

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	April 14, 2010
TO:	Riverside County Transportation Commission
FROM:	Western Riverside County Programs and Projects Committee Min Saysay, Right of Way Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement with Epic Land Solutions, Inc. to Provide Property Management Support Services

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 10-51-074-00 with Epic Land Solutions, Inc. (Epic), for property management support services for Commission-owned parcels for two years in an not to exceed amount of \$970,000, and one option year for an additional \$485,000; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement, including the option year, on behalf of the Commission.

BACKGROUND INFORMATION:

In 1993, the Commission acquired the San Jacinto Branch Line (SJBL) and various easement rights on the San Bernardino Subdivision from the Atchison, Topeka, and Santa Fe Railway Company (AT&SF), currently known as the Burlington Northern Santa Fe Railway Company (BNSF). The purpose of the acquisition was to enable the future development of commuter rail operations in Riverside County, including the Perris Valley Line (PVL), which extends from Highgrove to the SJBL intersection with I-215 near Romoland.

The SJBL acquisition included over 600 licenses and leases covering private, government, and utility owned facilities such as wire lines, pipelines, cables, as well as fee interest in property that was later determined to be in excess of the Commission's foreseeable needs.

In November 2003, the Commission approved Agreement No. 04-51-030-00 to Epic for Phase 1 of the property management support services project, focusing primarily on identifying all private, government, and utility-owned facilities within the SJBL, maximizing revenue of Commission-owned parcels, reducing liability exposure, and assessing needs for a comprehensive property inventory database.

Under Phase 1 services, Epic:

- Copied and reviewed approximately 370 licenses, leases, and easements within the PVL;
- Performed field inspections of the 22-mile length of the PVL, leading to identifying locations covered by the 370 contracts, including GPS coordinates, non-compliant uses, encroachments, safety related issues and potential liabilities, and photographs of each facility;
- Marketed and sold properties amounting to \$15.5 million in sales proceeds;
- Developed the RCTC Global Application (RGA) database that covers all Commission-owned properties;
- Reviewed as-built drawings for numerous utility facilities;
- Created aerial photographs of the entire PVL, showing existing contracts and encroachments;
- Coordinated the consolidation of 19 billboards owned by Lamar Advertising into one contract and increased annual revenues from \$45,000 to \$165,000;
- Initiated a rigorous valuation process that resulted in increasing an offer from Metropolitan Water District for a pipeline right of way from \$171,000 to \$1.1 million;
- Recommended and effected termination of 31 contracts located along the abandoned right of way that were no longer in use;
- Provided utility information to the PVL design team to assist in identifying conflicts;
- Began a resolution process to determine which contracts should be updated (including revenue potential), which should be terminated, and disposition of encroachments and contract violations; and
- Completed the conveyance to Caltrans of properties along State Route 74 that were needed in the widening of that highway between Lake Elsinore and Perris;

Phase 2 of Epic's provision of property management support services included the marketing and sale of various Commission-owned properties, conveyance of parcels to Caltrans, incorporating GIS and County Assessor data into the RGA database, and other special project assignments. The various special assignments were detailed in subsequent amendments to the agreement that were brought before the Commission for review and authorization, resulting in a total contract value of \$1,616,161 during the six-year period of performance.

Authorization of a proposed third and final phase of the property management support services project is hereby requested under a separate sole source agreement with Epic. Phase 3 services are required of Epic in order to close out the various projects initiated by Epic under the prior phases and to initiate current requirements including:

- Develop a methodology to be used in determining annual fees for licenses covering utilities and other private uses of the Commission's property;
- Complete the resolution process for PVL contracts begun as described above, including development of action plans to increase revenues, update contracts, prepare new licenses for acceptable encroachments, remove unacceptable encroachments, and resolve safety and liability issues;
- Dispose of excess lands from the SR-74 widening project described above, as well as other possible properties, i.e., Box Springs, Arlington Station, and the Old Ramona station grounds;
- Apply and complete the resolution process for the licenses, leases, and easements along the remainder of the SJBL beyond the end of the PVL from Romoland through Winchester, Hemet, and San Jacinto, as well as the Orange Empire Railway Museum line in Perris; and
- Provide continuing maintenance and updating of the RGA database, including the continuing reconciliation of assessor parcel numbers with the records of the County Assessor as and when they are changed.

Due to its accumulated knowledge and development of various property management projects, resources, and databases associated with the multitude of Commission-owned properties, including but not limited to those along the SBJL, Epic is the only firm that can efficiently complete the tasks described above. Completion of the foregoing services by Epic, however, will provide the Commission with the tools necessary to seek a competitive solution for future property management support services.

Staff developed a scope of work and a cost estimate for the services covered by the agreement. The cost estimate is based on the number of hours that may be required to perform the services and the hourly rates of Epic's staff.

COMMITTEE RECOMMENDATION AND DIRECTION:

During consideration of this item by the Western Riverside County Projects and Programs Committee at its February 22 meeting, staff was directed to return to the contractor and renegotiate for a reduction in overall cost of the contract. The Committee's direction was based on the economic climate and challenges currently faced in Riverside County. The Committee voiced its concern that since this contract has been in place since 2003, the contract rate should be revisited and reduced for the extension period.

The services outlined above will be provided by Epic for \$970,000 for the term of the contract and \$485,000 for the option year. This represents a 30% (or \$45,000) reduction in its profit from the original staff recommendation presented to the Committee on February 22, 2010.

The Committee further inquired about the responsibilities of the Relationship Manager and the basis for its hourly rate. The Relationship Manager for Epic is Ms. Holly Rockwell, who is the principal/president of the company. The original summary should have listed her under that title. Relationship Manager is not a title or job description typically used in Commission contracts and that item has been corrected. Ms. Rockwell's responsibilities include the following:

- Liaising with federal and state agencies on questions related to Commission-owned properties;
- Ensuring quality control of all Epic's work product prior to submission to Commission staff;
- Handling some of the more complex Commission property transactions, particularly those requiring history of Commission-owned properties;
- Making presentations at public meetings on behalf of the Commission;
- Representing Epic at bi-weekly project reviews with Commission staff; and
- Supporting Commission staff on an as-needed basis.

Ms. Rockwell's billable rate is \$178.13, which is based on a rate audited last year in conformity with Federal Acquisition Regulations. Principals for other right of way firms of similar size and services, bill at \$175 to \$200 per hour. Ms. Rockwell's overall proposed billable time represents around 7% of the overall contract. Her expertise and history with the Commission give her a unique value that cannot easily be replaced by another contractor.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2009/10 FY 2010/11 +	Amount:	\$291,000 679,000
Source of Funds:	Measure A, Lease Revenues, Property Sales			Budget Adjustment:	No
GL/Project Accounting No.:	105 51 65520		\$ 776,000		
	105 52 65520		\$ 194,000		
Fiscal Procedures Approved:	<i>Sherissa Iuvone</i>			Date:	03/15/10

Attachments:

- 1) Property Management Scope of Work
- 2) Property Management Cost Estimate
- 3) Proposed Agreement with Epic Land Solutions, Inc.

PROPERTY MANAGEMENT SUPPORT SERVICES
SCOPE OF WORK

1. On-Call Services (PMA6)

On-call services covers any ad hoc requests related to existing RCTC properties. Examples of work performed in the past six years on an ad hoc basis include:

- Analyzing title issues on previously acquired RCTC properties
- Providing real estate or right of way information for insurance, financial, operational or legal-based issues
- Analyzing impacts resulting from zoning changes on RCTC properties
- Correcting assessor information about RCTC properties
- Resolving right of way issues with BNSF
- Providing relevant real estate or right of way information necessary to evaluate proposals from developers, associations or other members of the public
- GIS mapping for presentations or exhibits
- Surveys to determine land boundaries or defining access easements (a budget of \$15,000 has been included for small projects; it is assumed that any large projects will be contracted directly by RCTC)

2. SR-74 Excess Lands (PMA10)

In the last three years, Epic has completed the conveyance to Caltrans of the SR-74 properties. At this stage, Caltrans is identifying the excess lands related to that project. As of right now, there are anticipated to be 27 excess properties. Some adjacent property owners have expressed interest in slivers that are unlikely to be sellable to any other party. We anticipate the following next steps:

- Coordinating with Caltrans on finalizing documentation related to excess lands
- Preparing background information/presentations for RCTC on each of the excess properties (including GIS maps)
- Determining which properties qualify for sales to adjacent owners in accordance with Caltrans and State of California requirements
- Preparing and sending public agency notifications
- Drafting RFP's and preparing marketing information
- Conducting marketing meetings and responding to potential buyer questions
- Reviewing and summarizing bids and making recommendation to RCTC
- Overseeing escrow

3. New Licenses (PMA12)

Epic has supported RCTC staff on preparing new or renewed licenses and anticipates continuing those activities, including:

- Researching property boundaries and other issues potentially impacting granting of licenses

- Performing cost estimates for rental values
- Liaising/negotiating with license applicants
- Preparing licenses and/or supporting documentation for licenses as requested by RCTC

4. RCTC Global Application/RGA (PMC1)

The Global Database is developed, installed and operating on RCTC and Epic computers to maintain information on RCTC properties, licenses and applications for licenses. The additional functional additions and database services anticipated over the next two years include:

- Installing and training for RGA GIS Phase 1 which allows users to view all RCTC owned properties on a dynamic map.
- Development and roll out of RGA GIS Phase 2 which will display licenses that have already been digitized in response to specific RCTC requests such as the double track analysis
- Development and roll out of RGA GIS Phase 3, including digitization of remaining utility licenses on PVL and San Jac remainder
- Development and roll out of RGA GIS Phase 4 which will include digitization of all remaining utility, government and private use licenses on RCTC station properties
- Data comparisons with assessor to resolve assessor discrepancies
- RGA maintenance tasks (monitoring server space size for attachments and GIS)
- Ad hoc GIS maps and database reports
- Support of third party installations (Epic, Bechtel, BB&K and future third parties)
- As-needed database modifications or additions of future functions (includes development, testing, and deployment)

5. Excess Land Sales (PMD2)

In the past, Epic has performed services to assist RCTC in preparing, marketing and selling excess land parcels. Previous excess land sales handled by Epic included: Pierce Street, Corona Depot, I-215 abandoned rail r/w, and Madison Station. Potential parcels that may be declared excess land in the next three years include: Perris Wye, Arlington Station, and Box Springs Quarry. For excess land parcels, Epic will:

- Prepare and send public agency notifications
- Draft RFP and marketing information
- Conduct marketing meetings and responds to potential buyer questions
- Review and summarizes bids and makes recommendation to RCTC
- Oversee escrow

For budget purposes, we have assumed one property will be sold in the next three years.

6. Encroachment Resolution (PMF1)

As a public agency, RCTC is always subject to unauthorized uses of its properties. Epic will assist in monitoring RCTC properties and identifying and resolving encroachments. Past encroachments which Epic has identified and/or resolved include personal property and structures on Arlington Station, crops on a future highway 79 parcel in Hemet, a car dealership on the railroad right of way in Hemet, and unauthorized access over Pedley station. Specific tasks for this area include:

- Researching rights and property lines to assess encroachments
- Identifying owners of encroachments
- Preparing notification letters for encroachments
- Negotiating for encroachment removal or new license
- Preparing documentation for legal support if eviction or other legal action is required

7. PVL Tenant Contract Resolution (PMJ1)

Over the past two years, Epic has reviewed all of the contracts (including licenses, leases and easements) on the Perris Valley Line and performed site visits to determine adherence to contract terms and identify encroachments. Approximately 410 contracts and 129 encroachments have been identified on the Perris Valley Line. The efforts have been tremendously helpful for both the preliminary engineering team and the utility relocation team in performing design and assessing risk.

Activities anticipated for the next period include resolving the items that were identified in the review include:

- Upgrading license terms to reflect current indemnification clauses
- Updating the fair market rent of contracts
- Enforcing existing license terms for non-conforming uses
- Entering into new licenses for previously unlicensed uses
- Defining the scope of work for surveys to determine encroachments (for purposes of this scope and fees, it is assumed that RCTC will contract directly for the survey work utilizing a scope developed by Epic)
- Working with owners to remove unauthorized, unacceptable encroachments
- Entering into master agreements with utilities
- Providing contract information to the preliminary engineering team and utility relocation teams

8. Non-PVL Tenant Contract Review and Resolution (PMJ2)

The tenant contracts for the Perris Valley Line have been a higher priority than the San Jac remainder. As such, the contracts for the non-PVL portions of RCTC property have not yet been reviewed. We anticipate approximately 200 licenses, leases and easements for which Epic will perform the following:

- Review contract and input information into RGA
- Perform site visit to confirm use complies with contract
- Take pictures of facilities and upload into RGA
- Scan and attach contracts and additional documentation into database
- Identify unauthorized encroachments
- Recommend and implement resolutions. Resolutions may include:
 - i. Upgrading license terms to reflect current indemnification clauses
 - ii. Enforcing existing license terms for non-conforming uses
 - iii. Updating the fair market rent of contracts
 - iv. Entering into new licenses for previously unlicensed uses
 - v. Working with 3rd parties to remove unauthorized encroachments
 - vi. Entering into master agreements with utilities
 - vii. Defining scope of work for surveys to define encroachments

9. Property Information Updates (PMJ3)

Epic has input all properties currently maintained by RCTC in the RGA database. It is anticipated that there will be additional work to be performed including:

- Reconciling information in RGA to the assessor information. Our experience in the past is that the assessor does not always have current or accurate information about RCTC properties. As a result, official notices (such as zoning changes, ordinance enforcements, etc) go to incorrect addresses and parties. Also, frequently parcel splits are not accounted for by the assessor which causes issues when RCTC utilizes or sells the property.
- Inputting newly acquired properties into the database
- Importing and validating information from other RCTC consultants

10. Easement to Fee conversion (PMJ4)

The San Jacinto Branch Line was originally purchased partially in fee and partially in easement with an option to convert to fee. Over the past few years, Epic has been assisting the commission in converting the easement to fee. Approximately 10 parcels remain to be converted. Specific steps in order to convert the easement to fee include:

- Draft scope of work and coordinate Phase 1 and Phase 2 reports (actual environmental work to be performed by RCTC consultants)
- Liaise with BNSF to convert easement to fee
- Work with title company to provide documentation and supporting information to obtain title insurance

11. Caltrans Encroachment/Oleander Swap (PMJ5)

Over the past year, Epic has been working with RCTC and Caltrans to resolve a question as to the correct boundary line between the 215 and the San Jacinto Branch Line near Oleander extending northerly to Van Buren. Over the upcoming period, Epic anticipates:

- Providing background info to Caltrans and legal counsel to assist in resolution

- Coordinating with Caltrans engineering to define correct boundary line
- Negotiating resolution of drainage culverts in conflict with PVL
- Coordinating fence relocations, as appropriate
- Participating in meetings with Caltrans
- Preparing and coordinating execution of conveyance deeds

12. Project Management (PM)

Ongoing project management encompasses all the activities to report, oversee and monitor all right of way activities under the Property Management contract. Specifically, the following steps are included under project management:

- Participation in bi-monthly meetings with RCTC
- Preparation and distribution of status reports bi-monthly

COST ESTIMATE FOR PROPERTY MANAGEMENT SERVICES

Area	Comp.	Name	Level	Hours	Rate	Fee Estimate	Expenses	Expense Amount	Total by Person	Total by Area	Fees anticipated for CY 2010 - 2011	Fees anticipated for CY 2012
PMA6. On Call Services	Epic	W. Evans	Project Manager	108	\$ 134.28	\$ 14,502.12			\$14,502.12			
	Epic	H. Rockwell	Principal	72	\$ 178.13	\$ 12,825.00			\$12,825.00			
	Epic	M. Kaiser	Project Manager	216	\$ 149.63	\$ 32,319.00	Mileage	\$900.00	\$33,219.00			
	Epic	S. Winder	R/W Coordinator	72	\$ 79.47	\$ 5,721.92			\$5,721.92			
	Epic	S. Cox	GIS Coordinator	72	\$ 68.51	\$ 4,932.69			\$4,932.69			
	Epic	I. Coker	R/W Coordinator	72	\$ 67.82	\$ 4,883.37	Title	\$4,000.00	\$8,883.37			
	Epic	B. Swanner	Tech Manager	120	\$ 89.06	\$ 10,687.50	Mileage	\$450.00	\$11,137.50			
	Epic	S. Cox	GIS Coordinator	120	\$ 68.51	\$ 8,221.15	Survey	\$16,774.00	\$24,995.15			
											\$116,516.75	\$68,478.47
PMA10. SR-74 Excess Lands	Epic	W. Evans	Project Manager	210	\$ 134.28	\$ 28,198.56	Mileage	\$900.00	\$29,098.56			
	Epic	H. Rockwell	Principal	105	\$ 178.13	\$ 18,703.13	Advertising	\$5,000.00	\$23,703.13			
	Epic	S. Cox	GIS Coordinator	200	\$ 68.51	\$ 13,701.92	Mileage	\$450.00	\$14,151.92			
	Epic	H. McKee	R/W Analyst	640	\$ 58.92	\$ 37,707.69			\$37,707.69	\$104,661.30	\$20,932.26	\$83,729.04
PMA12. New Licenses	Epic	W. Evans	Project Manager	108	\$ 134.28	\$ 14,502.12			\$14,502.12			
	Epic	M. Kaiser	Project Manager	144	\$ 149.63	\$ 21,546.00	Mileage	\$450.00	\$21,996.00			
	Epic	S. Winder	R/W Coordinator	180	\$ 79.47	\$ 14,304.81			\$14,304.81	\$50,802.92	\$30,481.75	\$20,321.17
PMC1. RGA	Epic	C. Overcamp	Advisory Manager	50	\$ 178.13	\$ 8,906.25	Travel	\$2,500.00	\$11,406.25			
	Dobbs	G. Dobbs	Database Programmer	300	\$ 100.00	\$ 30,000.00			\$30,000.00			
	Geoscape	J. Fletcher	GIS	20	\$ 100.00	\$ 2,000.00			\$2,000.00			
	Epic	B. Swanner	Tech Manager	200	\$ 89.06	\$ 17,812.50	Mileage	\$450.00	\$18,262.50			
	Epic	S. Cox	GIS Coordinator	350	\$ 68.51	\$ 23,978.37			\$23,978.37			
	Epic	M. Kaiser	Project Manager	25	\$ 149.63	\$ 3,740.63			\$3,740.63			
	Epic	I. Nowak	Database Programmer	100	\$ 114.00	\$ 11,400.00			\$11,400.00			
	Epic	B. Corbin	IT Analyst	100	\$ 54.12	\$ 5,412.26	Mileage	\$450.00	\$5,862.26			
	Epic	T. Walch	Database Analyst	100	\$ 51.30	\$ 5,130.00			\$5,130.00	\$111,780.00	\$111,780.00	
PMD2. Excess Land	Epic	W. Evans	Project Manager	60	\$ 134.28	\$ 8,056.73	Mileage	\$125.00	\$8,181.73			
	Epic	H. Rockwell	Principal	25	\$ 178.13	\$ 4,453.13	Mileage	\$130.00	\$4,583.13			
	Epic	S. Winder	R/W Coordinator	100	\$ 79.47	\$ 7,947.12	Mileage	\$125.00	\$8,072.12			
	Epic	I. Coker	R/W Coordinator	75	\$ 67.82	\$ 5,086.84	Mileage	\$125.00	\$5,211.84	\$26,048.81	\$26,048.81	
PMF1. Encroachment Resolution	Epic	M. Kaiser	Project Manager	200	\$ 149.63	\$ 29,925.00	Mileage	\$150.00	\$30,075.00			
	Epic	W. Evans	Project Manager	80	\$ 134.28	\$ 10,742.31	Mileage	\$100.00	\$10,842.31			

Agreement No. 10-51-074-00

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT WITH
EPIC LAND SOLUTIONS, INC.
PROPERTY MANAGEMENT SUPPORT SERVICES
FOR
COMMISSION-OWNED REAL PROPERTIES**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20__, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and EPIC LAND SOLUTIONS, INC. ("Consultant"), a CALIFORNIA 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 (2%) retail transactions and use tax (the "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 the continued funding of transportation and improvements within the County of Riverside.

2.4 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 Property Management Support services to public clients, is licensed in the State of California (if necessary), and is familiar with the plans of the Commission.

2.5 The Commission desires to engage Consultant to render such services for the Commission-owned Real Properties ("Project"), as set forth in this Agreement.

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 professional Property Management Support services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.2 [Intentionally Omitted.]

3.3 The term of this Agreement shall be from the date first set forth above to January 1, 2011 ("Initial Term"), unless earlier terminated as provided herein. The Commission, in its sole discretion, shall have the option to extend the Initial Term for an additional period of one (1) year, ending January 1, 2012 ("First Extended Term"), by providing written notice to Consultant of such extension. 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 Holly Rockwell 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 or her 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: Holly Rockwell.

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 that Commission's Representative, in his or her sole discretion, determines the formally submitted work product to be inadequate, 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.

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.

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. 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.

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

California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

3.17.4 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.

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

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 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.

(A) 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.

(B) The total compensation for the Initial Term shall not exceed Nine Hundred Seventy Thousand Dollars (\$970,000) without written approval of Commission's Representative.

(C) If the Commission exercises its option to extend the term of this Agreement for the First Extended Term, as set forth in Section 3.3 above, the total compensation for the First Extended Term shall not exceed Four Hundred Eighty Five Thousand Dollars (\$485,000) without written approval of the Commission's Representative.

(D) Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.22.2 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 Extra Work. At any time during the term of this Agreement, Commission may request Consultant to perform Extra Work. As used herein, "Extra Work" means any work which is determined by the Commission to be necessary for proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Commission's Representative. Extra Work which has been authorized shall be compensated in a total amount of up to **\$00** at the rates and in the manner set forth in Exhibit "C" attached hereto or the Extra Work order, as applicable. However, no compensation for Extra Work shall be paid except upon the issuance of a written Extra Work Order by Commission's Representative. In the event an Extra Work Order is not issued and signed by Commission's Representative, Consultant shall not provide such Extra Work.

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.

3.24 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of 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.

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 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

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

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

3.27 Right to Employ Other Consultants. The 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.

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

3.29 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.

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

3.31 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.

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

CONSULTANT:

Epic Land Solutions, Inc.
2601 Airport Drive, Suite 115
Torrance, CA 90505

Attn: President

COMMISSION:

Riverside County
Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

Attn: Executive Director

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

3.33 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.

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

3.35 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.

3.36 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.

3.37 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.

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

3.39 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.

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

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

3.42 No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. _____**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

EPIC LAND SOLUTIONS, INC.

By: _____
Bob Buster
Chair

By: _____
Signature

Name

Title

Approved as to Form:

ATTEST:

By: _____
Best, Best & Krieger LLP
General Counsel

By: _____

Its: Secretary

EXHIBIT "A"
SCOPE OF SERVICES

[_ INSERT _]

EXHIBIT "B"
SCHEDULE OF SERVICES

[__INSERT__]

EXHIBIT "C"

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.

1.1 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:

1.1.1 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.)

1.1.2 MULTIPLIER

The Multiplier to be applied to the Direct Salary Costs to determine the Direct Labor Costs is 2.587 and is the sum of the following components:

1.1.2.1	<u>Direct Salary Costs</u>	1.0
1.1.2.2	<u>Payroll Additives</u>	.0363

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.

1.1.2.3	<u>Overhead Costs</u>	1.224
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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.

Total Multiplier 2.587
(sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3)

1.2 FIXED FEE.

1.2.1 The fixed fee is \$0

1.2.2 A pro-rata share of the Fixed Fee shall be applied to the total Direct Labor Costs expended for services each month, and shall be included on each monthly invoice.

1.3 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>
Per Diem	\$ 35/day
Car mileage	\$ IRS reimburseable
Travel	\$ at cost
Overnight mail and postage	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.

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:

2.1 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.

- 2.2** 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.

POSITION OR CLASSIFICATION RANGE OF HOURLY RATES

Principal	\$ 62.50 - \$ 70.00/hour
Project Manager	\$ 40.00 - \$ 65.00/hour
Assistant Project Manager	\$ 35.00 - \$ 45.00/hour
Senior Agent/ Coordinator	\$ 26.00 - \$ 34.99/hour
Agent/ Analyst	\$ 15.00 - \$ 25.99.00/hour
Technician	\$ 10.00 - \$ 19.00/hour
Accounting Support	\$ 20.00 - \$ 45.00/hour

- 2.3** 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.

- 3.1** 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.
- 3.2** Charges shall be billed in accordance with the terms and rates included herein, unless otherwise agreed in writing by the Commission's Representative.
- 3.3** Base Work and Extra 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.
- 3.4** 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.

- 3.5 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.
- 3.6 Each invoice shall indicate payments to DBE subconsultants or supplies by dollar amount and as a percentage of the total invoice.
- 3.7 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

- 4.1 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.
- 4.2 The final payment for Services under this Agreement will be made only after the Consultant has executed a Release and Certificate of Final Payment.