

Contract No.: _____ [X]
Termination Date: _____ [X]
Amount Authorized: _____ [X/year x 5]
State Funding: _____ [

ON-CALL SERVICES AGREEMENT

for

[Service to be Provided]

between

County of Riverside • Transportation Department

and

[Consultant]



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ARTICLE I INTRODUCTION

A. This On-Call Services Agreement ("Agreement") is entered into this _____ day of _____, 20_____, by and between COUNTY OF RIVERSIDE, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and [CONSULTANT NAME], [LEGAL CAPACITY] hereinafter referred to as "CONSULTANT".

B. Coordination of CONSULTANT and COUNTY activities shall be accomplished through a CONSULTANT Contract Manager and a COUNTY Contract Administrator.

The CONSULTANT's Contract Manager for CONSULTANT shall be:

[Environmental Project Manager NAME]

Located at:

[Address]

The COUNTY's Contract Administrator for COUNTY shall be:

Mary Zambon, Transportation Department- Environmental Division Manager, or her designee

Located at:

3525 14 St., Riverside, CA 92501

C. CONSULTANT shall perform:

- The covenants set forth in Article III entitled Statement of Work;
In accordance with the time frames set forth in Article IV entitled Performance Periods;
For the fees set forth in Article V entitled Allowable Costs and Payments.

D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

E. Without the written consent of COUNTY, this contract is not assignable by CONSULTANT either in whole or in part.

F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

H. COUNTY may be working cooperatively with other agencies (collectively referred to as the “AGENCIES”) in the effort to complete services performed under this contract.

ARTICLE II CONSULTANT’S REPORTS OR MEETINGS

A. To ensure understanding and performance of the contract objectives, meetings between COUNTY, AGENCIES, and CONSULTANT shall be held in accordance with the terms of each Task Order. All work objectives, CONSULTANT’s work schedule, the terms of the contract and any other related issues may be discussed and/or resolved. CONSULTANT shall keep minutes of meetings and distribute copies of minutes as appropriate.

B. CONSULTANT’s Contract Manager shall meet with COUNTY’s Contract Administrator, as needed, to discuss progress on the contract and/or Task Orders.

ARTICLE III STATEMENT OF WORK

CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision, and expertise to fully and adequately perform and complete the covenants set forth in Attachment A, Scope of Services, which is attached hereto and incorporated herein by reference and in any Task Order executed under the authority of this Contract.

ARTICLE IV PERFORMANCE PERIOD

A. This contract shall go into effect on [DATE] contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY’S Contract Administrator. The contract shall end on [DATE], unless extended by contract amendment.

B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

C. The period of performance shall be in accordance with the requirements set forth in each Task Order. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment. Contract extensions may be executed by the Director of Transportation if authorized by the County Board of Supervisors.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

- 1 B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are
2 in the cost proposal and identified in the cost proposal and in the executed Task Order.
- 3 C. Specific assignments will be authorized to CONSULTANT through issuance of Task Orders.
- 4 D. Each Task Order will identify the scope of services, expected results, deliverables, period of performance and
5 will designate a COUNTY Task Coordinator. CONSULTANT shall prepare a Cost Estimate, including a written
6 estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses,
7 overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and
8 total cost; the finalized Task Order shall be prepared in accordance with the format as specified in the County
9 Consulting Services Manual and shall be signed by both COUNTY and CONSULTANT.
- 10 E. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved
11 Compensation Plan.
- 12 F. Progress payments for each Task Order will be made monthly in arrears based on services provided and
13 allowable costs incurred.
- 14 G. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been
15 approved by COUNTY and notification to proceed has been issued by COUNTY's Contract Administrator. No
16 payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- 17 H. A Task Order is of no force or effect until returned to COUNTY and signed by an authorized representative of
18 COUNTY. No expenditures are authorized on a assignment and work shall not commence until a Task Order
19 for that assignment has been executed by COUNTY.
- 20 I. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's
21 Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work
22 performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the
23 performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall
24 follow the format stipulated in the COUNTY's Consulting Services Manual. Credits due COUNTY that include
25 any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be
26 reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to
27 COUNTY's Contract Administrator at the address provided in Article I.
- 28 J. The period of performance for Task Orders shall be in accordance with time frame specified in each Task Order.
- 29 K. The total amount payable by COUNTY for an individual Task Order shall not exceed the amount agreed to in

1 the Task Order. Additional services or budget will require the issuance of a new Task Order.

2 L. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order,
3 no payment will be made until the deliverable has been satisfactorily completed.

4 M. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this
5 Agreement.

6 N. The total amount payable by COUNTY for all Task Orders resulting from this contract shall not exceed
7 \$[Amount].

8 O. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will
9 be authorized under this contract through Task Orders.

10 **ARTICLE VI TERMINATION**

11 A. COUNTY reserves the right to terminate this contract upon thirty (30) calendar days written notice to
12 CONSULTANT with the reasons for termination stated in the notice.

13 B. COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants
14 herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY
15 may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract
16 with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this contract
17 prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract. In
18 which case the overage shall be deducted from any sum due CONSULTANT under this contract and the
19 balance, if any, shall be paid to CONSULTANT upon demand.

20 **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

21 A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition
22 Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual
23 items.

24 B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform
25 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

26 C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be
27 unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part
28 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.

29 **ARTICLE VIII RETENTION OF RECORDS/AUDIT**

1 For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code
2 of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the
3 performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY
4 shall maintain and make available for inspection all books, documents, papers, accounting records, and other
5 evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the
6 contract. All parties shall make such materials available at their respective offices at all reasonable times during
7 the contract period and for three years from the date of final payment under the contract. The state, State Auditor,
8 COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books,
9 records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent
10 to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof
11 shall be furnished if requested.

12 **ARTICLE IX AUDIT REVIEW PROCEDURES**

- 13 A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not
14 disposed of by agreement, shall be reviewed by COUNTY'S Chief Financial Officer.
- 15 B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by
16 COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in
17 writing.
- 18 C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and
19 timely performance, in accordance with the terms of this contract.
- 20 D. Audit Terms and Conditions if the amount shown in Article V.N is greater than \$150,000.
21 CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews
22 such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper
23 review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable,
24 will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the
25 instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or
26 local government officials are allowed full access to the CPA's work papers including making copies as
27 necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by
28 COUNTY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that
29 individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if

1 directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review
2 recommendations, or to ensure that the federal, state or local governments have access to CPA work papers,
3 will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior
4 reimbursed costs.

5 The provisional ICR will apply to this contract and all other contracts executed between COUNTY and the
6 CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

7 **ARTICLE X SUBCONTRACTING**

8 A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any
9 subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations
10 hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its
11 subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and
12 omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its
13 subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the
14 CONSULTANT.

15 B. CONSULTANT shall perform the work contemplated with resources available within its own organization and
16 no portion of the work pertinent to this contract shall be subcontracted without written authorization by
17 COUNTY's Contract Administrator, except that, which is expressly identified in the Compensation Plan.

18 C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made
19 to CONSULTANT by COUNTY.

20 D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract
21 to be applicable to subconsultants.

22 E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to
23 the start of work by the subconsultant(s).

24 **ARTICLE XI EQUIPMENT PURCHASE**

25 A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before CONSULTANT
26 enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or
27 CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring
28 such costs.

29 B. For purchase of any item, service or consulting work not covered in CONSULTANT's Compensation Plan and

1 exceeding \$5,000 prior authorization by COUNTY's Contract Administrator; three competitive quotations must
2 be submitted with the request, or the absence of bidding must be adequately justified.

3 C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain
4 an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at
5 least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and
6 is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the
7 contract is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal
8 to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in
9 accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price.
10 If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's
11 expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained
12 from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the
13 equipment, the terms and conditions of such sale must be approved in advance by COUNTY.

14 **ARTICLE XII STATE PREVAILING WAGE RATES**

15 In the event that a portion of the work performed by CONSULTANT are by crafts affected by state labor laws, the
16 following terms and conditions shall apply.

17 A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in
18 accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances
19 applicable to the work.

20 B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction
21 or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of
22 the provisions of this Article, unless the awarding agency has an approved labor compliance program by the
23 Director of Industrial Relations.

24 C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence
25 costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined
26 in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

27 When all of the work performed by CONSULTANT is performed by crafts not affected by state labor laws or are not
28 contemplated for use, the following terms and conditions shall apply.

29 A. The State of California's General Prevailing Wage Rates are not applicable to this contract.

Note: The Federal “Payment of Predetermined Minimum Wage” applies only to federal-aid construction contracts.

ARTICLE XIII CONFLICT OF INTEREST

- A. CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or COUNTY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection

1 with the awarding of any state or federal contract; the making of any state or federal grant; the making of
2 any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation,
3 renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

4 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for
5 influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress;
6 an officer or employee of Congress, or an employee of a Member of Congress; in connection with this
7 federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit
8 Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

9 B. This certification is a material representation of fact upon which reliance was placed when this transaction was
10 made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction
11 imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a
12 civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13 C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this
14 certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients
15 shall certify and disclose accordingly.

16 **ARTICLE XVI STATEMENT OF COMPLIANCE**

17 A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury
18 under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the
19 nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of
20 Regulations, Section 11102.

21 B. During the performance of this Contract, CONSULTANT and its subconsultants shall not unlawfully
22 discriminate, harass, or allow harassment against any employee or applicant for employment because of sex,
23 race, color, ancestry, religious, national origin, ethnic group identification, age, physical disability (including HIV
24 and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), genetic information, marital status,
25 or sexual orientation. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their
26 employees and applicants for employment are free from such discrimination and harassment. CONSULTANT
27 and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code
28 §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations,
29 Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission

1 implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the
2 California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if
3 set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this
4 clause to labor organizations with which they have a collective bargaining or other Agreement.

5 C. The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted
6 programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of
7 Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement
8 and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of
9 race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits
10 of or subject to discrimination under any program or activity by the recipients of federal assistance or their
11 assignees and successors in interest.

12 D. The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with
13 Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin,
14 religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of
15 materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the
16 discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when
17 the Agreement covers a program whose goal is employment.

18 **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

19 A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws
20 of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to
21 Agencies on Government wide Debarment and Suspension (non procurement)", which certifies that he/she or
22 any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently
23 under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has
24 not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the
25 past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or
26 had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or
27 official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to
28 COUNTY.

29 B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in

1 determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating
2 agency, and dates of action.

3 C. Exceptions to the System for Award Management (SAM) maintained by the General Services Administration
4 are to be determined by the Federal Highway Administration.

5 **ARTICLE XVIII FUNDING REQUIREMENTS**

6 A. It is mutually understood between the parties that this contract may have been written before ascertaining the
7 availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program
8 and fiscal delays that would occur if the contract were executed after that determination was made.

9 B. This contract is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose
10 of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any
11 statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions,
12 terms, or funding of this contract in any manner.

13 C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any
14 reduction in funds.

15 D. COUNTY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by
16 mutual agreement to amend the contract to reflect any reduction of funds.

17 **ARTICLE XIX CHANGE IN TERMS**

18 A. This contract may be amended or modified only by mutual written agreement of the parties.

19 B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and
20 notification to proceed has been provided by COUNTY’s Contract Administrator.

21 C. There shall be no change in CONSULTANT’s Contract Manager or members of the contract team, as listed as
22 Key Personnel in the approved Scope of Services, which is a part of this contract without prior written approval
23 by COUNTY’s Contract Administrator.

24 **ARTICLE XX CONTINGENT FEE**

25 CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or
26 retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage,
27 brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling
28 agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this
29 warranty, COUNTY has the right to annul this contract without liability; pay only for the value of the work actually

1 performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount
2 of such commission, percentage, brokerage, or contingent fee.

3 **ARTICLE XXI DISPUTES**

4 A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of
5 by agreement shall be decided by a committee consisting of COUNTY’s Contract Administrator and Department
6 Head, who may consider written or verbal information submitted by CONSULTANT.

7 B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and
8 estimate, CONSULTANT may request review by COUNTY Governing Board of unresolved claims or disputes,
9 other than audit. The request for review will be submitted in writing.

10 C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full
11 and timely performance in accordance with the terms of this contract.

12 **ARTICLE XXII INSPECTION OF WORK**

13 CONSULTANT and any subconsultant shall permit COUNTY, the state, and the FHWA if federal participating funds
14 are used in this contract; to review and inspect the project activities and files at all reasonable times during the
15 performance period of this contract including review and inspection on a daily basis.

16 **ARTICLE XXIII SAFETY**

17 A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety
18 equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY Safety
19 Officer and other COUNTY representatives. CONSULTANT personnel shall wear hard hats and safety vests
20 at all times while working on the construction project site.

21 B. Pursuant to the authority contained in Section §591 of the Vehicle Code, COUNTY has determined that such
22 areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of
23 the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take
24 all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public
25 from injury and damage from such vehicles.

26 C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

27 D. In the event CONSULTANT performs trenching of five feet or deeper in the performance of any service provided
28 under this Agreement, CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA)
29 permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices,

1 work, method, operation, or process related to the construction or excavation of trenches which are five feet or
2 deeper.

3 **ARTICLE XXIV INDEMNIFICATION AND INSURANCE**

4 A. Basic Indemnity

5 1. To the fullest extent permitted by applicable law, CONSULTANT agrees to defend (through legal counsel
6 reasonably acceptable to COUNTY), indemnify, and hold harmless the County of Riverside, its Agencies,
7 Districts, Departments and Special Districts, Board of Supervisors, elected and appointed officials, and
8 each of their respective directors, members officers, employees, agents, volunteers and representatives
9 ("Indemnitees") and each of them from any and all Losses that arise out of or relate to any act or omission
10 constituting ordinary and not professional negligence (including, without limitation, negligent breach of
11 contract), recklessness, or willful misconduct on the part of CONSULTANT or its subconsultants or their
12 respective employees, agents, representatives, or independent contractors.

13 2. "Losses" shall mean any and all economic and non-economic losses, costs, liabilities, claims, damages,
14 actions, judgements, settlements and expenses, including, without limitation, full and actual attorney's fees
15 (including, without limitation, attorney's fees for trial and on appeal), expert and non-expert witness fees,
16 arbitrator and arbitration fees and mediator and mediation fees.

17 3. CONSULTANT further agrees to and shall indemnify and hold harmless the Indemnitees from all liability
18 arising from suits, claims, demands, actions, or proceedings made by agents, employees or subcontractors
19 of CONSULTANT for salary, wages, compensation, health benefits, insurance, retirement or any other
20 benefit not explicitly set forth in this contract and arising out of work performed for COUNTY pursuant to
21 this contract. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder
22 regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee
23 or any other person or entity; provided however, that nothing contained herein shall be construed as
24 obligating CONSULTANT to indemnify and hold harmless any Indemnitee to the extent not required under
25 the provisions of Paragraph B. below.

26 B. Indemnity for Design Professional Services

27 1. To the fullest extent permitted by Applicable Law, CONSULTANT agrees to defend (through legal counsel
28 reasonably acceptable to COUNTY), indemnify and hold harmless the Indemnitees, and each of them,
29 against any and all Losses that arise out of, pertain to, or relate to, any negligence, recklessness or willful

1 misconduct constituting professional negligence on the part of CONSULTANT or its Subconsultants, or
2 their respective employees, agents, representatives, or independent contractors. The Indemnitees shall
3 be entitled to the defense, and indemnification provided for hereunder regardless of whether the Loss is, in
4 part, caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity;
5 provided, however, that nothing contained herein shall be construed as obligating CONSULTANT to
6 indemnify and hold harmless any Indemnitee to the extent not required under the provisions of this section.
7 CONSULTANT shall defend and pay, all costs and fees, including but not limited to attorney fees, cost of
8 investigation, and defense, in any loss, suits, claims, demands, actions, or proceedings to the extent and
9 in proportion to the percentage, such costs and fees arise out of, pertain to, or relate to the negligence,
10 recklessness or willful misconduct of CONSULTANT arising out of or from the performance of professional
11 design services under this Agreement. The duty to defend applies to any alleged or actual negligence,
12 recklessness, willful misconduct of CONSULTANT. The cost for defense shall apply whether or not
13 CONSULTANT is a party to the lawsuit and shall apply whether or not CONSULTANT is directly liable to
14 the plaintiffs in the lawsuit. The duty to defend applies even if Indemnitees are alleged or found to be actively
15 negligent, but only in proportion to the percentage of fault or negligence of CONSULTANT.

- 16 2. Without affecting the rights of COUNTY under any other provision of this Agreement, CONSULTANT shall
17 not be required to indemnify or hold harmless or provide defense or defense costs to an Indemnitee for a
18 Loss due to that Indemnitee's negligence, recklessness or willful misconduct; provided, however, that such
19 negligence, recklessness or willful misconduct has been determined by agreement of CONSULTANT and
20 Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.
- 21 3. CONSULTANT agrees to obtain or cause to be obtained executed defense and indemnity agreements with
22 provisions identical to those set forth in this section from each and every Subconsultant, of every Tier.
- 23 4. CONSULTANT's indemnification obligations under this Agreement shall not be limited by the amount or
24 type of damages, compensation or benefits payable under any policy of insurance, workers' compensation
25 acts, disability benefit acts or other employee benefit acts.
- 26 5. The Indemnitees shall be entitled to recover their attorneys' fees, costs and expert and consultant costs in
27 pursuing or enforcing their right to defense and/or indemnification under this Agreement.

28 **B. INSURANCE**

29 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold the COUNTY harmless,

CONSULTANT shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

1. Workers' Compensation:

If the CONSULTANT has employees as defined by the State of California, the CONSULTANT shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

2. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

3. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

4. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for the CONSULTANT's performance of work included within this Agreement, with a limit of liability of not less then \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CONSULTANT's Professional Liability Insurance is written

1 on a claims made basis rather than an occurrence basis, such insurance shall continue through the term
2 of this Agreement and CONSULTANT shall purchase at his sole expense either 1) an Extended Reporting
3 Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a
4 retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through
5 Certificates of Insurance that CONSULTANT has Maintained continuous coverage with the same or original
6 insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

7 5. General Insurance Provisions - All lines:

8 a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of
9 California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are
10 waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for
11 a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

12 b. The CONSULTANT must declare its insurance self-insured retention for each coverage required
13 herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall
14 have the prior written consent of the County Risk Manager before the commencement of operations
15 under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at
16 the election of the Country's Risk Manager, CONSULTANT'S carriers shall either; 1) reduce or
17 eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a
18 bond which guarantees payment of losses and related investigations, claims administration, and
19 defense costs and expenses.

20 c. CONSULTANT shall cause CONSULTANT'S insurance carrier(s) to furnish the County of Riverside
21 with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of
22 Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by
23 the County Risk Manager, provide original Certified copies of policies including all Endorsements and
24 all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s)
25 and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days
26 written notice shall be given to the County of Riverside prior to any material modification, cancellation,
27 expiration or reduction in coverage of such insurance. In the event of a material modification,
28 cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the
29 County of Riverside receives, prior to such effective date, another properly executed original Certificate

1 of Insurance and original copies of endorsements or certified original policies, including all
2 endorsements and attachments thereto evidencing coverage's set forth herein and the insurance
3 required herein is in full force and effect. CONSULTANT shall not commence operations until the
4 COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of
5 endorsements and if requested, certified original policies of insurance including all endorsements and
6 any and all other attachments as required in this Section. An individual authorized by the insurance
7 carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of
8 Insurance.

- 9 d. It is understood and agreed to by the parties hereto that the CONSULTANT'S insurance shall be
10 construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured
11 retention's or self-insured programs shall not be construed as contributory.
- 12 e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope
13 of services; or, there is a material change in the equipment to be used in the performance of the scope
14 of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the
15 COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required
16 under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of
17 insurance carried by the CONSULTANT has become inadequate.
- 18 f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subconsultants
19 working under this Agreement.
- 20 g. The insurance requirements contained in this Agreement may be met with a program(s) of self-
21 insurance acceptable to the COUNTY.
- 22 h. CONSULTANT agrees to notify COUNTY of any claim by a third party or any incident or event that may
23 give rise to a claim arising from the performance of this Agreement.

24 **ARTICLE XXV OWNERSHIP OF DATA**

25 A. Ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this
26 contract will automatically be vested in COUNTY; and no further agreement will be necessary to transfer
27 ownership to COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data needed to complete
28 the review and approval process.

29 B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-

1 readable form, are intended for one-time use in the construction of any project for which this contract has been
2 entered into.

3 C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or
4 misuse by COUNTY of the machine-readable information and data provided by CONSULTANT under this
5 contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with
6 any use by COUNTY of project documentation on other projects, for additions to a project, or for the completion
7 of a project by others, except only such use as may be authorized in writing by CONSULTANT.

8 D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as
9 appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

10 E. COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the
11 agreement shall provide that the COUNTY shall have the royalty-free nonexclusive and irrevocable right to
12 reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

13 **ARTICLE XXVI CLAIMS FILED BY COUNTY’S CONSTRUCTION CONTRACTOR**

14 A. If claims are filed by COUNTY’s construction contractor relating to work performed by CONSULTANT’s
15 personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to
16 evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation
17 with COUNTY’S construction contract administration and legal staff and for testimony, if necessary, at
18 depositions and at trial or arbitration proceedings.

19 B. CONSULTANT’s personnel that COUNTY considers essential to assist in defending against construction
20 contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will
21 be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT’s personnel
22 services under this contract.

23 C. Services of CONSULTANT’s personnel in connection with COUNTY’s construction contractor claims will be
24 performed pursuant to a written contract amendment, if necessary, extending the termination date of this
25 contract in order to resolve the construction claims.

26 **ARTICLE XXVII CONFIDENTIALITY OF DATA**

27 A. All financial, statistical, personal, technical, or other data and information relative to COUNTY’s operations,
28 which are designated confidential by COUNTY and made available to CONSULTANT in order to carry out this
29 contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

- B. Permission to disclose information on one occasion, or public hearing held by COUNTY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COUNTY's actions on the same, except to COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by COUNTY, and receipt of COUNTY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than COUNTY.

ARTICLE XXVIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXIX LEGAL COMPLIANCE

CONSULTANT shall comply with all Federal, State and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals currently in effect and in any manner affecting the performance of this Agreement, including, without limitation, workers' compensation laws and licensing and regulations. Failure to comply by CONSULTANT may be grounds for termination by the COUNTY.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance may be evaluated by COUNTY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record. Preparation or processing of a performance evaluation shall not affect the contract end date as defined in "ARTICLE IV PERFORMANCE PERIOD".

ARTICLE XXXI RETENTION OF FUNDS

- 1 A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.
- 2 B. COUNTY will withhold the last 10 percent of the budget for preparation of any final PS&E documents. The 10
3 percent retainage is to be held after 90% of the PS&E phase has been billed and is not to be deducted from
4 each invoice. The amount retained will be paid to CONSULTANT after COUNTY has approved
5 CONSULTANT's PS&E documents. The CONSULTANT, or subconsultant, shall return all monies withheld in
6 retention from a subconsultant within thirty (30) days after receiving payment. Federal law (49 CFR 26.29)
7 requires that any delay or postponement of payment over thirty (30) days may take place only for good cause
8 and with the COUNTY's prior written approval. Any violation of this provision shall subject the violating
9 CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of
10 the Business and Professions Code. These requirements shall not be construed to limit or impair any
11 contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in
12 the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant
13 performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime
14 consultant and subconsultants.

15 **ARTICLE XXXII NOTIFICATION**

16 All notices hereunder and communications regarding interpretation of the terms of this contract and changes
17 thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage
18 prepaid, and addressed to the CONSULTANT's Contract Manager and COUNTY's Contract Administrator at the
19 respective addresses provided in Article I.B.

20 **ARTICLE XXXIII CONTRACT**

21 The two parties to this contract, who are the before named CONSULTANT and the before named COUNTY, hereby
22 agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the two
23 parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work
24 to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as
25 evidenced by the signatures below.

1 **ARTICLE XXXIV • APPROVALS**

2 **COUNTY** Approvals

3 RECOMMENDED FOR APPROVAL:

6 _____
7 PATRICIA ROMO

8 Director of Transportation

10 APPROVED AS TO FORM:

11 GREGORY P. PRIAMOS, County Counsel

14 By Deputy

16 APPROVAL BY THE BOARD OF SUPERVISORS

19 _____
20 _____
21 **PRINTED NAME**
Chairman, Riverside County Board of Supervisors

23 ATTEST:

26 _____
27 KECIA HARPER-IHEM

28 Clerk of the Board (SEAL)

CONSULTANT Approvals

CONSULTANT:

_____ **PRINTED NAME**

_____ **TITLE**

CONSULTANT:

_____ **PRINTED NAME**

_____ **TITLE**