

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	June 8, 2011
<b>TO:</b>	Riverside County Transportation Commission
<b>FROM:</b>	Western Riverside County Programs and Projects Committee Greg Moore, Procurement and Assets Manager
<b>THROUGH:</b>	Anne Mayer, Executive Director
<b>SUBJECT:</b>	Agreement with A.J. Fistes Corporation to Provide Services Associated with the Refurbishment of Station Platform Tactile Warning Surfaces at the Riverside Downtown, La Sierra, and West Corona Commuter Rail Stations

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

This item is for the Commission to:

- 1) Award Agreement No. 11-24-064-00 to A.J. Fistes Corporation for services associated with the refurbishment of station platform tactile warning surfaces at three Commission-owned commuter rail stations in the amount of \$143,685, plus a contingency amount of \$14,369, for a total amount not to exceed \$158,054; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

**BACKGROUND INFORMATION:**

The Commission owns and operates five Metrolink commuter rail stations in Riverside County (Downtown Riverside, La Sierra, North Main Corona, Pedley, and West Corona), and it is the Commission's responsibility to maintain the appearance and safety of the various stations. The Commission retains a number of specialty contractors to provide regular station maintenance (e.g., landscaping, electrical repair, and lot sweeping). Occasionally, the Commission requires some specialized service that must be retained under a separate competitive procurement process. To that end, the Commission requires the services of a qualified contractor to provide services associated with the refurbishment of the platform tactile warning surfaces located at the Downtown Riverside, La Sierra, and West Corona commuter rail stations.

The tactile warning surfaces located at the edge of the station platforms are intended to provide a safety barrier for all rail station commuters during train

station stops and to assist blind or visually impaired commuters with train boardings. Over the years, the warning surfaces have been faded and degraded by weather and regular power washing of the station platforms. The refurbishment of the station platform tactile warning surfaces is intended to increase passenger safety by making the tactile warning surfaces more prominent and returning the surfaces to acceptable tolerances, in terms of color and surface materials, mandated under applicable ADA requirements. Staff sought a competitive solution to meet the foregoing requirement.

### **Procurement Process**

The low bid methodology was deemed to be the most appropriate for this procurement, since the Commission had a complete technical specification. The procurement lends itself to a firm fixed lump sum contract, and the selection of the successful bidder can be made principally on the basis of price. Accordingly, staff released and advertised Invitation for Bids (IFB) No. 10-24-064-00 on March 3. A pre-bid meeting and job walk was held on March 15 at the Downtown Riverside station. Station drawings were made available to all potential bidders. Commission staff responded to all questions submitted by potential bidders prior to the March 21 request for information deadline.

Three firms — Empire Waterproofing, Inc.; U.S. National Corporation; and A.J. Fistes Corporation — submitted a bid prior to the March 31 bid deadline date. Under the terms of the IFB, the Commission reserved the right to split the various projects between one or more bidders. After reviewing the bids, however, staff determined that it is in the best interest of the Commission to award an agreement to a single responsive and responsible firm.

The bid summary in Table 1 sets forth the bid amounts received by the Commission. In order to be considered responsive, each bidder was required to conform to all material terms of the IFB, including the provision of a work plan, pricing information, and references. After a careful evaluation of the bids, staff determined that A.J. Fistes Corporation was the responsive and responsible firm offering the lowest price. Though Empire Waterproofing offered a lower price than A.J. Fistes Corporation, Empire Waterproofing was deemed non-responsive due to its failure to provide a complete bid submittal. Further, its pricing deviated substantially from the Commission's independent cost estimate.

TABLE 1					
Firm	Bid Amount (by Station)			Total	Responsive
	Downtown Riverside	La Sierra	West Corona		
A.J. Fistes Corp. *	\$63,240	\$39,618	\$40,827	<b>\$143,685</b>	Yes
Empire Waterproofing	\$34,720	\$ 23,650	\$20,650	<b>\$79,020</b>	No
U.S. National Corp.	\$105,300	\$ 56,000	67,200	<b>\$228,500</b>	Yes
*Lowest responsive, responsible bidder.					

The pricing offered by A.J. Fistes Corporation is considered fair and reasonable based upon adequate price competition. Based on the foregoing bid process, staff recommends the award of Agreement No. 11-24-064-00 to A.J. Fistes Corporation for services associated with the refurbishment of station platform tactile warning surfaces at three Commission-owned commuter rail stations for the amount of \$143,685, plus a contingency amount of \$14,369, for a total amount not to exceed \$158,054.

The Commission's standard form professional services agreement, in substantially the form attached hereto, will be entered into with the contractor subject to any changes approved by the Executive Director, and pursuant to legal counsel review.

A.J. Fistes Corporation has provided comparable services for many public agencies including the Riverside Unified School District, Temecula Unified School District, and the city of Santa Fe Springs.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2011/12	Amount:	\$158,054
Source of Funds:	LTF			Budget Adjustment:	N/A
GL/Project Accounting No.:	244001 73304 00000 0000 103 24 73301 244003 73304 00000 0000 103 24 73301 244004 73304 00000 0000 103 24 73301				
Fiscal Procedures Approved:	<i>Theresa Iuvino</i>			Date:	05/15/11

Attachment: Standard Form Professional Services Agreement

[\*\*\*MODEL - REMOVE THIS TITLE WHEN USED\*\*\*]

# Riverside County Transportation Commission Short-Form Construction Contract

## Station Platform Tactile Warning Strip Refurbishment Project

### 1. PARTIES AND DATE.

This Contract is made and entered into this [\*\*\*INSERT DAY\*\*\*] day of [\*\*\*INSERT MONTH\*\*\*], [\*\*\*INSERT YEAR\*\*\*] by and between the Riverside County Transportation Commission, a municipal organization organized under the laws of the State of California with its principal place of business at 4080 Lemon Street, Third Floor, Riverside, California 92502-2208 ("Commission") and **A.J. Fistes Corporation**, a [\*\*\*INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\*\*\*] with its principal place of business at [\*\*\*INSERT ADDRESS\*\*\*] ("Contractor"). Commission and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

### 2. RECITALS.

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

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the Commission on the terms and conditions set forth in this Contract. Contractor represents that it is experienced in providing [\*\*\*INSERT TYPE OF SERVICES\*\*\*] services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of Commission.

2.3 Project. Commission desires to engage Contractor to render such services for the [\*\*\*INSERT NAME OF PROJECT\*\*\*] Project ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, [\*\*\*INSERT APPLICABLE PERFORMANCE BOND, PAYMENT BOND, INSURANCE DOCUMENTS AND OTHER CERTIFICATIONS\*\*\*] as required by the Contract.

### 3. TERMS

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

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to Commission all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "A" attached hereto and incorporated herein by this reference. Special conditions, if any, relating to the Work are described in Exhibit "B" attached hereto and incorporated herein by this reference.

3.3 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the Commission.

3.4 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract within **\*\*\*INSERT NUMBER OF CALENDAR OR WORKING DAYS\*\*\*** days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the Commission. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to the Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the Commission will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the Commission as fixed and liquidated damages the sum of **\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\*** Dollars (\$**\*\*\*INSERT NUMERICAL DOLLAR AMOUNT\*\*\***) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.5 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in

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

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

3.7 Commission's Basic Obligation. Commission agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the Commission shall pay to Contractor, as full consideration for the satisfactory performance by the Contractor of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

3.8 Compensation and Payment.

3.8.1 Amount of Compensation. As consideration for performance of the Work required herein, Commission agrees to pay Contractor the Total Contract Price of **[\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\*] Dollars (\$[\*\*\*INSERT NUMERICAL DOLLAR AMOUNT\*\*\*])** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the Commission.

3.8.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, Commission will arrange for payment of the Total Contract Price upon completion and approval by Commission of the Work. If

the Work is scheduled for completion in more than thirty (30) calendar days, Commission will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the Commission an itemized application for payment in the format supplied by the Commission indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the Commission may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the Commission and in such detail and form as the Commission shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

Commission shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. No progress payments will be made for Work not completed in accordance with this Contract.

3.8.3 Contract Retentions. From each approved progress estimate, ten percent (10%) will be deducted and retained by the Commission, and the remainder will be paid to Contractor. All Contract retainage shall be released and paid to the Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.8.4 Other Retentions. In addition to Contract retentions, the Commission may deduct from each progress payment an amount necessary to protect Commission from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the Commission in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Commission during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the Commission, incurred by the Commission for which Contractor is liable under the Contract; and (11) any other sums which the Commission is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the Commission to deduct any of these sums from a progress payment shall not constitute a waiver of the Commission's right to such sums.

3.8.5 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the Commission will permit the

substitution of securities for any monies withheld by the Commission to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Commission, or with a state or federally chartered bank in California as the escrow agent, and thereafter the Commission shall then pay such monies to the Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the Commission has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the Commission.

3.8.6 Payment to Subcontractors. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 10262 of the California Public Contract Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Contract.

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

3.9 Termination. This Contract may be terminated by Commission at any time by giving Contractor three (3) days advance written notice. In the event of termination by Commission for any reason other than the fault of Contractor, Commission shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, Commission may terminate the Contract immediately without notice, may reduce payment to the Contractor in the amount necessary to offset Commission's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause.

In the event this Contract is terminated in whole or in part as provided, Commission may procure, upon such terms and in such manner as it may determine



appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, Commission may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

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

3.11 Commission's Representative. The Commission hereby designates **[\*\*\*INSERT NAME OR TITLE\*\*\*]**, or his or her designee, to act as its representative for the performance of this Contract ("Commission's Representative"). Commission's Representative shall have the power to act on behalf of the Commission for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the Commission's Representative or his or here designee.

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

3.13 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from Commission, the matter shall be referred to Commission's Representative, whose decision shall be binding upon Contractor.

3.14 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by Commission. However, Contractor shall be responsible for damage proximately caused by Acts of God, within the meaning of Section 4150 of the California Government Code, only to the extent of five percent (5%) of the Total Contract Price as specified herein. In the event of damage proximately caused by "Acts of God," the Commission may terminate this Contract upon three (3) days advanced written notice.

3.15 Indemnification. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor'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, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse Commission and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

3.16 Insurance.

3.16.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Commission that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Commission that the subcontractor has secured all insurance required under this section.

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

3.16.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Builders'/All Risk*: Builders'/All Risk insurance covering for all risks of loss, including explosion, collapse, underground excavation and removal of lateral support (and including earthquakes and floods if requested by the Commission).

3.16.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: **\*\*\*INSERT AMOUNT - TYPICALLY, \$1,000,000; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO COMMISSION. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT\*\*\***] per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: **\*\*\*INSERT AMOUNT - TYPICALLY, \$1,000,000; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO COMMISSION. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT\*\*\***] per accident for bodily injury and property damage; (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 **\*\*\*INSERT AMOUNT - TYPICALLY, \$1,000,000; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO COMMISSION. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT\*\*\***] per accident for bodily injury or disease; and (4) *Builders'/All Risk*: Completed value of the project.

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

3.16.3.1 General Liability. (1) The Commission, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Work or operations performed by or on behalf of the Contractor, 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, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its

directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

3.16.3.2 Automobile Liability. (1) The Commission, its directors, officials, officers, employees, agents and volunteers 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 Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

3.16.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

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

3.16.4 Builders'/All Risk Policy Requirements. The builders'/all risk insurance shall provide that the Commission be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the Commission.

3.16.5 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, agents and volunteers.

3.16.6 Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 [**\*\*\*CONTACT RISK MANAGEMENT TO CONFIRM REQUIREMENTS; OTHERWISE LEAVE AS IS AND DELETE THIS NOTE\*\*\***] per occurrence. This insurance shall name the Commission, its directors, officials, officers, employees, agents and volunteers

as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section.

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

3.16.8 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.

3.16.9 Verification of Coverage. Contractor shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the Commission. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the Commission. All certificates and endorsements must be received and approved by the Commission before work commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.16.10 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

### 3.17 Bond Requirements.

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

3.17.2 Performance Bond. If specifically requested by Commission in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Commission concurrently with this Contract a Performance Bond

in an amount required by the Commission and in a form provided or approved by the Commission. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the Commission.

3.17.3 Bond Provisions. Should, in Commission's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from Commission. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the Commission, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the Commission. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, the Contractor shall, upon request of the Commission, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Commission. To the extent available, the bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Total Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the Commission may terminate the Contract for cause.

3.17.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the Commission. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the Commission.

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

telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.19 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Commission of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the Commission in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the Commission may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Commission, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Commission by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Commission. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the Commission, the Commission shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Commission for any expenses incurred hereunder upon demand.

3.20 Laws and Regulations . Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If the Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the Commission in writing. Any necessary changes shall be made by written change order. If the Contractor performs any work knowing it

to be contrary to such laws, rules and regulations and without giving written notice to the Commission, the Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.21 Permits and Licenses. Contractor shall be responsible for securing Commission permits and licenses necessary to perform the Work described herein, including, but not limited to, a Commission Business License. While Contractor will not be charged a fee for any Commission permits, Contractor shall pay the Commission's applicable business license fee.

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

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

3.24 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, Commission shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of Commission to provide for removal or relocation of such utility facilities.



3.25 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and [\*\*\*INSERT "SINCE" OR "IF" AS APPROPRIATE\*\*\*] the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Commission shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.26 Apprenticeable Crafts . When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor.

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

3.28 Payroll Records. In accordance with the requirements of California Labor Code Section 1776, Contractor shall keep accurate payroll records which are either on forms provided by the Division of Labor Standards Enforcement or which contain the same information required by such forms. Responsibility for compliance with California Labor Code Section 1776 shall rest solely with Contractor, and Contractor shall make all such records available for inspection at all reasonable hours.

3.29 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "C" and incorporated herein by reference, shall be executed simultaneously with this Contract.

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

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

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

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

<u>Commission</u>	<u>Contractor</u>
Riverside County Transportation Commission	[***INSERT NAME***]
Riverside County Regional Complex	[***INSERT
<b>ADDRESS***]</b>	
4080 Lemon Street, Third Floor	[***INSERT
<b>ADDRESS***]</b>	
Attn: [***INSERT NAME***]	Attn: [***INSERT
<b>NAME***]</b>	

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

3.34 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

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

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

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

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

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

3.40 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 Contract, the prevailing Party in such action shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

3.41 Claims of \$375,000 or Less. Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in California Public Contract Code §§ 20104, et seq.

3.42 Prohibited Interests.

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

3.42.2 Conflict of Interest. For the term of this Contract, no member, officer or employee of Commission, during the term of his or her service with Commission, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to

cause its employees or subcontractors to file, a Statement of Economic Interest with the Commission's Filing Officer as required under state law in the performance of the Work.

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

3.44 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

IN WITNESS WHEREOF, each of the Parties has caused this Contract to be executed on the day and year first above written.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**\*\*\*INSERT CONTRACTOR'S  
NAME\*\*\*]**

By: \_\_\_\_\_  
[\*\*\*INSERT NAME\*\*\*]  
[\*\*\*INSERT TITLE\*\*\*]

By: \_\_\_\_\_  
[\*\*\*INSERT NAME\*\*\*]  
[\*\*\*INSERT TITLE\*\*\*]

\_\_\_\_\_  
License Classification of Contractor's

**EXHIBIT "A"**

**PLANS AND SPECIFICATIONS**

The following plans and specifications are incorporated into this Contract herein by this reference:

**[\*\*INSERT GENERAL CONDITIONS/SPECIFICATIONS - INCORPORATE BY REFERENCE ANY NEEDED PLANS OR DRAWINGS\*\*]**

**EXHIBIT "B"**  
**SPECIAL CONDITIONS**

**[\*\*\*INSERT SPECIAL CONDITIONS IF NECESSARY - OTHERWISE  
JUST INSERT "NOT APPLICABLE"\*\*\*]**

**EXHIBIT "C"**  
**CERTIFICATION**  
**LABOR CODE - SECTION 1861**

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

**\*\*\*INSERT CONTRACTOR'S NAME\*\*\***

By: \_\_\_\_\_  
**\*\*\*INSERT NAME\*\*\***

\_\_\_\_\_  
**\*\*\*INSERT TITLE\*\*\***