevailing rate of per diem wages are on file at the Commission's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Certified Payrolls are to be submitted whenever required by Prevailing Wage laws.

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

3.17.4 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. If Consultant wishes to use a firm as a subcontractor which is not specified in the proposal upon which this Agreement was awarded, prior written approval must be obtained from the Commission. The Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

Consultant has, as part of its proposal, identified certain companies/firms that will be subconsultants utilized by Consultant ("Subconsultants") for Project delivery. A list of said Subconsultants is attached hereto as Exhibit "C" Part 2 and made a part hereof. The Commission hereby approves the use by Consultant of the Subconsultants identified in Exhibit "C" Part 2. In the event and prior to the replacement of any Subconsultant approved herein, the Consultant shall seek and obtain the Commission's written approval. Exhibit "C" Part 2 also sets forth the rates at which each Subconsultant shall bill the Consultant for Services and that are subject to reimbursement by the Commission to Consultant. Additional Direct Costs, as defined in Exhibit "C" Part 1 shall be the same for both the Consultant and all subconsultants, unless otherwise identified in Exhibit "C" Part 2.

Consultant acknowledges that approval of Consultant's utilization of the identified Subconsultants together with the incorporation of Subconsultants' rate schedules and cost proposals into this Agreement shall in no way be construed to create any contractual relationship between any Subconsultant and the Commission. The Subconsultant rate schedules and cost proposals contained herein are for accounting purposes only. In the event that any Subconsultant shall bring any action, claim or proceeding purporting to enforce any right purportedly arising under this Agreement, the Consultant shall be responsible for the Commission's reasonable legal fees without regard to the merits of any such claim.

### 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 Indemnification. 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 alleged negligent acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of consequential damages, expert witness fees, and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Commission, its directors, officials, officers, employees, consultants, agents, or 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, or 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, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Commission, its directors, officials officers, employees, consultants, agents, or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligations as set forth in this Section 3.19 shall survive expiration or termination of this Agreement.



### 3.20 Insurance.

3.20.1 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.

3.20.2 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) *if Consultant has employees, Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$2,000,000 per occurrence for bodily injury, personal and advertising 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) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.20.3 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 \$2,000,000 per claim.

3.20.4 Aircraft Liability Insurance. Prior to the direct or indirect use of any civil aircraft to provide Services under this Agreement, Consultant shall procure and maintain, or cause to be procured and maintained, aircraft liability insurance or equivalent form, with a single limit of not less than \$5,000,000 per each occurrence.

Such insurance shall include coverage for owned, hired and non-owned aircraft and passengers, and shall name, or be endorsed to name, the Commission, its directors, officials, officers, employees, consultants and agents as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant.

3.20.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(A) General Liability. 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.

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

3.20.7 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Commission, its directors, officials, officers, employees, and agents.

3.20.8 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.

3.20.9 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.

3.20.10 Other Insurance. At its option, the Commission may require such additional coverage(s), limits and/or the reduction of deductibles or retentions it considers reasonable and prudent based upon risk factors that may directly or indirectly impact the Project. In retaining this option Commission does not warrant Consultant's insurance program to be adequate. Consultant shall have the right to purchase insurance in addition to the insurance required in this Section.

3.21 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.

### 3.22 Fees and Payment.

3.22.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Total Compensation shall be on the basis of direct costs plus a fixed fee as further set forth in Exhibit "C". The maximum compensation for Pre-Construction Phase Services, including Railroad Liability Insurance, rendered under this Agreement shall not exceed Two Million, Three Hundred Thirty Four Thousand, Seven Hundred Ninety Nine Dollars (\$2,334,799). The maximum compensation for Construction Phase Services rendered under this Agreement, including post construction Services, as further set forth in Exhibit "A", shall not exceed Thirteen Million, Six Hundred Fifteen Thousand, Three Hundred Forty Eight Dollars (\$13,615,348).

3.22.2 Payment of Compensation. Consultant shall submit a monthly itemized 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. Charges specific to each Milestone listed in the Schedule of Services shall be listed separately on an attachment to each statement. Each statement shall be accompanied by a monthly progress report and spreadsheets showing hours expended for each task for each month and the total Project to date. Each statement shall include a cover sheet bearing a certification as to the accuracy of the statement signed by the Consultant's Project Manager or other authorized officer.

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

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

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

3.22.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the Commission's Representative.

### 3.23 Prohibited Interests.

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

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

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

3.23.4 Covenant Against Contingent Fees. As required in connection with federal funding, the Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed

to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Commission shall have the right to terminate this Agreement without liability pursuant to Section 3.14, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

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

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

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

3.24 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. As required in connection with federal funding, the Federal Acquisition Regulations in Title 48, CFR 31 shall be the governing factors regarding allowable elements of cost. All such records shall be clearly identifiable. Consultant

shall allow a representative of the Commission during normal business hours to examine, audit, and make transcripts or copies of any and all ledgers and books of account, invoices, vouchers, canceled checks, and any other records or documents created pursuant to this Agreement. All such information shall be retained by Consultant for at least three (3) years following termination of this Agreement. Following final settlement of the contract accounts with the FTA under this Agreement, such records and documents may be microfilmed at the option of the Commission, but in any event shall be retained for said three (3) year period after processing of the final voucher by the FTA.

Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. are subject to repayment by the Consultant to the Commission.

3.25 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of the Commission's Disadvantaged Business Enterprise Program, Affirmative Action Plan or other related Commission programs or guidelines currently in effect or hereinafter enacted.

3.26 Right to Employ Other Consultants. Commission reserves the right to employ other consultants in connection with the Project. Consultant shall cooperate fully with any other consultant engaged by the Commission on the Project.

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

3.28 Attorneys' 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 attorneys' fees and, all other costs of such actions.

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

3.30 Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.31 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:

8404	Indian	Hills	Omaha,	NE	68114
<b>CONSULTANT:</b>			<b>COMMISSION:</b>		
HDR Construction Control Corporation			Riverside County		
8404 Indian Hills			Transportation Commission		
Omaha, NE 68114			4080 Lemon Street, 3 <sup>rd</sup> Floor		
Attn: Brent Felker			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.

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

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

3.34 Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

3.35 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.36 Provisions Applicable When Federal Transit Administration Are Involved. Since funding for the Services provided by this Agreement are provided, in whole or in part, from the FTA, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Transit Administration Requirements) attached hereto and incorporated herein by reference.

3.37 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.



3.38 Survival. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH FEDERAL TRANSIT ADMINISTRATION ASSISTANCE**

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

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**CONSULTANT  
HDR CONSTRUCTION CONTROL  
CORPORATION**

By: \_\_\_\_\_  
Bob Buster, Chair

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Attest:

*Approved as to Form:*

By: \_\_\_\_\_

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

Its: Secretary

**EXHIBIT "A"**  
**SCOPE OF SERVICES**





## Draft Scope of Work for Perris Valley Line Metrolink Improvement Project

### Phase 1: Pre-Construction Services

#### A. Management/Coordination

##### 1. Management and Coordination Services

Perform general management of staff and coordination with RCTC, RCTC Program Manager and other stakeholder and team members.

##### 2. Review Project Issues and Assist with Resolution or Evaluation

Assist RCTC in reviewing issues not covered or included in this Scope of Work and other pre-construction tasks.

##### 3. CM Procedures Manual

Prepare a CM Procedures Manual (CMPM) for non-highway projects that will become a useful tool for the successful management of the PVL Project. Discuss the project issues with the responsible RCTC/RCTC Program Manager staff members to develop an understanding of the philosophy behind the existing draft CMPM and the associated existing procedures. Expand upon the draft to fully address the Manual's key sections and subsections in the following ways:

#### Project Information and Management

- Include updated project description and background information
- Identify and update all project participants and stakeholders
- Identify and update all levels of authority
- Address:
  - Safety and Security
  - Crisis / accident management
  - Public Affairs/Media management
  - Coordination with public and private agencies and organizations
  - Coordination of construction with utility relocations, rail operations, and other 3rd party work
  - Commissioning and startup

#### Construction Administration

- Incorporate the document control system currently used by RCTC/RCTC Program Manager
- Discuss CM document control system and address need to transfer digital files to RCTC at end of project



- List currently scheduled or future meetings regarding the project
- Include updated status of FTA participation and identify requirements for funding
- Address the following:
  - Document control issues
  - Processing of Submittals, Requests for Information and Substitution Requests
  - Conduct and recording of meetings
  - Written and verbal communications
  - Daily project reports and photo/video documentation of the work
  - Partnering

### **Changes and Claims Management**

- Provide updated outline of RCTC change order process from initiation to approval, including authorization levels
- Include updated RCTC process for administering project disputes and construction claims
- List current assessment of major risks to the project
- Address the following:
  - Fair and independent cost estimates
  - Change order processing
  - Time extension requests
  - Resolution of disputed issues
  - Claims
  - Entitlement evaluation

### **Cost and Schedule Management**

- Include updated project budgets, funding sources, restrictions and schedules
- Outline progress payment process, including time tables and all parties involved in the process
- Incorporate into existing procedures the lessons learned from previous project experiences with:
  - Progress payment processing, including bid item breakdowns
  - Cash flow management
  - Schedule submittal and review process
  - Time extension requests



### **Construction Quality Assurance and Quality Control**

- Outline the anticipated RCTC/RCTC Program Manager oversight efforts and coordination required
- Update the existing draft RCTC Quality Assurance Plan
- Incorporate into existing procedures the lessons learned from previous project experiences with:
  - Daily inspection reports or verification tests
  - Certificates of completion
  - Factory or plant inspections and tests
  - Performance tests

### **Project Close-out**

- Include updated close-out procedures/final occupancy for RCTC rail projects
- List identified close-out procedures for FTA rail projects and resources for obtaining requirements
- Incorporate into existing procedures the lessons learned from previous project experiences with:
  - Final punchlists and close-out of construction contracts
  - As-built drawings and as-built schedules
  - Project records transfer and subsequent audits or use
  - Warranties

### **Items that RCTC may consider adding to this plan, and that we can incorporate with an amended scope include the following:**

- Acting as Owner's Representative coordination with public and private agencies and organizations
- Partnering
- Cash flow management

The updated draft of the CM Procedures Manual will be submitted for RCTC review and comment. Once revisions have been made and approved, the Manual will be used by the HDR Team to administer and manage the PVL construction project. The Project Manager and Resident Engineer will stress the importance of HDR's Team adherence to the procedures in the Manual, and will require advanced approval of any proposed variances. The Manual will be updated and revised, as needed, for the duration of the project.

## **4. Project Procedures Manual**

Prepare the PPM, with some elements pulled directly from the CM Procedures Manual discussed above, under Task 1, and other elements from the contract documents. The PPM will provide detailed and PVL project-specific procedures for the flow and control of communications and project documents during the construction phase.



The Manual will include details and/or contract procedures for the following major topics:

- RCTC-HDR Team Organization
- Contractor Organization
- Roles & Responsibilities
- Lines of Communication Hierarchy
- Communication Formats
- Community Relations/Media
- Emergency Response Procedures
- OSHA & Other Communications
- Notice Procedures
- Labor Compliance
- Environmental Compliance
- BNSF/SCRAA Coordination
- FTA Requirements
- Safety Program
- Meetings
- Project Controls
- Cost Segregation/Trending
- Progress Payments
- Schedule Reviews
- Submittals
- Requests for Substitutions
- Requests for Information
- Changes
- Delays
- Dispute & Claim Resolution
- QC/QA Requirements & Responsibilities
- Non-Compliance Reports
- Survey Control
- Contract Close-Out
- As-Built Documentation
- Document Control Requirements
- Project File Requirements

The PPM will reference other stand alone documents that will be utilized in managing the PVL. The PPM is not intended as a substitute for the Contract and will state that in the event of a conflict, the Contract requirements will govern. The initial draft of the PPM will be updated, as needed, to reflect the 100% design documents and any changes to procedures made by addenda issued during the bid period. Upon review and approval by RCTC, the PPM will be distributed at the Pre-construction Meeting and each section discussed, allowing for questions or clarifications. The Manual will be corrected or updated, as necessary, during the construction phase. This manual will incorporate any stand alone documents required.

## **5. Construction Safety Plan and Roadway Worker Safety Manual**

The Perris Valley Line Construction Safety Plan and Roadway Worker Safety Manual will be focused on the health and safety of the HDR construction management team and our subconsultants as it relates to our work on the Perris Valley Line. RCTC has indicated that you may choose to utilize the documents as a basis for your overall construction safety plan. RCTC will need to evaluate the applicability of this plan for your organization in the overall off-highway safety plan currently under development, as the plan is not intended to be adopted verbatim into your overall construction program.

## **6. Support Development of Agreements with SCRRRA and BNSF**

Assist RCTC in developing and negotiating agreements with SCRRRA and BNSF. This task includes the review of documents and attending meetings with the agencies.

## **7. Public Outreach**

- Assist RCTC with providing public outreach services as outlined below: Prepare a Draft and Final Public Outreach Plan (POP) of outreach tasks, deliverables and key dates.





- Develop, and update a database of property owners, tenants and key stakeholders, including elected officials, city and county staff, resource agencies, businesses, schools, emergency responders, utility providers, and other interested parties in the Riverside, Moreno Valley and Perris corridor.
- Prepare a project newsletter, following RCTC's standards. The newsletter will be prepared in English and Spanish, distributed to stakeholders, and posted to the project website. The publication will be updated on a quarterly basis.
- Develop and maintain a project website, following RCTC's standards. The website will include maps and information about construction, stations, project schedule, meeting information and opportunities for feedback about the project.
- Coordinate three public information meetings prior to the start of construction.

## **8. Support Bid/Award Process**

RCTC's Contract Manager will manage the bidding period and evaluations, with HDR assisting as requested to perform the various tasks, including those identified below. This is an allowance item, as the scope will be further defined as RCTC's Contract Manager assesses need.

Assist RCTC in compiling any pre-qualification packages to be sent to prospective bidders. Assist RCTC in preparing and responding to comments from pre-bid meetings.

**Bids Evaluation** - When the bids are received, Assist RCTC with the bid review, addressing the following:

- Compliance with the contract documents;
- Review in consideration that all elements of the contract scope are addressed;
- Review in consideration of out-of-balance bid items or any unusual items
- Verify that the pricing appears reasonable.

Make a recommendation of award to the lowest responsive and responsible bidder. Advise RCTC's Project Manager as to the timing for issuance of the NTP.

## **B. Project Controls**

### **1. Prepare Project Controls Plan and FTA Reporting Plan**

Prepare Project Controls Plan and FTA Reporting Plan. The Plan will outline the Project Control Manager's (PCM) role in taking the lead for the pre-construction project controls tasks, including the merging of the CM, Designer and RCTC costs and schedule items to produce a comprehensive schedule and cost reporting system. This will include software utilized, reporting frequency (monthly and quarterly) and content specific for each report. The Project Controls Plan will be prepared in accordance RCTC's Quality Assurance Plan and elements will include cost forecasting, trending analysis, budgets, commitments, schedule, document control, and reporting procedures. All of this will roll up into the documentation for reporting to FTA. We will meet with RCTC and FTA representative if appropriate to establish the reporting requirements.



## **2. Document Control Training/Plan Integration of Document Control System with all users**

Train and familiarize staff on the document control system (Infoworks) to be utilized on the project. RCTC will provide access to the system and software as well as training for staff. Initial training of HDR Team members will include Resident Engineer, Project Controls manager and Project Manager.

## **3. Review Schedule, Cost and Construction Phasing Strategy and Prepare Master Schedule**

**Schedule** – During pre-construction, prepare a detailed cost loaded Primavera schedule that will be incorporated into a master program schedule, provided by the RCTC Program Manager. Manage the schedule throughout preconstruction and analyze the schedule impacts of design and management decisions. Recommend changes as required. Verify that design requirements and third party approvals will be incorporated into the schedule so that RCTC can have an accurate forecast of the anticipated commencement of construction.

Review, evaluate and determine the critical path of the Project in the aforementioned cost-loaded Master Schedule. Recommend schedule contingencies to RCTC's schedule strategy.

**Cost** - The Master Schedule will be used to create cash flow projections for the project. RCTC will provide cost data for all expenditures outside of the CM services and construction hard costs. Review the cost of each activity in the schedule and update monthly. The cash flow projections will then be communicated to the RCTC staff responsible for funding and managing the cash flow for the project. Tailor cost reports and cost coding system to coordinate with existing RCTC accounting methodologies. A WBS will be agreed upon to track costs.

## **4. Cost Risk Analysis (CRA)**

Conduct a cost risk analysis for the Perris Valley Line project.

### **CRA Work Breakdown**

#### **Sub-Task 0.1 – Documentation Review and Internal Review Session**

The first step in the cost analysis consists of reviewing all existing project documentation, including:

- The baseline cost estimates;
- The baseline project schedule;
- Relevant technical reports or memoranda;
- Design drawings; and
- Others, as identified by the project team.

A preliminary listing of risks is also developed under sub-Task 1.1, with assistance from the project team. Three categories



of risks are typically considered:

- **Budget risks:** reflect the uncertainty inherent to the estimation of project costs (at any stage of design) and represent the risks that the budget elements will deviate from the base estimate.
- **Event risks:** risks of internal or external events that force the project team to work beyond the estimate, just to meet the Project Scope and Statement of Work. Examples include: extreme weather, contractor non-performance, vandalism at construction site, archeological findings, labor issues such as strikes, or undiscovered utilities.
- **Scope risks:** risks of significant changes to the project scope due to external pressures. Examples of scope risks include: community pressures for changes in alignment or station location, or unfavorable environmental assessment report leading to changes to the project design.<sup>1</sup>

A review session is conducted internally (within the risk team) to discuss findings from the documentation review, expand and edit the listing of budget, event and scope risks and develop material for the preparation session (sub-Task 1.2).

The Cost Risk Analysis is typically initiated at this time. This process involves:

- Reviewing scope, schedule and cost assumptions by independent experts;
- Explicitly identifying contingency and separating it from baseline estimate;
- Assess historical price fluctuations for key project components;
- Develop forecasts for key project components; and
- Identify and quantify uncertainty in baseline cost estimates over the project life cycle.

### **Sub-Task 0. 2 - Preparation Session**

A preparation session will be held in early November, shortly after project initiation. The session is facilitated by a member of the risk team (the risk lead). Participants include members of the project team and other members of the risk team.

The main objectives of the preparation session are:

- For the project team to get acquainted with the risk analysis process;
- For the risk team to obtain first-hand cost and schedule information from the project team, and require clarifications on any of the documentation reviewed under sub-Task 1.1;
- For the project and risk teams to jointly develop a project flowchart: a simplified representation of the project schedule where project tasks are combined within relatively homogenous activities, and where dependencies among activities, and the project (most) critical path, are highlighted.



The flowchart is reviewed subsequently by the entire risk team, and finalized during the risk analysis workshop (sub-TASK 1.4). It is used, among other things, to allocate event risks to specific activities and to estimate the impact of those risks on the baseline project completion date. It is also used to distribute (allocate) project costs over time and estimate cost escalation, with and without project delays.

### **Sub-Task 0.3 - Develop Simulation Model**

A customized cost and schedule simulation model will be developed under this task. The model will be, in large part, structured around the (preliminary) project flowchart created during the preparation session.

The model will employ Monte Carlo simulation techniques to combine the risks identified under sub-Tasks 1.1 and 1.2 and produce probability distributions for total project costs and project completion date.<sup>2</sup>

### **Sub-Task 0.4 - Conduct Risk Analysis Workshop**

Facilitate a risk analysis workshop to review, discuss, and refine all baseline cost estimates, scheduling assumptions, risk factors and proposed mitigation strategies.

The workshop will be conducted over 3 days, and facilitated by the risk lead. Participants to the workshop include members of the risk team, the cost lead, various Subject Matter Experts (engineers, planners, developers, construction economists, etc.), and selected members of the project team.

The main objectives of the workshop are to:

- Provide an overview of the Cost Risk Assessment process and develop a common understanding among workshop participants regarding purpose, assumptions and outcomes;
- Provide an overview of the project. This sub task is typically led by a member of the project team.
- Review and validate the project baseline schedule and baseline cost estimates.
- Review and quantify all risk factors and their implications in terms of cost and/or schedule; and
- Identify, discuss, and quantify mitigation strategies for key project cost and schedule risks.

During the session, the cost and schedule risks are entered into a **risk register**. The register combines information on the nature of the risk (a brief description of the event or scope change), its probability of occurrence, its cost and/or schedule impact (expressed as a probability distribution), and the activities potentially impacted.

### **Sub-Task 0.5 - Produce Risk-Adjusted Cost and Schedule Estimates**

The outcomes of the risk analysis include:



- Detailed probable cost and schedule outcomes arrayed against their respective probability of occurrence (i.e., a full probability distribution for total project costs, and expected completion date)
- The identification of key risk factors and their estimated impact on project costs and schedule
- The identification of mitigation strategies and their estimated impact on project costs and schedule
- An estimate of the expected cash flow requirements through the end of the project.

#### **Sub-Task 0.6 – Presentation of Preliminary Results**

The results of the risk analysis will be summarized in a PowerPoint presentation and distributed for review and comments.

Members of the risk team will present and discuss the findings with the project team via a telephone conference call.

#### **Sub-Task 0.7 - Follow-up, Updates and Reporting**

A draft final and final report will be developed after presentation of the preliminary results. The final report will include:

- An introduction with an overview of the project and project objectives;
- A description of the project flowchart, and simulation scenarios (if any);
- A summary of key modeling assumptions;
- A presentation and discussion of the simulation results (including cost and schedule probability distributions, tornado charts and cash flow requirement charts);

Appendices providing supporting material (summary of base cost validation, base schedule durations, risk register, list of workshop attendees, etc.)

### **C. Quality Assurance**

#### **1. Construction Manager QA/QC Plan**

The QAP outlines the overall quality program for all public transportation services that fall under the jurisdiction of the RCTC. As such, any entity contracted by the RCTC must perform its work in accordance with the RCTC Quality Assurance Plan (QAP).

The Perris Valley Line Quality Assurance Plan (PVL QAP) will be a standalone document and is intended to establish a well structured and systematic approach to verify that expected and accepted levels of quality are reached throughout the project duration. The plan will be developed in accordance with the RCTC QAP, Federal Transit Authority (FTA) “Quality Assurance and Quality Control Guidelines, FTA-MA-06-0189-92-1”, as well as Caltrans-Local Assistance Procedures Manual (LAPM), Chapter 16 – Administer Construction Contracts, Section 14 – Quality Assurance Program for FHWA funded local agency projects. The PVL QAP will outline responsibilities for the CM Team to perform QA audits on the contractor and RCTC will be performing QA over the CM services.



The PVL QAP will include the following 15 key elements:

1. Management Responsibility
2. Documented Quality Systems
3. Engineering Control
4. Document Control
5. Purchasing
6. Product Identification and Traceability
7. Process Control
8. Inspection and Testing
9. Inspection, Measuring and Test Equipment
10. Inspection and Test Status
11. Non-Conformances
12. Corrective Actions
13. Quality Records
14. Quality Audits
15. Indoctrination and Training

## **2. Constructability Analysis at 90% Design Completion**

Identify problems and provide detailed and meaningful solutions to help deliver a complete, cohesive and constructible set of contract documents. A review team will be established, consisting of multiple team members, including transit rail design and construction engineers and technical specialists to review all aspects of the contract documents from a construction perspective. A kick-off meeting with HDR team and RCTC to discuss scope of work and schedule requirements, and learn as much as possible regarding key project issues, constraints and requirements, special areas of focus, and any future significant changes RCTC is planning for the next submittal.

Perform a detailed review of the contract documents available at this design stage. Pay particular attention to freight staging, right-of-way issues, and potential utility conflicts. Review the existing site conditions with the contract documents to verify site access, parking, lay down areas, temporary utility requirements and other issues related to the efficient utilization of the construction sites. Site visits will identify potential contract provisions for legal access to the site along the entire corridor. Particular attention will be paid to the dust and erosion control issues and neighborhood impacts during the construction phase. Site visits will accomplish the following:

- Visit the mainline right of way and each facility site location to evaluate the provisions in the contract documents relating to these issues.
- Review the construction limits of each site. Evaluate the Location of potential team jobsite offices and parking with the goal of minimizing relocations and maximizing communication during construction.
- Consider traffic patterns for access to the site for impact on the surrounding neighborhood.
- Evaluate the adequacy and potential location of temporary utilities.
- Identify potential areas for storage of long lead items, parking and material storage.
- Review historical records of utilities from RCTC and compare with drawings and field conditions. Become familiar with the easement agreements and conditions. Assist in monitoring relocation prior to construction.
- Review RCTC provided survey data and ROW mapping. Field survey verification can be provided but is not included in the scope at this time for preconstruction.

Formulate recommendations to RCTC to for revisions to the contract documents reviewed. Prepare a "Site Access Map", providing a schematic drawing of all access points in relation to major street crossings. All the above data will be compiled



and reviewed with the EOR and RCTC to determine whether to make revisions to the bid documents.

Check the plans for consistency between the various disciplines of work; verify that the work shown in the plans is covered by a contract bid item and specification; identify potential conflicts with adjacent projects; and verify that the construction details appear to be complete and biddable.

Provide detailed comments and recommendations to RCTC and the EOR in a comment review form spreadsheet and be accompanied by red-lined plans and specifications. Summarize the findings in a letter report that describes the documents that were reviewed, and our major findings and recommendations. A follow-up meeting will be conducted to discuss the issues and answer any questions.

**Construction Phasing** - Discussions have occurred to date between RCTC and BNSF to determine construction phasing that will allow efficient construction operations with the least impact to the BNSF freight service. The Master Schedule will reflect the sequencing discussed between the parties to date.

### **3. Perform 90% Design Review and Compliance at 100%**

A review team will be established, consisting of multiple team members with both specialized and multi-disciplinary experience in commuter rail transit design, including construction engineers, systems engineers and civil/track engineers to review all aspects of the contract documents from a design and construction perspective. Schedule and manage a kick-off meeting with HDR team, the design team, and RCTC to review the design criteria (SCRRA) and project details; discuss scope of work and schedule requirements, constraints and requirements, special areas of focus, and any future significant changes the EOR is planning for the next submittal.

Utilize experienced design engineers familiar with SCRRA standards. Provide design comments to RCTC design engineers and engineer or record. Schedule and manage a meeting with them to resolve and discuss issues. Review 100% design drawings to confirm that 90% comments have been addressed. No check of calculations is anticipated at this time, but can be completed if requested.

### **4. Review 90% Cost Estimate and Provide Final Detailed Cost Estimate at 100%**

Review and comment on the construction cost estimate that has been prepared by RCTC Program Manager from the 90% design documents.

A detailed independent cost estimate will be provided.

### **5. Conduct Pre-Condition Survey**

Review survey documentation obtained from RCTC to check horizontal and vertical project control, right of way maps, legal descriptions and plats, design files, and improvement plans as they pertain to the project. Recover and verify project survey control. Nominal hours will be used by survey crew to verify conditions during the constructability review.



## **6. Provide Inspection for Pre-Construction Utility Relocation Work**

Provide QA inspection to verify that utilities are relocated beyond the limits of planned improvements and that new connections to be established prior to contractor mobilization are constructed per the contract requirements. As-built drawings documenting all work performed during this phase will be created and made readily available for use by the project team during construction. Review utility matrix, utility agreements and other supporting documents provided by RCTC.

## **D. Environmental**

### **1. Construction Environmental Control Plan**

As part of the pre-construction activities, prepare a Construction Environmental Control Plan (CECP). Review RCTC's Mitigation Monitoring and Reporting Plan prior to developing the CECP. Outline the monitoring and surveying required for biological, paleontological, archaeological and other environmental issues to verify construction activities are conducted in accordance with applicable environmental requirements as outlined in the CEQA and NEPA document for the project and current regulatory requirements. RCTC will provide a mitigation monitoring and reporting plan for HDR's use, anticipated for sometime in August 2010.

Specific issues to address in the CECP include

- 1) Archeological and paleontological monitoring during ground-disturbing activities of depths of four feet or more, including work at various station locations, the Citrus Connection, and the Layover Facility;
- 2) Archeological monitoring of all work between MP 3.50 and MP 4.50, and MP 5.60 and MP 6.50;
- 3) Monitoring requirement resulting from permit conditions of resource agencies;
- 4) Standard stormwater quality monitoring;
- 5) Preconstruction surveys for endangered bird species;
- 6) Condition that no work be performed in the Box Spring Canyon Reserve during the bird nesting season, and at all other locations vegetation clearing must occur outside of the bird nesting season; and
- 7) Verification of NEPA/CEQA mitigation for noise in Riverside residential area, requiring construction of soundwalls along property boundaries. Other considerations include handling of hazardous materials, traffic impacts, noise impacts and air quality issues.

Environmental permits will be assessed and monitoring activities required will be listed in the plan, including the 401 permit from the Regional Water Quality Control Board, the 404 permit from the Army Corps of Engineers and the 1600 Agreement with California Department of Fish and Game (concerning the Lake and Streambed Alteration Agreement





Verify that the mitigation measures required by the environmental documents are adequately included in the contract documents, noting any discrepancies. Discrepancies will be identified and discussed with the Engineer of Record who then will be able to make any needed modifications. The final CECP will then be developed and delivered to the Engineer of Record.

## **Task 1 Construction Environmental Control Plan**

As part of the pre-construction activities, the HDR Team will prepare a Construction Environmental Control Plan (CECP). The CECP will outline the monitoring, mitigation, and surveying required for biological, paleontological, and archaeological environmental issues to ensure construction activities are conducted in accordance with all applicable environmental requirements as outlined in the final CEQA and NEPA documents for the project and current regulatory requirements.

Environmental permits will be assessed and monitoring activities required will be listed in the CEPC, including the 401 permit from the Regional Water Quality Control Board, the 404 permit from the Army Corps of Engineers and the 1600 Agreement with California Department of Fish and Game (concerning the Lake and Streambed Alteration Agreement).

HDR will verify that the mitigation measures and terms and conditions required by the environmental documents are adequately included in the contract documents. The CECP will be formatted in a manner for ease of use in the field (e.g., in a binder, color coded tabs for each environmental issue area). This task is broken down into the following subtasks:

### **Task 1.1 CECP Initiation/Meetings/Coordination**

Meetings and coordination related to the initiation of the CECP will be covered under this task, as well as any meetings or coordination to clarify permit requirements. Up to 54 hours of the Environmental Project Manager have been identified for this subtask.

### **Task 1.2 Review Existing Information/EIR/Permit Requirements**

Under this subtask, we will review all environmental-related materials, including the EIR, NEPA document, CEQA mitigation monitoring and reporting program, regulatory permit conditions and the mitigation requirements of the Western Riverside County MSHCP. Up to 36 hours of staff time are identified for this subtask

### **Task 1.3 Draft 1 of CECP**

Under this subtask, we will prepare a first draft of the CECP for RCTC review. The completeness of the first draft of the report will be based upon the availability of final mitigation measures from the EIR and additional mitigation measures and terms and conditions identified through the regulatory permitting process. Assumes 10 hard copies (in binders) and 1 electronic copy of the first draft report.

### **Task 1.4 Draft 2 of CECP**

Based upon comments from RCTC, we will revise the CECP to produce a second draft for team review. Assumes 10 hard copies (in binders) and 1 electronic copy of the second draft report.



### **Task 1.5 Final CECP**

Based upon comments from RCTC, we will finalize the CECP to produce a final document. Assumes 20 hard copies (in binders) and 1 electronic copy of the final report.

## **2. Environmental Survey**

Verify that site conditions continue to reflect conditions identified during planning for environmental issues. Confirm the presence or absence of sensitive biological resources. Provide preconstruction surveys for the following species:

- Burrowing owls
- Southwestern willow flycatchers
- Least Bell's vireos
- California gnatcatchers
- Yellow-billed cuckoos
- Nesting bird surveys per the Migratory Bird Treaty Act
- Western Spadefoot Toad (San Jacinto River Bridge and Overflow Channel area)

Additional sensitive species can be addressed, as needed, based upon the outcome of the CEQA/NEPA documents and recommended mitigation measures. The preconstruction surveys may also reveal additional sensitive species surveys are warranted. All biological resources work will be carried out by individuals who hold required California and Federal permits to work with these and other species that may become relevant to the project. Adhere to USFWS or other adopted protocols.

Based upon the results of the preconstruction surveys, identify additional protection or avoidance measures to minimize potential impacts to sensitive species. This information will be provided to the Engineer of Record for their use in finalizing the contract documents and requirements of the contractor.

Coordinate the environmental monitoring team throughout the duration of the project.

### **Task 1 PRE-CONSTRUCTION SURVEYS**

#### **Task 1.1 Rail Safety Training for Environmental Monitoring Team**

This task covers rail safety training for all monitoring staff. HDR assumes training of up to 16 people (one 8-hour day to cover training and travel) so we have multiple team members that can rotate into the monitoring. While this training is required annually, we have budgeted for one training cycle, with the assumption that the second year training would occur concurrent to monitoring

#### **Task 1.2 Biological Resource (Pre-Construction)**

##### **Task 1.2.1 Burrowing Owl (BUOW) Preconstruction survey**



This task assumes a pre-construction BUOW survey is required along the entire project corridor. Kleinfelder will have performed a habitat assessment (including appropriate buffers) as part of the biological resources support for the EIR preparation and the assessment covers the project impact area and appropriate buffer area required by the wildlife agencies. No included budget to conduct a habitat assessment for any portion of the project corridor is assumed.

Due to the phased construction process and size of the site, 8 protocol surveys have been budgeted. The task includes a survey of areas for potential burrows, and 4 follow up surveys for owls in areas with potential burrows to see if they are being used. With regard to the timing of the protocol surveys, notification at least 45 days prior to construction commencing in an area that requires surveys is necessary. This provides the 30 days needed to conduct the surveys, as well as a two-week time frame to mobilize the biologists. Please see the attached budget spreadsheet for the cost to conduct the preconstruction survey.

Mitigation for burrowing owls within 50 meters of the project site without 6.5 acres of forage habitat typically consists of a combination of avoidance and if necessary relocation of the burrow outside of the breeding season. At the time this scope of work was prepared, the project is in the Draft EIR stage and the specific BUOW mitigation plan has not yet been prepared, nor is it possible to estimate the number of owls which may require mitigation. This task includes an additional 80 hours (beyond the survey effort noted above) to implement mitigation efforts should burrowing owls be found on the project site. If additional mitigation support beyond the 80 hours is needed, an amended scope of work would be needed prior to initiating the additional mitigation support.

#### **Task 1.2.2 Environmental Worker Awareness Training**

Per Mitigation Measures of DEIR BR-1, prepare a power point presentation to educate the construction crew on the biological resource issues on the site. Conduct one large training session at the start of the construction phase. The presentation will also usable in a printed format that can be presented in the field to small groups by the monitors as the project continues. Helmet stickers will be provided for those who attend the course RCTC will provide a location for the large training.

## **Phase 2: Construction Phase Services**

### **A. Management/Coordination**

#### **1. Conferences/Meetings**

Project Manager, Resident Engineer, all technical leads, and the Labor Compliance Officer will attend the pre-construction conference. Schedule and lead the pre-construction meeting. Compile a list of the appropriate municipalities, fire, life safety, and law enforcement agencies, the appropriate utility companies and other applicable parties and prepare the agenda.

Weekly safety meetings will be held on the project by both the contractor and the CM Team. Attend both meetings to verify that safety is held as the highest priority on the project.

Weekly progress meetings will be held with the contractor. Prepare the agendas, including review of the project



schedules, a summary of submittals, RFI's, and Non Conformance Reports (NCR's) – indicating status, old business not yet resolved, and new issues that require follow-up.

Schedule, lead and/or attend meetings with local agencies, utilities, community groups, or other entities that RCTC believes would be useful in communicating the progress or intentions of the contractor on the project.

The contractor will be required to submit work plans for critical work elements. Hold a pre-work meeting to review the approved work plan and discuss any concerns to verify that risk points have been addressed and that a backup plan is in place to implement, should it become necessary.

## **2. Public Affairs**

Provide Public Affairs assistance for the HDR team and outreach activities for PVL, including:

### **Task 2.1: Public Outreach Plan**

In coordination with RCTC, implement the Public Outreach Plan (POP) developed in the pre-construction phase.

### **Task 2.2: Stakeholder Database**

Update the stakeholder database at regular intervals and provide to RCTC upon request.

### **Task 2.3: Project Newsletter**

Prepare a project newsletter, following RCTC's standards. The newsletter will be prepared in English and Spanish, distributed to stakeholders, and posted to the project website. The publication will be updated on a quarterly basis.

### **Task 2.4: Project Website**

Establish and maintain a project website, following RCTC's standards. The website will include maps and information about construction, stations, project schedule, meeting information and opportunities for feedback about the project.

### **Task 2.5: Project Helpline**

Maintain a toll-free project helpline in English in Spanish to allow callers to ask questions and receive updates about construction activity and public meetings. Calls will be documented in an inquiry log and relayed to the technical team to alert them of concerns or other issues. Return helpline calls within one business day.

### **Task 2.6: Ground-Breaking and Ribbon-Cutting Ceremonies**

Coordinate ground-breaking and ribbon-cutting ceremonies to mark these project milestones. An overall ground-breaking event will be held for the project, followed by three station grand opening ceremonies and two overall ribbon-cutting



ceremonies. Activities will include site selection, logistics, notification, planning the flow of events and speakers, preparing printed programs, staffing, refreshments, photography, equipment rentals and commemorative items.

### **Task 2.7: Construction Alerts**

Prepare and disseminate Construction Alerts in English and Spanish, using a variety of outreach methods, including email, US mail, website postings, and use of RCTC's Twitter account.

### **Task 2.8: Response/Monitoring of Project Inquiries**

Respond to, document and resolve project inquiries received via the website, helpline, in person, and during meetings. All inquiries will be documented in a public inquiry log and presented to RCTC and the construction team. Responses to frequent inquiries may be incorporated into the project newsletters.

### **Task 2.9: Organizational Updates**

Arrange updates to City Councils and Chambers of Commerce for Riverside, Moreno Valley, and Perris, as well as to the UCR Campus Planning Division, prior to the start of construction and on an annual basis. A PowerPoint presentation will be prepared to support these briefings, and the outreach team will schedule the briefings and provide technical support during the presentations.

### **Task 2.10: Business/School/Neighborhood/Commuter Outreach**

Facilitate outreach to businesses, schools, neighborhoods and commuters via visits to area businesses, UCR, neighborhood groups, and other major stakeholders to relay project information, answer questions, and learn the best way to communicate with these affected parties. Commuters will be reached through construction signage with the project helpline, website, and Twitter account printed on signs.

### **Task 2.11: Team Coordination**

- Participate in team coordination meetings, project kickoff meetings and weekly construction progress meetings to ensure close coordination with RCTC, and the construction team. Develop a database of project stakeholders
- Prepare a bi-lingual project fact sheet/newsletter and website
- Establish a toll-free project helpline in English and in Spanish
- Coordinate three public information meetings prior to the start of construction – one each in Riverside, Moreno Valley, and Perris.
- Coordinate and participate in weekly construction progress meetings.
- Prepare and disseminate traffic advisories in English and Spanish, using a variety of outreach methods, including email, US mail, newspapers and radio updates, and Twitter.
- Document inquiries, response and resolution of construction inquiries received via the website, helpline, in



person, and during meetings.

- Coordination of project ground-breaking and ribbon-cutting ceremonies.
- Update annually the City Councils and Chambers of Commerce for Riverside, Moreno Valley, and Perris, March Air Force Base, as well as UCR Campus Planning Division.
- Business/school/neighborhood/commuter outreach.

### **3. Partnering Conferences**

Project Manager, Resident Engineer, all technical leads, and key staff will participate in Partnering sessions with members of RCTC, as well as contractor's key personnel.

### **4. Coordinate Construction Issues with Local Agencies**

Coordinate construction issues with local agencies by communicating the PVL schedule, including contractor weekly and monthly updates, and clarifying the construction activities which would be of concern to those agencies, such as weekend closures for work on grade separations, traffic detours and business access. Potential impacts to traffic, public safety, public services, community events, schools, businesses, emergency services, other construction projects, the environment, and other quality of life issues will be discussed ahead of construction. Identified affected local agencies include departments of the City and County of Riverside, the City of Perris, Caltrans, SCRRRA, BNSF, and the March Joint Powers Authority.

### **5. Construction Safety and Security**

The contractor will be responsible for developing their own safety and security plan that is appropriate for the work contemplated along the rail corridor, the city street crossings and the stations. This plan will be submitted to the owner. Review the plan for compliance with the Contract Documents, the RCTC safety plan and expected operations. The contractor is responsible for complying with the safety requirements, and discrepancies will be brought to their attention for appropriate changes.

Monitor all operations on the project, document incidents and take appropriate actions to discuss them with the contractor. Accidents will be recorded in daily reports and reports generated by law enforcement or regulatory agencies or the railroad will be collected for the project files

### **6. Contractor/Subcontractor Lien Releases**

Track, analyze, and report to RCTC regarding the filing of any Preliminary Lien Notices, Stop Work Notices and Lien Releases by the Project's subcontractors and vendors. Verify that the contract requires the contractor provide RCTC with both "release of lien" documentation and liens filed as work is completed, or the Project nears completion. Stop Work Notices will be addressed at weekly progress meetings to address any issues with lack of payment to subcontractors and vendors. Provide RCTC with a spreadsheet identifying liens and releases.



## **7. Contractor Insurance**

The Contractor will provide a list of subcontractors, which the CM will use to determine if insurance and bonding forms have been submitted in conformance with the contract. Provide specific files for tracking these insurance requirements.

## **8. Labor Compliance and Disadvantaged Business Enterprise (DBE) Monitoring:**

Verify that documents required are initiated, processed, and maintained. Monitor the contractor's compliance with prevailing wages under state and/or federal laws by providing the following services:

- Attend and conduct labor compliance portion of a pre-job-conference.
- Provide Prevailing Wage Training Seminar to Prime, subcontractors and staff
- Review of certified payrolls submitted by prime and subcontractors.
- Review correlation of payrolls and extra work billing.
- Review placement of posters by Contractors.
- Review submitted data and make recommendations to the Resident Engineer regarding possible deductions due to violations and discrepancies.
- Conduct preliminary investigations of apparent violations.
- Conduct, review and follow-up on field interviews. This generally will consist of two interviews per trade per month.
- Conduct site audits quarterly.
- EEO: Monitor goals and timetable for minority and female participation and Conduct preliminary investigations on complaints.

## **B. Project Controls**

### **1. Progress Management**

Utilize the agreed upon electronic document control system to file and manage all correspondence, submittals, shop drawings, permits, costs and other schedule sensitive issues.

Should a conflict be identified in the field, identify the conflict and provide recommendations to mitigate said conflict. Discuss with RCTC all changes anticipated by the CM team. Coordinate with the designer of record and RCTC before issuing a change order. Assist with the management of, and communication with, third parties along the alignment, including SCRRRA, BNSF, property owners, and outside agencies including the Cities of Perris and Riverside, Riverside County, March Air Force Base, and Moreno Valley. Include the various utility companies that have facilities and/or infrastructure adjacent to or crossing the alignment.



Work with the contractor with the goal of obtaining an approved baseline schedule early in the project. This baseline schedule will provide a platform from which progress and impacts can be measured throughout construction. The **CPM schedule** monthly updates to the baseline schedule will be reviewed within the timeframes allotted in the contract specifications. Work with the contractor and our staff to identify opportunities to recover the slippage in schedule.

Develop a list of required submittals, including shop drawings, from the contract documents and project specifications, and require the contractor to do the same. The two lists will be compared against each other to verify that both parties are in agreement as to the submittal requirements. These will all be managed within the electronic document control system, which will allow generation of reports indicating outstanding submittals and contract documents that require processing. Verify that the contractor includes activities and durations for submittal review and approval for all significant submittals. The activities will be required to be included on the schedule for all significant procurements, especially long-lead items such as grade crossing panels and equipment, communication, and station electrical components. Work with RCTC and the EOR to determine which submittals will be reviewed by which party.

Provide RCTC with a **Monthly Project Status Report** for the project as a whole. Meet with RCTC's Project Manager to agree on the items to be included in this report. Information will include progress reports for major elements of the Project, engineering and contract administration issues, costs expended versus costs projected, an updated contingency balance, contractors progress versus time expended, and schedule updates. Any schedule slippage will be identified, as well as schedule recovery strategies proposed by the contractor.

## 2. Document Control

Work with RCTC Project Management staff and the EOR in selecting a Document Control System (DCS) that meets the project needs and is capable of adding any necessary file categories to manage the document flow and contract. FTA and State guidelines will be followed, and agency requirements met

Provide consistency of document processing including:

- Document I.D.– contract number, date in, source
- Subject/File code assignment
- Document tracking
- Document distribution
- Records storage and retrieval

Provide training and assistance to all field office staff relative to correct and timely document processing. The document control procedures will be formalized in the Project Procedures Manual. All records will be properly secured in controlled computer storage with appropriate back-up systems. Backup files will be saved electronically and stored offsite. Hard copy files will be kept at the construction office.

Documents will be scanned, coded and filed in both the hard copy file as well as electronically.





Develop a matrix that describes the workflow for all project documents.

### **3. Progress Payments**

Unit rate items are measured by the field inspection staff as the work progresses. These field measurements are recorded in the inspector daily reports and on separate Quantity Sheets for each specific Bid Item. Lump sum items, with Schedules of Values, in FTA format, will be tracked against the progress in the field and the individual tasks updated as appropriate.

When the Contractor submits its monthly request, the inspectors provide the Quantity Sheets for that period. The inspectors and the office engineers then review the quantities requested by the Contractor against the Quantity Sheets and Schedule of Values. A meeting may occur between the CM staff and the Contractor to discuss any discrepancies between the quantity submitted on the pay request by the Contractor and the CM's Quantity Sheets. The approved monthly progress pay request package will include Quantity Sheets that support the quantities shown for the period and to date.

### **4. Cost Management**

Provide cost management through tracking project allocations from the beginning of the project using our Cost to Complete Trend System as described later. Input all current costs, track changes and potential changes and look at the effect each has on the overall budget. Provide the ability to segregate costs, using a unique WBS identification system, to provide RCTC with a summary of relevant costs as well as various funding sources. Cost reports will be provided to support the Monthly Project Status Report and the Quarterly FTA Project Status Reports.

### **5. Cost Engineering/Estimating**

Implement a Cost to Complete Trend System that forecasts the known costs (bid items and approved change orders) and potential costs (potential change orders, potential claims, and disputes) of construction through completion of the project. The cost to complete will be updated monthly and included in the monthly progress report to RCTC.

Once a change is identified, determine the scope of the change and produce an Independent Cost Estimate (ICE) for the change. The ICE will consist of a detailed estimate of the hours and costs associated with the materials, labor and equipment for items of work that are affected by the modifications, including markups outlined in the contract documents. For any change that might materially affect the cost basis of an item, generally either 25% above or below the engineer's estimate, daily reports will be assessed and actual cost of production will be determined in the case of adjustments being warranted. Each potential change order cost is included in the Project Cost to Complete Trend System.

### **6. Submittals, Non Conformance Reports, and RFIs**

Review submittals for compliance, quality and completeness before processing them for review by the Engineer of Record (Engineer) or a CM Team member, as appropriate and agreed upon by all parties 60 days prior to construction contract NTP. Copies of specific submittals for review will be provided to RCTC staff as determined during the preconstruction phase. The submittal review process will be tracked and the status report included in the weekly construction meeting.



Identify critical submittals and request timely action by all project team members.

Issue Non-Conformance Reports (NCR's) to the Contractor when work is not in compliance with contract requirements and requires remedial work or replacement. The EOR will be copied on all NCR's and will be requested to approve any remedial work proposed by the Contractor. NCR's will be tracked and reported to all parties through satisfactory resolution and acceptance of the deficient work. Requests for Information (RFI's) from the Contractor will be reviewed and assigned to the Engineer, RCTC, or CM Team for response, as appropriate. The Engineer and RCTC will be copied on all RFI's and the responses, regardless of responsibility for the response. Report status to all parties on a weekly basis for timely resolution of the issues. The web-based database and communications system to be used for this project will facilitate processing and tracking of submittals, NCR's, and RFI's.

## **7. Schedule Management**

Review the baseline and monthly schedule updates for compliance with the contract requirements. Verify that the Contractor has included key items in the Baseline schedule such as:

- Scheduling sequence conforming to the specified construction staging
- Order-of-work requirements
- Submittals and required submittal review periods
- Procurement of long-lead items
- Utility installations/relocations
- Appropriate level of detail, accurate logic ties, cost-loading as required, etc.

Once the project is underway, monthly schedule updates will be completed by the Contractor and submitted for review. Review the monthly update to determine if the update continues to conform to the contract specification requirements for staging, work phases, and other required sequencing. Check that progress reported in the schedule matches with progress in the field. Verify that approved change orders and time adjustments have been properly incorporated into the schedule.

Progress on the critical path is monitored by the project controls team at weekly meetings, review of inspector daily reports, weekly look ahead schedules and site visits. Perform a detailed analysis each month that compares the critical path between the Contractor's schedule updates. Identify activities that need further monitoring due to lack of progress. Interface with the appropriate party to resolve the issue that is delaying the project.

## **8. Changes/Claims**

Implement the procedural standards outlined in the contract documents, FTA Project and Construction Guidelines, as well as Chapter 9 - Contract Administration, of the FTA's Best Practice Procurement Manual.

If the contractor identifies a change, he will be required to submit a Request for Change (RFC) immediately upon encountering the change.



If the contractor is requesting time impacts, a Time Impact Analysis (TIA) will be required to be submitted. Review the TIA for proper logic ties and if warranted, additional time will be granted in the change order and the contractor will update the project schedule to reflect said change.

Should the contractor file a notice of potential claim, perform the following

- 1) Analyze the potential claim and examine the facts of the issue to determine if the claim has merit;
- 2) Take timely action to respond to the potential claim. Deny RFCs that are determined, in conjunction with RCTC, to have no merit via a detailed response letter to the Contractor outlining why their potential claim does not have merit. Issue a contract change order if the claim has merit. Track the contractors' costs in the field on a time and materials basis for any ongoing work associated with the potential claim to serve as back-up and support for future negotiations and resolution.
- 3) Prepare an independent cost estimate (ICE) to substantiate the costs of the change order.
- 4) Increase or decrease quantities of contract items or negotiate a lump sum agreed price with the understanding that proceeding on a time and materials (force account) basis will be the last resort.

Prepare a narrative that presents the applicable contract language and a brief background including correspondence, meeting minutes, and RFIs. Examine the facts of the issue and determine if a change from the plans and specifications has occurred. If an issue is found to have merit, the impacts on time and costs are then examined. A rough order of magnitude cost is allocated to each potential claim for inclusion into the project cost to complete the report until an ICE can be completed.

## 9. Reports and Records

Prescribed procedures for contract administration functions and tasks will be implemented for the Perris Valley Line Project, and include the following:

**Control Logs** – Review, log, coordinate and respond to RFI's, RFC's, PCO's, NCR's, NPC's and other project related inquiries. Inquiries will be tracked as they are submitted. Review and research each RFI and provide a recommended response. Should input from design, the RCTC or other agencies be required, coordinate obtaining the necessary responses.

**Daily Diaries & Photo Control** - Keep Caltrans-style daily diaries. Project inspection staff will submit daily diaries documenting construction activities, weather conditions, manpower, equipment and materials used in the work, work status, location and type of work performed, number and classification of trade labor, supervision, quantity and type of materials used, production, and conflicts or conversations that occurred during the day.

Additionally each inspector shall keep a daily photographic and video log of work activities. The photographs will be categorized by month, type of work and the individual that took the photo.



**Weekly Diaries and Progress Reports** - Prepare weekly RE Diaries that will document pertinent conversations with the contractor and any local agencies or 3<sup>rd</sup> parties. Prepare progress reports detailing the weekly construction progress this will include the progress in time, any weather days or CCO days for the week and financial payments to date. These reports will roll up to the monthly and quarterly reports.

**Change Documentation** - Change Orders will include the scope of the change, what items are being changed, how it is being paid, the percent increase/decrease of the items being changed and if an adjustment is warranted, any schedule impacts, the total cost of the change, and the associated funding splits. Provide a letter of transmittal indicating the scope of the change, why the change is necessary, method of compensation, the total cost of the change, who the change was discussed with and concurred by, if contract time is impacted by the change, funding splits, and the remaining contingency balance.

**Monthly Reporting** - Compile the monthly project costs, including engineering and management costs, change summaries and their effects on contingencies, contract work completed vs. time expended and other pertinent data. The monthly reporting will be formatted such that it will be able to be incorporated into RCTC's quarterly FTA reports.

**Quarterly FTA reports** – Will assist RCTC in preparation of the Quarterly FTA reports.

## 10. Railroad Force Account

Write a specific railroad diary that includes all railroad specific activity. The information includes the normal workday information, weather and location as well as specific documentation of rail road workers, items worked on, flagman for the day, equipment on the job and durations. For Force Account work, this separate daily report or "railroad diary" will be matched with specific invoiced daily reports and activities to corroborate work done and verify the accuracy of charges.

## C. Quality Assurance

### 1. Quality Assurance

Review the contractor's Quality Control Plan to verify that it meets all requirements of the FTA "Quality Assurance and Quality Control Guidelines, FTA-MA-06-0189-92-1", as well as Caltrans-Local Assistance Procedures Manual (LAPM), Chapter 16 – Administer Construction Contracts, Section 14 – Quality Assurance Program for FHWA funded local agency projects.

### 2. Utility Coordination

**Initial Field Review** –Copies of the master list will be distributed by RCTC to all members of the Project Team and filtered copies provided to each agency representative for review/comment.

**Relocation/Mitigation/Installation Planning** - Attend meetings, on an as-needed basis, which will include representatives of each relevant entity as well as the Design/CM team. These meetings will be used to identify specific utilities in need of



modification as well as any new facilities required under the project scope or changes. Also, monitor utilities that will not be able to be located until after construction begins. We assumed this to be the case in no more than 10 utility locations.

**Construction Phase** - Once the construction phase commences, assume the lead role in inspecting the relocation of utilities that were not relocated during the pre-construction phase, as well as the mitigation of any unknown utility issues identified during construction. Coordinate between the designer, contractor and utility agencies to develop small-scale workarounds and serve as a liaison between the utility and project design teams should larger mitigation efforts be required. Any unknown utilities will be incorporated into the master list immediately upon discovery.

### **3. Coordinate Flagging**

Once the construction contract is underway, the BNSF will relinquish dispatching and control to SCRRA. Meet with the contractor and SCRRA in the beginning of the project to discuss flagging, railroad requirements and make sure both parties know each other and agree on communication protocols for flagging and other issues. For every operation that will be within railroad right of way, a safety briefing will be held immediately prior to beginning work. Require that the contractor's EIC will inform all team members of the expected train traffic, any specific issues for the location and the safety for the day. HDR Team members will check in with the EIC and check out when leaving the project location within railroad right of way.

### **4. Storm Water Pollution Prevention (SWPPP)**

The Contractor will be required to develop, submit for approval, and implement a Storm Water Pollution Prevention Plan (SWPPP) for the project. This submittal will include guidelines for the handling of storm water, how the contractor will control any potential contamination of water leaving the project site and list all Best Management Practices required by the project. These are generally shown on the contract plans and discussed in the contract special provisions. Once the SWPPP plan is approved, the contractor will be required to follow the provisions of the plan for all instances on the project. The contractor will be responsible for implementing the Best Management Practices (BMPs) as shown on the plans and as required by the SWPPP. It is assumed that this project will comply with the Statewide Construction General Permit Order 2009-0009-DWQ which will take effect on July 1, 2010.

Review the project site on an on-going basis to verify that the proper BMPs are being utilized and Rain Event Action Plans are in place. Field inspectors and the Resident Engineer will be responsible for daily monitoring of BMPs and implementation and notifying the contractor of any upkeep, revisions and monitoring of the effectiveness of BMPs installed.

### **5. Review of Traffic Plans**

Traffic plans submitted by the Contractor will be reviewed for conformance with any lane closure details and traffic handling requirements provided in the contract documents and for conformance with the applicable standards. Traffic plans will be submitted to the appropriate local agency for review and acceptance prior to the start of construction. Periodically verify that Contractor properly installs and maintains detours and prosecutes the work in the phases shown on the drawings, or as approved. Once a detour has been installed, monitor its effects and assist with resolution of any issues arising from the detour. Provide advance notice to agencies, emergency services, businesses, residents, and the general public prior to



traffic detours and road or lane closures through the public outreach task.

## 6. Survey Support (QA) Services

Verify the accuracy of the contractor's supplemental control points and our surveyors will spot check layouts from those control points. Where layout is critical, such as wall construction along the ROW and bridge piles and abutments, spot check the Contractor's layout as requested by RE.

## 7. Systems Inspection, Testing, Commissioning, and Start-up

**Work identified in this section will be performed with SCRRRA and Designer participation.**

**Commissioning and Start-up** - Support RCTC with the performance of the following major operations and start-up tasks:

- Safety and Security Certification
- Integrated Testing
- Rail Activation and System Acceptance

### **Systems Inspection and Testing**

**Signal Inspection** and Test Witnessing—Monitor inspection, maintenance and installation of railroad crossings, wayside signal, bungalow wiring, traffic signals, remotely operated power switches and cutover testing. Verify the QC measures are followed and submitted. Assist the Engineer of Record in reviewing signal design submittals as required. Coordinate with BNSF and SCRRRA and the contractor to verify compliance with the negotiated construction agreements to minimize operational impacts.

Monitor and verify that permits are in place, submittals are made and materials procurements are performed to meet the signal installation schedule.

**Communications Inspection** -Monitor inspection, maintenance and installation of communications systems, review the planned systems and make recommendations to the Engineer of Record. Coordinate similarly to the Signal Inspection as outlined above. Monitor, in conjunction with SCRRRA, the integration of CCTV into existing SCCRA system.

### **Systems Testing:**

Coordinate execution of the various systems integration testing activities including the generation and review of testing procedures and reports, track access control and coordination and the organization of personnel and equipment, test witnessing.



As certifiable items are ready for witnessing, testing or placing into service, identify system items to be verified and incorporated into the Safety Certification Checklist.

**Safety and Security Certification** - The Perris Valley Project and RCTC, under mandate from the FTA and FRA, is required to implement a System Safety Program Plan (SSPP). One element of the SSPP is a Safety and Security Certification Program (SSCP) to verify that rail projects and major capital projects have been designed and constructed in accordance with safety and security related criteria and specification requirements.

Support RCTC with maintaining oversight of the safety and security issues. Assist RCTC in its coordination with the FRA, CPUC and FTA as needed. This oversight will also include identifying safety item requirements for operations, including contractor provided training, rules and procedures, and emergency drills. Using an electronic and hardcopy filing system, safety and security certification items identified in the documentation review, checklists, and analyses will be logged, tracked and verified. Support RCTC throughout the entire safety and security certification process, culminating in a Final Safety and Security Certification Verification Report that summarizes the readiness of the project for revenue service.

Follow the work plan regarding the below twelve major tasks:

- Support the Preparation of a Safety and Security Management Plan (SMPP)
- Support the preparation of a Safety and Security Certification Program Plan
- Develop Master Certifiable Items List (CIL)
- Prepare Preliminary Hazard Analysis
- Develop Safety/Security File System
- Review Testing and Safety Certification Activities
- Implementation of the Safety and Security Certification Program
- Develop Safety Critical Items List to track open items
- Support the preparation of Final Project Safety and Security Certificates

**Integrated Testing** - The construction contractor will be required to submit and adhere to an Integrated Test Plan that will identify the tests required, and the roles, responsibilities, and schedules. Verify that the Plan provides the necessary instructions and prerequisite training for contractors and staff prior to accessing the mainline for testing. Verify the Plan includes the necessary forms and instructions to request track allocation procedures, red tag procedures, vehicle mainline testing, wayside access, and flagman protection. Requirements for this Plan will be clearly spelled out as a contract deliverable in the construction contract documents.

Although the contractor will be responsible for developing and implementing the Test Plan, develop a Test Management Oversight Plan which will provide the framework for overseeing and coordinating the contractor's integrated and pre-revenue testing. Provide a Test Oversight Manager who will implement the plan and provide liaison with the contractor. The Test Oversight Manager will also provide coordination with city and traffic engineers to verify grade crossings are adequately protected prior to vehicle testing.



**Rail Activation Plan** - Prepare a Rail Activation Plan. This Plan will identify and schedule all of the critical rail start-up tasks and assign responsibility for each of them. Work closely with the FRA to verify tasks are defined and assigned in accordance with their policies and practices.

Categorize each activation task under one of the following ten functions:

- Staffing
- Transportation
- Maintenance/Engineering
- Training
- Safety
- Security
- Finance
- Service Integration
- Fare Collection
- Public Information

## 8. **Materials Testing and Support Services**

Provide Quality Assurance (QA) geotechnical and materials testing services for the Perris Valley Line project. Test all materials in accordance with the most current and appropriate ASTM and/or Caltrans Test Methods.

Create a table of all materials that require testing. The table will address testing frequencies, generally following the frequencies identified in the Caltrans Construction Manual.

**Daily Field Reports (DFRs)** - DFRs will be written by the field materials tester and submitted to the project office.

**Earthwork Observation and Testing** - Provide certified soils technicians for observation and testing of backfill placement, as fill thickness and the earthwork contractor's schedule requires.

**Foundation Observation** - Observe foundation excavations before reinforcing steel is placed, to verify that foundations will bear on and within suitable soil.

**Concrete Sampling and Testing** - Field special and batch plant inspection will be performed by a certified technician, both on site and at a batch plant within 50 miles of this alignment.

**Hot Mix Asphalt (HMA) Sampling and Testing** - Field special and batch plant inspection will be performed by a certified technician.

**Materials Laboratory Testing** - Perform all materials laboratory testing for this project at the Leighton Caltrans certified Temecula laboratory.

Perform geotechnical laboratory testing of representative on-site and imported soils, and aggregate base materials to determine the laboratory maximum dry density and optimum moisture content ("compaction curves"), and corresponding





grain size distribution to match these earth materials with the appropriate compaction curve. Additional geotechnical laboratory testing such as corrosion potential, sand equivalent and/or R-value testing, may also be required. Perform concrete compressive strength and shrinkage testing, and asphalt extraction, gradation and density testing as specified. It is anticipated that the QA effort will be approximately 10-20% of QC testing frequencies, depending on material performance and material risks. Testing frequencies will largely be established as shown in the Caltrans Construction Manual for similar materials.

**Quality Control** –Laboratory results are reviewed by a California licensed Civil Engineer before final results are transmitted. In support of all of these field services, provide project management, supervision and internal quality control.

## 9. As-Built Drawings

Coordinate with the Contractor to verify they are keeping up to date and accurate as-built plans and coordinate with the Engineer of Record for any design changes and changed plans. Work with the Engineer of Record to review the final as-built drawings for accuracy.

## D. Environmental

### 1. Environmental Services

Implement the Construction Environmental Control Plan. Coordinate the monitoring (e.g., biological, cultural, paleontological) that would be required during portions of project construction. Advise the resident engineer on which requirements will need to be included in the contractor's schedule. Verify that key team players are aware of environmental constraints and any schedule implications for sensitive environmental resources.

#### **TASK 1 Construction Monitoring**

##### **Task 1.1 Biological Resource (During Construction)**

##### **Task 1.1.1 Biological Construction Monitoring through project durations**

Per mitigation measure (BR-5) of the Draft EIR, biological construction monitors will be available to monitor all areas required. This scope assumes that when work is conducted in environmentally sensitive areas (ESA), the monitor will be onsite 5 days per week. If substantial construction activity is planned for the project site within/adjacent to ESA areas, there may be a need for up to one additional monitor. If an additional monitor is perceived necessary between HDR and RCTC, a cost amendment would be required. For work in non-environmental sensitive areas, a monitor will be onsite approximately 3 days per week. Each monitoring day is assumed to be 10 hours to allow for monitoring a full construction day and providing the necessary travel and reporting throughout the site. We have budgeted a total of 2,500 biological monitoring hours for this cost estimate. Please see the attached budget spreadsheet for the cost to conduct the biological monitoring preconstruction survey.



The Draft EIR (ES.4.0) identifies that construction would occur outside the bird breeding season for the southwestern willow flycatcher, least Bell's vireo, and California gnatcatcher. If project construction is proposed during the breeding season, near suitable habitat for these species and surveys per U.S. Fish & Wildlife Service protocol are required, an amended scope of work would be required to perform this work. In addition, noise monitoring at nest locations would require an amended scope of work prior to initiating the additional work.

#### **Task 1.1.2 Spadefoot Toad Preconstruction survey**

Spade foot toads are only apparent during a small window of 4-8 weeks every year. Surveys for the two sites (San Jacinto River Bridge and Overflow Channel Bridge areas) where they may occur are recommended to be done at the time of year when the toads may be visible rather than the 30 days before construction. Surveying at other times of year will not be effective. Surveys will be conducted by a qualified biologist a survey report prepared. Please see the attached budget spreadsheet for the cost to conduct the preconstruction survey.

At the time this scope of work was prepared, the project is in the Draft EIR stage and the specific mitigation plan has not yet been prepared and it is uncertain how many spade foot toads (if any) exist in the project area. Typically mitigation for toads requires exclusion fencing around the project area and daily monitoring to ensure toads are not entering the area, the exclusion fencing is intact, and removing any found in the project area. HDR has included an additional 100 biologist hours (beyond those identified for the survey above) to support spade foot toad mitigation efforts as needed. If additional mitigation support beyond the 100 hours is needed, an amended scope of work would be needed prior to initiating the addition mitigation support.

#### **Task 1.2 Cultural Resources (During Construction)**

##### **Task 1.2.1 Archaeological Monitoring – Bedrock Milling Site (Between MP 3.50 and 4.50)**

Under this task, conduct archaeological monitoring between MP 3.50 and 4.50. The monitor will be present during all construction activities in this area, per the mitigation measure (CR-1) identified in the Draft EIR (April 5, 2010). We have assumed up to 10 hours per day for the monitor. This would include monitoring as well as monitoring report preparation. As required in CR-1 in the PVL DEIR, "archaeological monitors will have the authority to temporarily halt or divert construction equipment to examine potential resources, assess significance, and offer recommendations for the procedures deemed appropriate to either further investigate or mitigate any adverse impacts." Cultural resource discoveries will first be reported to Project Manager who will determine, in conjunction with the monitor, the degree to which the discovery should be assessed. General monitoring methods consist of taking daily field notes and documenting daily construction activities. Provide weekly progress reports. All archaeological monitors will have passed the appropriate rail safety training. Please see note #1, at end of scope, regarding procedures in the event that archaeological resources are identified on the project site.

##### **Task 1.2.2 Archaeological Monitoring - Bedrock Milling Site (Between MP 5.60 and 6.50)**

Under this task, conduct archaeological monitoring between MP 5.60 and 6.50. The monitor will be present during all construction activities in this area, per the mitigation measure (CR-2) identified in the Draft EIR (April 5, 2010). We have assumed up to 10 hours per day for the monitor. This would include monitoring as well as monitoring report preparation. As required in CR-2 in the Draft EIR "archaeological monitors will have the authority to



temporarily halt or divert construction equipment to examine potential resources, assess significance, and offer recommendations for the procedures deemed appropriate to either further investigate or mitigate any adverse impacts.” Cultural resource discoveries will first be reported to the Project Manager who will determine, in conjunction with the monitor, the degree to which the discovery should be assessed. General monitoring methods consist of taking daily field notes and documenting daily construction activities. The Project Manager will provide weekly progress reports. All archaeological monitors will have passed the appropriate rail safety training. Please see note #1, at end of scope, regarding procedures in the event that archaeological resources are identified on the project site.

### **Task 1.2.3 Paleontological Monitoring**

Under this task, staff from the San Diego Natural History Museum will conduct paleontological monitoring on the project site per the requirements of mitigation measures CR-3 identified in the Draft EIR (April 5, 2010). HDR has assumed 140 man-days (10 hour per day) for a total of 1,400 hours of paleontological monitoring. Since project construction may occur in different areas simultaneously, there may be instances where two monitors are required. An amended scope of work would be needed prior to initiating the additional monitoring effort. The mitigation measure notes that paleontological monitoring is required for all areas of the project site where grading of depths of more than 4 feet will be required, with the exception of the following, which will require monitoring regardless of depth: 1) Monitoring construction associated with the Citrus Connection, South Perris Station and Layover Facility and 2) if Palmyrita or Columbia station option are selected, construction will be monitored. All paleontological monitors will have passed the appropriate rail safety training. Please see note #1, at end of scope, regarding procedures in the event that paleontological resources are identified on the project site.

Construction within the San Jacinto River will be monitored to verify that the work is done in compliance with the jurisdictional impact area conditions. If habitat removal is to occur within the nesting season, restrictions as outlined in the MBTA will be monitored by the project biologist.

Verify adherence to environmental and encroachment permits’. Permitting requirements will be a line item to be discussed at the weekly progress meeting between the CM team and the contractor. Our Environmental staff will assist the RE if needed on any environmental issues outlined in the environmental control plan as well as new issues that present themselves in the field. Air quality, Storm Water Pollution Prevention, noise regulations and hazardous materials locations will be periodically reviewed and monitored to verify compliance by the contractor with the various laws and requirements as set forth in the special provisions and any permits required for the project.

## **Phase 2 A: Post Construction Phase Services**

### **1. Contract Closeout**

These activities will include the following steps:

- Verification of work completion for each respective contract.



- Final payment processing.
- Resolution of open change orders. Forwarding of executed change orders to storage.
- Review final inspection, certification, and warranty documentation. Transfer of documents and records to storage.
- Review of as-builts and transfer of as-built contract drawings for storage and protection.
- Review O&M Manuals
- Review of final DBE/EEO documentation for compliance.
- Review of payroll certification records.
- Resolution of liens. Forwarding of lien releases to storage.
- Liquidated damages assessment.
- Backcharge(s) resolution.
- Confirm third-party acceptance, if required.

## **2. Warranties: Monitor and Track Warranties**

Include warranty and guarantee procedures in the final version of RCTC's Construction Management Procedures Manual. Metrolink and BNSF requirements must be clearly considered in future warranty monitoring. These procedures are generally as follows:

For warranties and guarantees, when work is formally accepted, advise the contractor in writing of the start of the warranty period, the effective end date of the warranty period and the status of retention release dependent on the warranted work.

## **3. Plant Establishment**

Monitor contractor efforts for the plant establishment throughout the project including intermittent inspection of plants and verifying that irrigation systems work properly and that all plants are established or replaced.

## **4. Turn Over to RCTC & SCRRA**

Prepare all project documentation, files, electronic files, brochures, materials records, and final as-built plans from contractor, warranties and manuals for turn over to RCTC and SCRRA as needed.

This would include punchlist final walkthrough.

Coordinate Station Turn Over to RCTC.

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**



**1. Pre-Construction**

**Start August 2010**

- a. CM Manual 10 Weeks after Receipt of Design Documents
- b. Constructability Review 4 weeks after Receipt of Design Documents
- c. QA/QC Plan 16 weeks after Receipt of Design Documents
- d. Utility Relocation Inspection start within 4 weeks of start

**2. Construction**

**Start April 1, 2011**

- a. Bid Assistance May 1, 2011
- b. Construction Inspection start May 1, 2011
- c. Train Testing and Start Up May 30, 2012
- d. Revenue Service December 2012

**3. Post Construction**

**Start November 2012**

- a. Project As-Built plans April 30, 2013
- b. Hand over all Documents April 30, 2013





**EXHIBIT "C"**

**PART I**

**COMPENSATION AND PAYMENT**

**PART II**

**APPROVED SUBCONSULTANTS  
AND  
APPROVED BILLING RATES**



## EXHIBIT "C"

### PART 1 COMPENSATION AND PAYMENT

For the satisfactory performance and completion of the Services under this Agreement, the Commission will pay the Consultant compensation as set forth herein.

#### 1) ELEMENTS OF COMPENSATION.

Compensation for the Services will be comprised of the following elements: 1.1 Direct Labor Costs; 1.2 Fixed Fee; and 1.3 Additional Direct Costs.

##### a) DIRECT LABOR COSTS.

Direct Labor costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

##### i) DIRECT SALARY COSTS

Direct Salary Costs are the base salaries and wages actually paid to the Consultant's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to the Consultant's personnel appears in Section 2 below.)

##### ii) MULTIPLIER \*

The Office and (Field) Multipliers to be applied to the Direct Salary Costs to determine the Direct Labor Costs is **1.4909 Office & 1.3534 Field** respectively, and are the sum of the following components:

(1)	<u>Direct Salary Costs</u>	<u>1.00</u>
(2)	<u>Payroll Additives</u>	<u>.4909 Office</u> <u>.3534 Field</u>

The decimal ratio of Payroll Additives to Direct Salary Costs. Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

(3) Overhead Costs **1.1860 Office & .9688 Field**

The decimal ratio of allowable Overhead Costs to the Consultant firm's total direct salary costs. Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, and consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

(4) Profit **8%**

**1.1.2.4 Multiplier **2.8911 Office & 2.5080 Field****

**(Sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)**

\* The Payroll Additives and Overhead Costs, as those terms are defined above, shall be adjusted annually to equal Consultant's audited overhead costs for the preceding year. The adjustment shall occur when Consultant has published its audited overhead rate and shall apply to Direct Salary Cost, as defined above, incurred thereafter until the rate for the following year is available upon completion of an independent audit of Consultant's indirect cost rate.

**b) FIXED FEE.**

A Fixed Fee of **\$1,077,897.00** shall be paid to Consultant for Consultant's complete and satisfactory performance of this Agreement and all Services required hereunder. Commission shall pay the Fixed Fee in monthly installments based upon the percentage of the Services completed at the end of each billing period, as determined in the sole discretion of the Commission's Representative, or his or her designee. Consultant shall not be entitled to and shall forfeit any portion of the Fixed Fee not earned as provided herein.

**c) ADDITIONAL DIRECT COSTS.**

Additional Direct Costs directly identifiable to the performance of the services of this Agreement shall be reimbursed at the rates below, or at actual invoiced cost.

Rates for identified Additional Direct Costs are as follows:

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
Sub Consultant Mark Up	\$327,438.00
Per Diem	Actual Cost
Car mileage	0.50 or current IRS rate
Rental Car	Actual Cost
Travel	Actual Cost
• Hotel	\$150/per night
• Meals	\$30/per day
Vehicles	\$1400/per month maximum
Photocopies (Black & White)	Actual Cost
Photocopies (Color)	Actual Cost
Photographs/ other reprographic Services	Actual Cost
Postage/Shipping	Actual Cost
Courier Service	Actual Cost
Other Rentals, supplies, purchases	Actual Cost

Travel by air and travel in excess of 100 miles from the Consultant's office nearest to the Commission's office must have the Commission's prior written approval to be reimbursed under this Agreement.

## 2) **DIRECT SALARY RATES**

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- a) Direct Salary Rates shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in Paragraph 1.1.2 above.
- b) Direct Salary Rates shown herein are in effect for one year following the effective date of the Agreement. Thereafter, they may be adjusted annually to reflect the Consultant's adjustments to individual compensation. The Consultant shall notify the Commission in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

**HDR CCC FIELD RATES:**

**POSITION OR CLASSIFICATION      RANGE OF RAW HOURLY RATES**

Project Director	\$111.11 - \$133.33/hour
Structure Specialist/Proj Advisor	\$83.81 - \$100.57/hour
Signal Preemption Coordinator	\$75.00 - \$90.00/hour
Resident Engineer	\$68.00 – 81.60/hour
Inspector	\$46.76 - \$90.00/hour
Admin Assistant/Field Office Mgr	\$30.00 - \$36.00/hour
Admin Assistant – Office	\$23.77 - \$28.52/hour

- c) The above rates are for the Consultant only. All rates for subconsultants to the Consultant will be in accordance with the Consultant's cost proposal.

**3) INVOICING.**

- a) Each month the Consultant shall submit an invoice for Services performed during the preceding month. The original invoice shall be submitted to the Commission's Executive Director with two (2) copies to the Commission's Project Coordinator.
- b) Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by the Commission's Representative.
- c) Base Work shall be charged separately, and the charges for each task and Milestone listed in the Scope of Services, shall be listed separately. The charges for each individual assigned by the Consultant under this Agreement shall be listed separately on an attachment to the invoice.
- d) A charge of \$500 or more for any one item of Additional Direct Costs shall be accompanied by substantiating documentation satisfactory to the Commission such as invoices, telephone logs, etc. Consultant shall maintain files and documentation, for auditing purposes, substantiating all Additional Direct Costs charged to the Commission.
- e) Each copy of each invoice shall be accompanied by a Monthly Progress Report and spreadsheets showing hours expended by task for each month and total project to date.
- f) Each invoice shall indicate payments to DBE subconsultants or supplies by dollar amount and as a percentage of the total invoice.
- g) Each invoice shall include a certification signed by the Consultant's Representative or an officer of the firm which reads as follows:

I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed.

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Invoice No. \_\_\_\_\_

#### 4) PAYMENT

- a) The Commission shall pay the Consultant within four to six weeks after receipt by the Commission of an original invoice. Should the Commission contest any portion of an invoice, that portion shall be held for resolution, without interest, but the uncontested balance shall be paid.
- b) The final payment for Services under this Agreement will be made only after the Consultant has executed a Release and Certificate of Final Payment.

#### 5) SAVINGS BONUS

##### Definitions

“**Savings Bonus**” shall mean compensation to be provided to Consultant, in addition to any other compensation under this Agreement, for Actual Savings realized by the Commission, in an amount not to exceed \$1,600,000 (approximately 10% of total fee per phase, \$200,000 in Phase 1, \$1,300,000 in Phase 2 and \$100,000 in Phase 3).

“**Phase of Work**” for this agreement shall mean Pre-Construction, Construction, and Post Construction.

“**Actual Cost**” shall mean the actual cost of providing the Services, as determined at completion of Phase 1, Phase 2 and Phase 3 less Other Direct Costs. The Actual Cost shall be calculated following submission of the final invoice for each of the phases by Consultant and final acceptances of each phase’s Services by Commission.

“**Actual Savings**” shall mean the savings achieved by Consultant as determined at the completion of each phase based on the Metrics.

“**Metrics**” shall mean the set of metrics to be mutually established and agreed upon by the Parties within ninety (90) days of the effective date of this Agreement to be used in determining the Actual Savings. The Metrics, if established as set forth herein and approved in writing by the Commission’s Executive Director, shall be incorporated into the terms and this Section 5 as though fully set forth herein.

The Commission desires to encourage and regard Consultant for Project delivery that is of excellent quality and also timely, efficient and economical. In addition to any other compensation provided for in this Agreement, Consultant shall be entitled to a Savings Bonus equal to twenty five percent (25%) of Actual Savings realized by the Commission, up to the not to exceed amount shown above for each phase.

If the Parties are unable to successfully establish the Metrics, the Parties agree that Consultant shall not be entitled to any Savings Bonus. If the Metrics are adopted, the Commission may adjust this Savings Bonus program, pursuant to a written amendment, as required to equitably account for changes in work assigned to the Consultant.

The Consultant acknowledges that it is under a pre-existing legal obligation to deliver the Project at the lowest cost to the Commission. The Savings Bonus is being offered as an incentive to Consultant. Any dispute arising out of the administration, calculation or meaning of this Section 5 shall be resolved at the sole discretion of the Executive Director. The exclusive remedy for any claim under this Section 5 shall be a written appeal to the Commission, and such claim shall not be subject to litigation or any other remedy either at law or in equity.



**EXHIBIT "C"**

**PART 2  
APPROVED SUBCONSULTANTS  
AND  
APPROVED BILLING RATES**

<b>HDR Engineering, Inc. Office Rates</b>										
POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additions	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Systems Management Lead	1.0	0.4909	1.186	2.6769	.08	2.8911			\$104.57	\$125.48
Vehicle Specialist	1.0	0.4909	1.186	2.6769	.08	2.8911			103.41	124.10
QA Manager	1.0	0.4909	1.186	2.6769	.08	2.8911			92.04	\$110.48
PM Manager	1.0	0.4909	1.186	2.6769	.08	2.8911			88.25	\$105.90
Railroad Agreement Advisor	1.0	0.4909	1.186	2.6769	.08	2.8911			\$82.50	\$99.00
Transit Advisor	1.0	0.4909	1.186	2.6769	.08	2.8911			\$81.89	\$98.27
Rail Operations Specialist	1.0	0.4909	1.186	2.6769	.08	2.8911			\$72.80	\$87.36
Positive Training Control Advisor	1.0	0.4909	1.186	2.6769	.08	2.8911			\$70.00	\$84.00
Sr. Signals Engineer	1.0	0.4909	1.186	2.6769	.08	2.8911			\$67.66	\$81.19
Funding Specialist	1.0	0.4909	1.186	2.6769	.08	2.8911			\$67.25	\$80.70
Estimator	1.0	0.4909	1.186	2.6769	.08	2.8911			\$60.56	\$86.85
CPUC Specialist	1.0	0.4909	1.186	2.6769	.08	2.8911			\$54.50	\$65.40
Inspector	1.0	0.4909	1.186	2.6769	.08	2.8911		x	\$48.30	\$57.96
Track Reviewer	1.0	0.4909	1.186	2.6769	.08	2.8911			\$44.51	\$131.67
Accountant	1.0	0.4909	1.186	2.6769	.08	2.8911			\$44.47	\$53.36
Structural Engineer	1.0	0.4909	1.186	2.6769	.08	2.8911			\$43.86	\$67.20
Communications Engineer	1.0	0.4909	1.186	2.6769	.08	2.8911			\$36.54	\$43.85
Reviewer	1.0	0.4909	1.186	2.6769	.08	2.8911			\$36.49	\$102.56
Systems EIT	1.0	0.4909	1.186	2.6769	.08	2.8911			\$33.30	\$39.96
Safety Oversight	1.0	0.4909	1.186	2.6769	.08	2.8911			\$33.00	\$41.04
Project Coordinator/Admin	1.0	0.4909	1.186	2.6769	.08	2.8911			\$24.00	\$38.92
Biologist	1.0	0.4909	1.186	2.6769	.08	2.8911			\$21.03	\$67.31
Environmental Lead	1.0	0.4909	1.186	2.6769	.08	2.8911			\$48.95	\$86.54
Environmental Planner	1.0	0.4909	1.186	2.6769	.08	2.8911			\$35.00	\$42.00

**HDR Engineering, Inc. (continued)**

POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Environmental Document Prep	1.0	0.4909	1.186	2.6769	.08	2.8911			\$30.45	\$36.54
Environmental GIS Analyst	1.0	0.4909	1.186	2.6769	.08	2.8911			\$27.83	\$33.39
Environmental Analyst	1.0	0.4909	1.186	2.6769	.08	2.8911			\$21.92	\$26.30
<b>Cultural/Paleo</b>	1.0	0.4909	1.186	2.6769	.08	2.8911				
Principle Investigator	1.0	0.4909	1.186	2.6769	.08	2.8911			\$43.33	\$52.00
Manager	1.0	0.4909	1.186	2.6769	.08	2.8911			\$33.36	\$40.03
Cultural Coordinator	1.0	0.4909	1.186	2.6769	.08	2.8911			\$32.03	\$38.43
Project Archaeologist	1.0	0.4909	1.186	2.6769	.08	2.8911			\$29.83	\$35.79
Paleo Monitor	1.0	0.4909	1.186	2.6769	.08	2.8911			\$20.00	\$24.00
Cultural Monitor	1.0	0.4909	1.186	2.6769	.08	2.8911			\$19.00	\$24.00

**ARCADIS**

POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Project Controls Manager	1.0	0.7261	0.5782	2.3043	.08	2.4886			58.89	60.07
Senior Scheduler	1.0	0.7261	0.9740	2.7001	.08	2.9161			54.48	55.57
Claims Mitigation	1.0	0.7261	0.9740	2.7001	.08	2.9161			62.78	64.04
Claims Analysis	1.0	0.7261	0.9740	2.7001	.08	2.9161			75.44	76.95

**Arellano Associates**

POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Outreach Manager	1.0	N/A	0.6	1.6	.08	1.7280			90.00	91.80
Outreach Specialist	1.0	N/A	0.6	1.6	.08	1.7280			61.00	62.22

Outreach Specialist	1.0	N/A	0.6	1.6	.08	1.7280			51.00	52.02
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Note 1: Payroll additives included in overhead costs.

**C-**

<b>David Evans and Associates, Inc.</b>										
POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Survey Manager	1.0	0.6551	1.2424	2.8975	.08	3.1293			\$80.00	\$90.00
PLS/Survey Analyst	1.0	0.6551	1.2424	2.8975	.08	3.1293			\$42.00	\$52.00
PLS Party Chief	1.0	0.6551	1.2424	2.8975	.08	3.1293	x	x	\$45.56	\$49.56
Chainman	1.0	0.6551	1.2424	2.8975	.08	3.1293	x	x	\$39.73	\$43.73
Survey Admin/Clerical	1.0	0.6551	1.2424	2.8975	.08	3.1293	x		\$25.00	\$30.00

<b>Ghirardelli Associates</b>										
POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Office Engineer	1.0	0.83	0.48	2.31	.08	2.4948			48.00	60.00

<b>Gonzalez-White Consulting Services</b>										
POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Labor Compliance Officer	1.0	<i>Small Business - no audited rate</i>		1.7068	.08	1.8433			45.00	45.90

Note 1: Rate includes costs for mileage, photocopying, postage and shipping.

<b>Griego and Associates</b>										
POSITION OR CLASSIFICATION	MULTIPLIER						SUBJECT TO (enter "x")		RANGE OF DIRECT SALARY RATES	
	Direct Labor	Payroll Additives	OH Costs	Total	Fee Rate	Total Multiplier	OT Premium	Prevailing Wage	\$ / Hr	\$ / Hr
Commissioning/Start-up Manager	1.0	Small Business – No Audited Rate		1.3374	.08	1.4444			90.00	115.00
Safety/Security Certification Manager	1.0	Small Business – No Audited Rate		1.7196	.08	1.8572			70.00	92.00

Systems Testing and Activation Manager	1.0	Small Business – No Audited Rate	1.6049	.08	1.7333			75.00	110.00
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**C-**

<b>Leighton Consulting, Inc.</b>										
<b>POSITION OR CLASSIFICATION</b>	<b>MULTIPLIER</b>						<b>SUBJECT TO (enter "x")</b>		<b>RANGE OF DIRECT SALARY RATES</b>	
	<b>Direct Labor</b>	<b>Payroll Additives</b>	<b>OH Costs</b>	<b>Total</b>	<b>Fee Rate</b>	<b>Total Multiplier</b>	<b>OT Premium</b>	<b>Prevailing Wage</b>	<b>\$ / Hr</b>	<b>\$ / Hr</b>
Senior Principal (PE, GE, REA I)	1.0	0.284	1.549	2.833	.08	3.0596			85.34	95.99
Principal Geologist (PG, CEG)	1.0	0.284	1.549	2.833	.08	3.0596			74.64	83.96
Geologist	1.0	0.284	1.549	2.833	.08	3.0596			52.88	59.48
Geotechnical Project Manager (GE)	1.0	0.284	1.549	2.833	.08	3.0596			49.50	55.68
Associate Geologist (PG)	1.0	0.284	1.549	2.833	.08	3.0596			46.34	52.13
Senior Project Scientist	1.0	0.284	1.549	2.833	.08	3.0596			33.32	37.48
Staff Geologist/Scientist	1.0	0.284	1.549	2.833	.08	3.0596			25.96	29.20
Administrative	1.0	0.284	1.549	2.833	.08	3.0596	X		20.18	22.70
Prevailing Wage Group I (soil/asphalt)	1.0	0.284	1.549	2.833	.08	3.0596	X	X	42.21	46.81
Prevailing Wage Group II (concrete/masonry)	1.0	0.284	1.549	2.833	.08	3.0596	X	X	43.99	48.59
Prevailing Wage Group II (CWI/bolting)	1.0	0.284	1.549	2.833	.08	3.0596	X	X	43.99	48.59
Prevailing Wage Group III (NDT)	1.0	0.284	1.549	2.833	.08	3.0596	X	X	45.99	50.59

<b>SIMON WONG ENGINEERING (2010/2011 Rates)</b>										
<b>POSITION OR CLASSIFICATION</b>	<b>MULTIPLIER</b>						<b>SUBJECT TO (enter "x")</b>		<b>RANGE OF DIRECT SALARY RATES</b>	
	<b>Direct Labor</b>	<b>Payroll Additives</b>	<b>OH Costs</b>	<b>Total</b>	<b>Fee Rate</b>	<b>Total Multiplier</b>	<b>OT Premium</b>	<b>Prevailing Wage</b>	<b>\$ / Hr</b>	<b>\$ / Hr</b>
Project Manager	1.0	N/A	1.5256	2.5256	.08	2.7276			69.67	92.86
Assistant R.E.	1.0	N/A	1.5256	2.5256	.08	2.7276	x		46.34	62.06
Safety/Rail Coordinator	1.0	N/A	1.5256	2.5256	.08	2.7276	x	x	50.00	60.00
Inspector (Prev. Wage)	1.0	N/A	1.5256	2.5256	.08	2.7276	x	x	47.44	55.90
Doc. Control / Admin.	1.0	N/A	1.5256	2.5256	.08	2.7276	x		27.58	35.23

Note 1: Payroll additives included in overhead costs.

Note 2: Prevailing wage rates based on California DIR Prevailing Wage Determination SC-23-63-2-2009-1D.

**C-**

<b>Xorail, Inc.</b>										
<b>POSITION OR CLASSIFICATION</b>	<b>MULTIPLIER</b>						<b>SUBJECT TO (enter "x")</b>		<b>RANGE OF DIRECT SALARY RATES</b>	
	<b>Direct Labor</b>	<b>Payroll Additives</b>	<b>OH Costs</b>	<b>Total</b>	<b>Fee Rate</b>	<b>Total Multiplier</b>	<b>OT Premium</b>	<b>Prevailing Wage</b>	<b>\$ / Hr</b>	<b>\$ / Hr</b>
Lead Systems Engineer	1.0	N/A	1.2064	2.2064	.08	2.3829			72.12	96.16
Signalization Principle Inspector	1.0	N/A	1.2064	2.2064	.08	2.3829			43.27	62.50
Communication Inspector	1.0	N/A	1.2064	2.2064	.08	2.3829			43.27	62.50
Test Engineer	1.0	N/A	1.2064	2.2064	.08	2.3829			43.27	62.50
Test Technician	1.0	N/A	1.2064	2.2064	.08	2.3829			24.04	38.47
Signal Design Engineer	1.0	N/A	1.2064	2.2064	.08	2.3829			38.47	52.89
Sr. Signal Engineer	1.0	N/A	1.2064	2.2064	.08	2.3829			48.08	72.12
CAD Technician	1.0	N/A	1.2064	2.2064	.08	2.3829	X		18.00	38.47
Project Manager	1.0	N/A	1.2064	2.2064	.08	2.3829			43.27	62.50
Administrative Assistant	1.0	N/A	1.2064	2.2064	.08	2.3829	X		18.00	38.47

Note 1: Payroll additives included in overhead costs.

**Sub-Consultant Reimbursable  
Other Direct Costs**

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
Per Diem	Actual Cost
Vehicle	\$1,400 max per month
Car mileage	0.50 or current IRS rate
Rental Car	Actual Cost
Travel	
• Hotel	\$150/per night
• Meals	\$30/per night
Photocopies (Black & White)	Actual Cost
Photocopies (Color)	Actual Cost
Photographs/other reprographic Services	Actual Cost
Postage/Shipping	Actual Cost
Courier Service	Actual Cost
Other Rentals, supplies, purchases	Actual Cost
Advertising	Actual Cost
Graphic Design Services	Actual Cost
Translation Services	Actual Cost

Toll-Free Helpline Services	Actual Cost
Agency Fees (recording fee, etc)	Actual Cost
Mobile Laser Scanning Equipment (TiTAN)	\$15,000.00 per day

**C-  
Sub-Consultant Reimbursable  
Other Direct Costs (continued)**

<u>ITEM</u>	<u>REIMBURSEMENT RATE</u>
Nuclear density gauge	\$88.00 per day
Photo-Ionization Detector (PID)	\$200.00 per day
Standard Block Weld Test	Actual Cost
<b>CONCRETE, MASONRY &amp; ASPHALT LAB TESTING</b>	
Pick-up and Delivery of Test Specimens	\$ 80.00 per trip
Concrete Cylinders Compressive Strength (ASTM C 39)	\$ 25.00 per each
Mix Design, Review of Existing Data-Concrete, Asphalt	\$150.00 per each
Asphalt Concrete Maximum Density – Hveem	\$125.00 per each
Mortar Cylinders (2 by 4 inches)	\$ 25.00 per each
Grout Prisms (3 by 6 inches)	\$ 25.00 per each
CMU Grouted Prisms (Comp Test $\leq$ 8 by 8 by 16)	\$180.00 per each
Bolt Tensile Test	\$ 50.00 per each
Bolt, Nut or Washer Hardness Test	\$ 50.00 per each
Rebar Tensile Strength, $\leq$ No. 10 Bars	\$ 45.00 per each
Rebar Bend Test, $\leq$ No. 8 Bars	\$ 45.00 per each
<b>SOIL &amp; AGGREGATE LAB TESTING</b>	
Maximum Density/Optimum Moisture ASTM D1557-07	\$220.00 per each
Sand Equivalent (SE)	\$105.00 per each
R-value	\$310.00 per each
Sieve Analysis D 422	\$110.00 per each
Expansion Index (EI)	\$131.00 per each
Corrosion Testing (pH, resistivity soluble sulfate & chloride)	\$245.00 per each

Other Direct Cost Permitted under the FAR and not listed above are reimbursed at Cost

Travel by air and travel in excess of 100 miles from the Consultant's office nearest to the Commission's office must have the Commission's prior written approval to be reimbursed under this Agreement.



METROLINK IMPROVEMENT PROJECT 1-Aug-10 30-Apr-13 33	METROLINK IMPROVEMENT PROJECT 1-Aug-10 30-Apr-13 33	CONSTRUCTION MANAGEMENT SERVICES, MATERIALS TESTING, AND CONSTRUCTION SURVEYING PHASE: PRE-CONSTRUCTION TASKS	COSTI PROPOSAL FOR	TOTAL COST SUMMARY	TOTAL LABOR HOURS	TOTAL LABOR DOLLARS	TRAVEL & EXPENSES	DATE	DESCRIPTION	FIRM	HDR-CCC	HDR-ENGR	SIMON WONG	ARCADIS	ARELLANO	DAVID EVANS	GHIRARDELLI	GONZALEZ-WHITE	GRIEGO	LEIGHTON	XO RAIL	TOTAL COST SUMMARY	TOTAL LABOR HOURS	TOTAL LABOR DOLLARS	TRAVEL & EXPENSES																																										
																										HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS																				
																																																HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS	HOURS	COSTS
188	\$ 32,315	\$ 5,656	\$ 86,859	454																																																															
																										32	\$ 5,656	\$ 86,859	454																																						
348	\$ 62,563	\$ 2,853	\$ 38,660	260																																																															
																										20	\$ 2,853	\$ 38,660	260																																						
212	\$ 39,861	\$ 7,860	\$ 34,146	200																																																															
																										40	\$ 7,860	\$ 34,146	200																																						
160	\$ 25,057	\$ -	\$ 34,030	200																																																															
																										-	\$ -	\$ 34,030	200																																						
384	\$ 77,376	\$ -	\$ 31,319	16																																																															
																										-	\$ -	\$ 31,319	16																																						
24	\$ 5,498	\$ -	\$ 2,995																																																																
																										-	\$ -	\$ 2,995																																							
260	\$ 46,095	\$ 14,001	\$ 30,905	200																																																															
																										80	\$ 14,001	\$ 30,905	200																																						
96	\$ 15,144	\$ -	\$ 8,454	40																																																															
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262	\$ -																																																																		
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120	\$ 21,920	\$ -	\$ 31,643	156																																																															
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132	\$ 25,225	\$ -	\$ 2,700	12																																																															
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204	\$ 35,372	\$ -	\$ 19,821	152																																																															
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224	\$ 28,923	\$ -	\$ 26,141	217																																																															
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284	\$ 46,451	\$ -	\$ 22,772	132																																																															
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24	\$ 4,958	\$ 175,375	\$ 5,364	88																																																															
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48	\$ 7,298	\$ -	\$ 13,538	16																																																															
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284	\$ 45,247	\$ -	\$ 26,980	192																																																															
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112	\$ 17,830	\$ -	\$ 106,433	800																																																															
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104	\$ 17,060	\$ 41,279	\$ 3,612	16																																																															
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-	\$ -	\$ 45,831	\$ 12,210	80																																																															
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3,208	\$ 554,212	\$ 397,949	\$ 538,581	3,499																																																															
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960	\$ 148,122	\$ 38,463	\$ 126,609	294																																																															
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294	\$ 57,179	\$ 52,180	\$ 8,720	104																																																															
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424	\$ 21,555	\$ 8,720	\$ 61,951	168																																																															
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984	\$ 2,132,088	\$ -	\$ -	13,217																																																															
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984	\$ 188,518	\$ -	\$ -	294																																																															
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## EXHIBIT "D"

### FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

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

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

(Master Agreement<sup>1</sup> §2.f)

(1) The Commission and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government ("Government"), the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Commission, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

#### 2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(Master Agreement §3.f)

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant

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

certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53 or any other Federal law, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323 on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

### **3. ACCESS TO RECORDS**

(Master Agreement §§ 8.c, d, t)

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

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

3. The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of transmission of the final expenditure report, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the Commission, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

4. FTA does not require the inclusion of these requirements in subcontracts.

### **4. FEDERAL CHANGES**

(Master Agreement §2.c(1))

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Grant Agreement or Cooperative Agreement between the Commission or the Riverside Transit Agency and the Federal Government (“Grant Agreement or Cooperative Agreement”), as they may be amended or promulgated from time to time during the term of this contract. Consultant’s failure to so comply shall constitute a material breach of this contract.

## **5. CIVIL RIGHTS REQUIREMENTS**

(Master Agreement §12)

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21, FTA Circular 4702.1A, “Title VI and Title VI – Dependent Guidelines for Federal Transit Administration Receipts,” May 13, 2007, Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - The Consultant agrees to comply with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and equal employment opportunity provisions of 49 U.S.C. § 5332, all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

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

(4) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **6. TERMINATION PROVISIONS**

(Master Agreement §11)

The termination provisions found at Section 3.14 of this Agreement are consistent with the termination provisions suggested by FTA for the protection of the Federal

Government. The termination provisions found at Section 3.14 of this Agreement control termination under this Agreement.

## **7. DEBARMENT AND SUSPENSION**

(Master Agreement §3.b)

### Instructions for Certification

1. By signing and submitting this Agreement, the Consultant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Commission may pursue available remedies, including suspension and/or debarment.
3. The Consultant shall provide immediate written notice to Commission if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Commission for assistance in obtaining a copy of those regulations.
5. The Consultant agrees by executing this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Commission.
6. The Consultant further agrees by executing this Agreement that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Commission may pursue available remedies including suspension and/or debarment.

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

11. The Consultant agrees to, and assures that its subconsultants, lessees and third party contractors will review the "Excluded Parties Listing System" at <http://elps.gov/> before entering into any third subagreement, lease or third party contract.

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

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

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



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

(Master Agreement §53)

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

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

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

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

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

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

## **9. LOBBYING**

(Master Agreement §3.d)

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

(1) Comply, and assure the compliance of each subcontractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

(2) Comply with Federal statutory provisions, to the extent applicable, prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

## **10. CLEAN AIR**

(Master Agreement §25.b)

(1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **11. CLEAN WATER**

(Master Agreement §25.c)

(1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 through 1377. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **12. ENERGY CONSERVATION**

(Master Agreement §26)

Energy Conservation. To the extent applicable, Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act,

42 U.S.C. §§ 6321 et seq. To the extent applicable, Consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

### **13. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE**

(Master Agreement §15.m)

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

### **15. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

Consultant assumes full responsibility for verifying the identity and employment authorization of all of its employees performing work under this Agreement in compliance with the Immigration Reform and Control Act of 1986, and rules and regulations promulgated in connection therewith (hereinafter "IRCA"). Consultant shall indemnify, defend and hold Commission harmless from and against any claims, loss, damage, liability, costs or expenses arising from any noncompliance with the provisions or IRCA.

### **16. SPECIAL PROVISIONS**

(Master Agreement § 39, 40, 41, 42, 43, 48)

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

The Programs are as follows:

- (1) Urbanized Area Formula Program authorized under 49 U.S.C. § 4307.
- (2) Elderly Individuals and Individuals with Disabilities Formula Program authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively.
- (3) New Freedom Program authorized under 49 U.S.C. § 5317.

(4) Nonurbanized Area Formula Program authorized under 49 U.S.C. § 5311(b).

(5) Clean Fuels Grant Program authorized under 49 U.S.C. § 5308.

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

## **17. RELEASE OF RETAINAGE**

(49 CFR 26.29)

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

## **18. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Federal Transit Authority, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal Transit Authority, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

**EXHIBIT "E"**

**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.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**EXHIBIT "F"**

**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.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





## **EXHIBIT "G"**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

#### **CONSULTANT CONTRACT REQUIREMENTS**

The provisions of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the RIVERSIDE COUNTY TRANSPORTATION COMMISSION'S adopted DBE Program require that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate in federally-funded, transportation projects. The Commission's overall annual DBE goal for projects funded by Federal Transit Administration (FTA) Funds for the 2009-2010 Fiscal Year is \_\_\_\_\_.

Notwithstanding anything to the contrary contained in the Agreement, and the exhibits attached hereto, the following provisions shall apply if funding for the Services is provided, in whole or in part, from the United States Department of Transportation (DOT):

#### **1. DISCRIMINATION**

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

Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, of sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR Part 26 and the Commission's DBE program in the award and administration of DOT-assisted contracts, as further set forth below.

#### **2. PROMPT PAYMENT**

Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

#### **3. RELEASE OF RETAINAGE**

The Commission shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Commission of the contract work and pay retainage to prime contractors based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from

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

#### **4. LEGAL REMEDIES**

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

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

#### **5. DBE PARTICIPATION**

Even if no DBE participation will be reported, Consultant shall complete Exhibits "H" and "I" of this Agreement in compliance with the Commission's DBE program.

A. This Agreement is subject to Title 49, Part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure that the Commission achieves its federally mandated overall DBE goal, the Commission encourages the participation of DBEs, as defined in 49 CFR 26, in the performance of Agreements financed in whole or in part with federal funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the Commission has established an overall DBE goal for projects funded by FTA funds. In order to ascertain whether that overall DBE goal is being achieved, the Commission is tracking DBE participation on all FTA funded contracts.

B. The Commission advises that participation of DBEs in the specified percentage is not a condition of award.

C. Contractor has agreed to carry out the applicable requirements of Title 49 CFR 26, in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated herein and by reference.

D. The Contractor should notify Commission's Representative in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

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

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

## **6. DBE PARTICIPATION GENERAL INFORMATION**

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

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

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

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

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

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

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

## **7. COMMERCIALY USEFUL FUNCTION**

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

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

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

## **8. DBE CERTIFICATION AND DE-CERTIFICATION STATUS**

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

## 9. DBE RECORDS

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

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

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

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

## 10. REPORTING MATERIAL OR SUPPLIES PURCHASED FROM DBEs

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

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that

produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

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

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

## **11. REPORTING PARTICIPATION OF DBE TRUCKING COMPANIES**

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

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

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

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

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit

for the total value of the transportation services the lessee DBE provides on the Agreement.

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

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

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**EXHIBIT "I"**

DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PARTICIPATION GOALS FOR CONTRACT AND PROJECT

**LOCAL AGENCY BIDDER DBE INFORMATION**

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received by the administering agency no later than the time specified in the special provisions.

**CO.RTE.PM:** \_\_\_\_\_ **BIDDER'S NAME:**  
\_\_\_\_\_

**CONTRACT NO.:** \_\_\_\_\_ **ADDRESS:**  
\_\_\_\_\_

**BID AMOUNT: \$** \_\_\_\_\_

**BID OPENING DATE:** \_\_\_\_\_ **DBE GOAL FROM CONTRACT**  
%

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OF WORK OR SERVICES TO BE CONTRACTED OR MATERIALS TO BE PROVIDED	NAME OF DBE ** (Name of DBE's, Certification Number, and Telephone Number)	DOLLAR AMOUNT *** DBE	PERCENT
<b>Total Claimed</b>				
<b>Participation</b>				%

*If 100% of item is not to be performed or furnished by DBE, describe exact portion, including planned location of work to be performed, or item to be performed or furnished by DBE.		
**DBE's must be certified by a California Unified Certification Program certifying agency on the date bids are opened. Subcontractors and suppliers certified State-funded only cannot be used to meet goals on federally funded contracts.		
***Credit for a DBE supplier, who is not a manufacturer is limited to 60% of the amount paid to the supplier. (See Section "Disadvantaged Business" DBE of the special provisions.)		
<b>IMPORTANT: Names of DBE subcontractors and their respective item(s) of work listed above should be consistent with the name and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law.</b>		
Signature of Bidder	Date	(Area Code) Telephone No.

Person to Contact (Please Print or Type)

**EXHIBIT "J"**

**DISCLOSURE OF LOBBYING ACTIVITIES**

**[ATTACHED BEHIND THIS PAGE]**



Exhibit 10-Q Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p style="text-align: right;"><b>For Material Change Only:</b>          year _____ quarter _____          date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime      <input type="checkbox"/> Subawardee          Tier _____, if known</p> <p style="text-align: center;">Congressional District, if known</p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p style="text-align: center;">Congressional District, if known</p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p style="text-align: center;">CFDA Number, if applicable _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. a. Name and Address of Lobby Entity</b>          (If individual, last name, first name, MI)</p>	<p><b>b. Individuals Performing Services</b> (including address if different from No. 10a)          (last name, first name, MI)</p>	
(attach Continuation Sheet(s) if necessary)		
<p><b>11. Amount of Payment (check all that apply)</b></p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment (check all that apply)</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify _____</p>	
<p><b>12. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____          value _____</p>		
<p><b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b></p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>		
<p><b>15. Continuation Sheet(s) attached:</b>      Yes <input type="checkbox"/>    No <input type="checkbox"/></p>		
<p><b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		
		<p>Signature: _____          Print Name: _____          Title: _____          Telephone No.: _____ Date: _____</p>
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form - LLL

Standard Form LLL Rev. 04-28-06

**INSTRUCTIONS FOR COMPLETION OF SF-LLL,  
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4. checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4. to influenced the covered federal action.  
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»