

AGREEMENT BETWEEN THE VENTURA COUNTY TRANSPORTATION COMMISSION AND Conrad LLP FOR PROFESSIONAL SERVICES

This is an agreement (“Agreement”) by and between the Ventura County Transportation Commission, hereinafter referred to as VCTC, and Conrad, LLP hereinafter referred to as CONTRACTOR, to provide professional TDA Financial and Compliance Auditing services.

VCTC and CONTRACTOR agree as follows:

1. STATEMENT OF AGREEMENT

VCTC hereby engages CONTRACTOR, and CONTRACTOR hereby accepts such engagement, to perform the services on the terms and conditions herein described, and as set forth in this Agreement. CONTRACTOR hereby warrants that it has the professional qualifications, experience and facilities to properly perform said services and hereby agrees to undertake and complete the performance thereof.

2. DESCRIPTION OF SERVICES

The services to be performed by CONTRACTOR are those set forth and incorporated herein in Attachment 1 (Request for Proposals for Professional TDA Financial and Compliance Auditing Services dated January 11, 2019) of this Agreement, and the specifications attached thereto and as further described in Contractor’s proposal dated February 4, 2019 set forth and incorporated herein in Attachment 2 to this Agreement. In the event of a conflict between any specific provision of this Agreement and any provision of Attachment 1 or Attachment 2, the provisions of this Agreement shall prevail. In the event of a conflict between any specific provision of Attachment 1 and Attachment 2, the provisions of Attachment 1 shall prevail over conflicting provisions of Attachment 2. All work performed by the CONTRACTOR shall be performed in a good and workmanlike manner.

3. CHANGES IN THE WORK

The VCTC may, at any time, by written order to CONTRACTOR make changes within the general Scope of Services, including but not limited to revising or adding to the work or deleting portions thereof. Upon agreement of the parties and receipt of notice of change to the Scope of Services, CONTRACTOR shall immediately take all necessary steps to comply therewith.

4. COMPENSATION

4.1 - The total compensation payable by VCTC, to CONTRACTOR, for the above stated services is not to exceed \$110,000 for Fiscal Year 2018/2019, \$110,000 for Fiscal Year 2019/2020, \$110,000 for Fiscal Year 2020/2021, \$110,000 for Fiscal Year 2021/2022 and \$110,000 for Fiscal Year 2022/2023. The total amount for the contract period shall not exceed \$550,000.

VCTC shall not be obligated to pay CONTRACTOR for costs incurred in excess of this amount unless approved in writing by VCTC prior to CONTRACTOR’s commencement of the work.

4.2 - CONTRACTOR will bill VCTC monthly for completed work. VCTC will pay CONTRACTOR within thirty (30) days of receipt of a satisfactory invoice. Each invoice shall be supported by employee name, labor category, hours worked, etc. in the performance of the Agreement during the period covered by each invoice.

5. PROGRESS AND COMPLETION

CONTRACTOR shall commence work on the services to be performed upon full execution of this Agreement and shall consider full execution of this Agreement as Notice to Proceed. All services shall be completed as mutually agreed upon by both parties; deviations from the schedule shall be approved by VCTC. Progress reports, which include a summary of work completed during the billing period, will be provided by the CONTRACTOR with each invoice.

6. ASSIGNMENT AND SUBCONTRACTING

6.1 - This Agreement is for professional services and CONTRACTOR may not assign its rights under this Agreement nor delegate the performance of its duties without the VCTC's prior written consent.

6.2 - CONTRACTOR shall complete all work under this Agreement. Contractor may assign duties to another contractor or to any subcontractor only upon prior written consent of the VCTC. Any assignment or delegation without VCTC's prior written consent shall be void.

6.3 – CONTRACTOR will act as an independent contractor and is not an employee, officer, agent, partner or joint venture of VCTC by virtue of this Agreement. CONTRACTOR agrees that its workers performing services under this Agreement shall be either (1) employees of CONTRACTOR, or (2) shall meet all of the following three requirements to qualify as independent contractors: (a) be free from control and direction of CONTRACTOR; (b) perform work that is outside the usual course of CONTRACTOR's business; and (c) be customarily engaged in an independently established trade, occupation or business of the same nature as the work the individual performs for the CONTRACTOR. CONTRACTOR will defend, indemnify, and hold VCTC harmless from any claims, demands, liabilities, costs, and expenses arising from CONTRACTORS misclassification of workers providing services as independent contractors under this Agreement.

7. RELATIONSHIP OF THE PARTIES

CONTRACTOR is, and at all times retains the status of, an independent contractor and shall represent the will of VCTC only as to the results of the subject matter of this Agreement, and not as to the manner in which the services herein are performed. CONTRACTOR shall have complete control and responsibility over the details and performance of the services herein required to complete the Agreement, and in no event shall CONTRACTOR be considered an officer, agent, servant or employee of VCTC.

8. KEY PERSONNEL

Andrea Jayasekara, partner, and Mariana Beuchat, manager, are considered essential to the work being performed under this Agreement; substitution for these individuals will not be made without the prior written consent of the VCTC.

9. INSURANCE

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if consultant provides written verification it has no employees)
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the VCTC requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The VCTC, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the VCTC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the VCTC, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the VCTC.

Waiver of Subrogation

Consultant hereby grants to VCTC a waiver of any right to subrogation which any insurer of said Consultant may acquire against the VCTC by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the VCTC has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the VCTC.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the VCTC with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the VCTC before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The VCTC reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

VCTC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Deductibles and Self-Insured Retentions

Consultant shall disclose to and obtain the approval of VCTC for any self-insured retention and/or deductible of all insurance policies required by this Agreement before beginning any of the services or work called for by any term of this Agreement/approval of this agreement by VCTC. The VCTC may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Further, if any insurance policy required by this Agreement includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

10. PERMITS

To the extent applicable, CONTRACTOR shall, at CONTRACTOR's expense, obtain all necessary permits and licenses necessary to perform and complete the work under this Agreement, give all notices, and pay all fees and taxes required by law. Any permits required from VCTC shall be granted to CONTRACTOR at no cost.

11. INDEMNIFICATION

Notwithstanding the existence of insurance coverage required of CONTRACTOR pursuant to this Agreement, CONTRACTOR shall save, keep, indemnify, hold harmless and defend VCTC and its appointed and elected officials, officers, employees and agents, from every claim or demand made and every liability, loss damage or expense of any nature whatsoever and all costs or expenses incurred in connection therewith, which arise at any time, by reason of damage to the property of, or personal injury to, any person, occurring or arising out of the performance of CONTRACTOR, its officers, agents or employees, including but not limited to, its subcontractors, of the work required pursuant to this agreement, occasioned by any alleged or actual negligent or wrongful act or omission by CONTRACTOR including any such liability imposed by reason of any infringement or alleged infringement of rights or any person or persons, firm or corporation, in consequence of the use in the performance of CONTRACTOR of the work hereunder of any article or material supplied installed pursuant to this agreement. Contractor shall not be required to indemnify and hold harmless VCTC, its officers, agents or employees (VCTC Indemnitees) for any such claims, damages, penalties, obligations or liabilities attributable to the sole negligence, failure to act or misconduct of VCTC Indemnitees.

12. NON-DISCRIMINATION

CONTRACTOR shall not discriminate in the hiring of employees or in the employment of subcontractors on the basis of sex, race, religion, age, natural origin, handicap, or any other basis prohibited by law. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act and applicable laws promulgated thereunder.

13. RECORDS AND AUDITS

The CONTRACTOR's accounting systems shall conform to generally accepted accounting principles (GAAP), enable the determination of costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers, except for the audit working papers, of CONTRACTOR connected with performance under this Agreement shall be maintained for a minimum of seven years from the date of final payment to CONTRACTOR and shall be held open to inspection and audit by representatives of the State Auditor General.

14. ATTORNEY'S FEES

In the event an action is filed by either party to enforce rights under this Agreement, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any relief granted by the court.

15. TERMINATION BY VCTC

This Agreement may be terminated by the VCTC at any time upon thirty (30) days' written notice. In full discharge of any obligation to CONTRACTOR in respect of this Agreement and such termination, the VCTC shall pay for the costs and noncancelable commitments incurred prior to the date of termination and fair closeout costs in accordance with the hourly rates and not to exceed amount specified in Article 4. CONTRACTOR shall take all reasonable steps to minimize termination costs. In no event, however, shall the VCTC be obligated to pay CONTRACTOR any amount in excess of the total funds committed by the VCTC up to the time of termination to support the work.

16. NOTICES

16.1 - All notices to the VCTC under this Agreement shall be in writing and sent to:

Ms. Sally DeGeorge, Director of Finance
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

16.2 - All notices to CONTRACTOR under this Agreement shall be in writing and sent to:

Andrea Jayasekara, Engagement Partner
Conrad, LLP
23161 Lake Center Drive, Suite #200
Lake Forest, CA 92630

17. ENTIRE AGREEMENT, MODIFICATION, AND EFFECTIVE DATE

17.1 - This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements and understandings related to the work performed under this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by a party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in the Agreement shall not be valid or binding.

17.2 - This Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representative of both parties.

17.3 - This Agreement shall be effective upon full execution by both VCTC and CONTRACTOR in accordance with Article 5 above, such full execution shall be considered a Notice to Proceed.

18. GOVERNING LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California with venue in the County of Ventura. This Agreement is executed and to be performed in the County of Ventura.

19. BREACHES AND DISPUTE RESOLUTION PROCEDURE

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

Performance During Dispute - Unless otherwise directed by VCTC, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

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

Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the VCTC and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California with venue in the County of Ventura.

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

20. **SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

VENTURA COUNTY TRANSPORTATION COMMISSION

Manuel Minjares, Chair

Date

APPROVED AS TO FORM:

Steven T. Mattas, General Counsel

Date

CONTRACTOR – Conrad, LLP

Andrea Jayasekara

Date