



**VENTURA COUNTY TRANSPORTATION COMMISSION**  
**REQUEST FOR PROPOSALS**  
**TO PERFORM ANNUAL BRIDGE INSPECTIONS**  
**ON THE SANTA PAULA BRANCH LINE**

**OVERVIEW**

Professional engineering consultant, licensed to practice in the State of California, to perform annual structural inspections of bridges on the VCTC-owned Santa Paula Branch Line (SPBL) to comply with 49 CFR, Part 237, Bridge Safety Standards.

**BACKGROUND & INTRODUCTION**

VCTC purchased the rail corridor and active rail line known as the Santa Paula Branch Line in 1995 from Southern Pacific Transportation Company. The SPBL corridor is 32 miles long, with approximately 29 miles of active track and 39 bridges requiring annual inspection and capacity ratings. SPBL traverses Ventura County eastward from the Coast Main Line in the City of Ventura to the unincorporated community of Piru. A Bridge Management Plan is in place and annual bridge inspections have been completed since 2012.

Current train operations on the SPBL consist of Union Pacific, approximately one freight car per week scheduled to Mile Post 413.85 in Santa Paula. Past operations by Fillmore & Western Railway Company included excursion train operations from approximately MP 414.45 in Santa Paula to the eastern terminus of the line at MP 435.07, movie train operations on SPBL MP 403.20 to the eastern terminus of the line at MP 435.07; and movement and storage of empty rail cars east of Fillmore. The 20-year Fillmore & Western Railway Company lease to operate the SPBL expired on June 30, 2021. Negotiations are underway with a new prospective railroad operator based on the results of a Request for Proposals issued in 2020. Operations are anticipated to include freight service, storage and transload services, public/tourist excursion trains, and movie production, and are subject to change.

**SCOPE OF WORK**

The scope of work includes physical inspection of each of the 35 bridges listed in Attachment 1 to the Scope of Work attached hereto and incorporated herein as Exhibit A, in conformance with 49 CFR 237.109. See attached Scope of Work included below.

**WORK PRODUCTS**

- Two (2) hardcopy and one (1) digital copy of Bridge Inspection Reports;
- Estimates for any required repairs or modifications; and
- List of bridges for which safe load capacities must be recalculated based on the findings of the bridge inspection.

## PROPOSED PROJECT SCHEDULE

Proposal Deadline	-	<b>November 23, 2021 – No later than 4:00 PM</b>
Notice to Proceed	-	<b>December 1, 2021</b>
Inspections Complete	-	<b>December 31, 2021</b>
Deliverables	-	<b>March 31, 2022</b>

## PROPOSAL REQUIREMENTS

One electronic version of the proposal shall be submitted no later than **4:00 P.M. Tuesday, November 23, 2021. Proposals delivered after the stated time will not be considered.** Proposals shall be delivered via email to Amanda Fagan, Planning and Sustainability Director, at [afagan@goventura.org](mailto:afagan@goventura.org).

There is no expressed or implied obligation for the VCTC to reimburse responding firms for any expenses incurred in the preparation or delivery of proposals in response to this request nor any expense incurred in negotiating with VCTC on any matter related to proposals. The VCTC reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected. All submissions are considered a matter of public record. All proposals must include the items listed below. Any proposal that does not include the following may be deemed non-responsive and rejected.

Proposals should include the following information:

1. **Letter of Transmittal** - Indicate name of proposer's firm, mailing address, telephone number, name of contact person, and date of proposal. Provide the names and titles of individuals authorized to make representations for the proposer. Include the names and contact information of any subcontractors.
2. **Understanding of Work to be Performed** - Briefly state the proposer's understanding of the work to be done and make a positive commitment to perform the work within the specified timeframe.
3. **Profile of the Proposer and Summary of Proposer's Qualifications** - Provide a brief overview of the firm and summary of representative experience and similar projects relevant to the work solicited by this RFP. Provide a list of references for whom similar work has been performed and references for any proposed subcontractors. Include sample maps or related print material.
4. **Fee Structure** - Include a detailed quote and fee structure.

## PROPOSAL EVALUATION

VCTC will conduct an initial review of the proposals for general responsiveness and compliance with the requirements of this RFP. Proposals failing to satisfy the requirements of the RFP or are inadequately responsive may be rejected.

After the initial responsiveness review, proposals will be reviewed by VCTC based on evidence of understanding of the work to be performed (20%), demonstrated competence to perform work specific to this request (20%), experience with similar projects and portfolio (20%), assigned personnel qualifications and availability (20%), and proposed cost (20%). VCTC reserves the right to select the proposal which in its sole judgment best meets the needs of the VCTC.

## **VCTC CONTACT INFORMATION**

All questions, comments, and proposals should be directed to:

Amanda Fagan, Planning and Sustainability Director  
Ventura County Transportation Commission  
751 E. Daily Dr., Suite 420  
Camarillo, CA 93010

Phone: (805) 642-1591 (ext. 103)

Email: [afagan@goventura.org](mailto:afagan@goventura.org)

## **FORM CONSULTING SERVICES AGREEMENT**

A form Consulting Services Agreement is attached hereto and incorporated herein as Exhibit B. Firms interested in responding to this request for quotes should be prepared to enter into the agreement under the standard terms and should be able to provide the required insurance. Objections to any provisions must be identified in the proposal. No response will signify that the agreement is acceptable as written. If VCTC is unable to negotiate a satisfactory agreement with the top-ranked proposer, with terms and conditions VCTC determines, in its sole judgment, to be fair and reasonable, then VCTC may commence negotiations with the next most qualified proposer in sequence, until an agreement is reached, or determination is made to reject all submittals. If necessary, VCTC may repeat this process until a final contract has been negotiated. VCTC and Consultant may agree to add additional work to the Project work scope by a later agreement. VCTC may elect to stop work at any time in the contract and will pay for work completed to that point on a time and material basis.

## **RESERVATION OF RIGHTS**

In conducting this Request for Proposals, VCTC reserves the right to:

1. Accept or reject any or all submittals, or any item or part thereof;
2. Issue subsequent Requests for Proposals;
3. Alter the Selection Process Dates;
4. Remedy technical errors in the Requests for Proposals process;
5. Request additional information from Proposers and investigate the qualifications of all firms under consideration;
6. Confirm any part of the information furnished by a Proposer;
7. Obtain additional evidence of managerial, financial or other capabilities;
8. Approve or disapprove the use of particular subcontractors;
9. Negotiate with any, all, or none of the Proposers;
10. Solicit best and final offers from all or some of the Proposers;
11. Award a contract to one or more Proposers;
12. Accept other than the lowest-priced Proposal;
13. Cancel or withdraw this Requests for Proposals at any time without prior notice and the VCTC makes no representations that any contract will be awarded to any Proposer responding to this RFP;
14. Waive informalities and irregularities in Proposals or the selection process.

**EXHIBIT A**  
**SANTA PAULA BRANCH LINE**  
**ANNUAL BRIDGE INSPECTIONS**  
**SCOPE OF WORK**  
**2021**

**OVERVIEW**

Professional engineering consultant, licensed to practice in the State of California, to perform annual structural inspections of bridges on the VCTC-owned Santa Paula Branch Line (SPBL) to comply with 49 CFR, Part 237, Bridge Safety Standards.

**BACKGROUND**

VCTC purchased the rail corridor and active rail line known as the Santa Paula Branch Line in 1995 from Southern Pacific Transportation Company. The SPBL corridor is 32 miles long, with approximately 29 miles of active track and 35 bridges requiring annual inspection and capacity ratings. SPBL traverses Ventura County eastward from the Coast Main Line in the City of Ventura to the unincorporated community of Piru. A Bridge Management Plan is in place and annual bridge inspections have been completed since 2012.

Current train operations on the SPBL consist of Union Pacific, approximately one freight car per week scheduled to Mile Post 413.85 in Santa Paula. Past operations by Fillmore & Western Railway Company included excursion train operations from approximately MP 414.45 in Santa Paula to the eastern terminus of the line at MP 435.07, movie train operations on SPBL MP 403.20 to the eastern terminus of the line at MP 435.07; and movement and storage of empty rail cars east of Fillmore. The 20-year Fillmore & Western Railway Company lease to operate the SPBL expired on June 30, 2021. Negotiations are underway with a new prospective railroad operator based on the results of a Request for Proposals issued in 2020. Operations are anticipated to include freight service, storage and transload services, public/tourist excursion trains, and movie production, and are subject to change.

**SCOPE OF WORK**

**Task 1. Annual Bridge Inspection:**

Task 1 consists of physical inspection of each bridge listed on Attachment 1 to this RFP in conformance with 49 CFR 237.109 below. Deliverables include two hardcopy and one digital copy of Bridge Inspection Reports as well as estimates for any required repairs or modifications and a list of bridges for which safe load capacities must be recalculated based on the findings of the bridge inspection. All inspections must be completed prior to **December 31, 2021**. All work and documentation must be completed and submitted to VCTC by **March 31, 2022**.

**49 CFR Part 237.109 Bridge inspection records.**

- (a)** Each track owner to which this part applies shall keep a record of each inspection required to be performed on those bridges under this part.
- (b)** Each record of an inspection under the bridge management program prescribed in this part shall be prepared from notes taken on the day(s) the inspection is made, supplemented with sketches and photographs as needed. Such record will be dated with the date(s) the physical inspection takes place and the date the record is created, and it will be signed or otherwise certified by the person making the inspection.
- (c)** Each bridge management program shall specify that every bridge inspection report shall include, as a minimum, the following information:
- (1)** A precise identification of the bridge inspected;
  - (2)** The date on which the physical inspection was completed;
  - (3)** The identification and written or electronic signature of the inspector;
  - (4)** The type of inspection performed, in conformance with the definitions of inspection types in the bridge management program;
  - (5)** An indication on the report as to whether any item noted thereon requires expedited or critical review by a railroad bridge engineer, and any restrictions placed at the time of the inspection;
  - (6)** The condition of components inspected, which may be in a condition reporting format prescribed in the bridge management program, together with any narrative descriptions necessary for the correct interpretation of the report; and
  - (7)** When an inspection does not encompass the entire bridge, the portions of the bridge which were inspected shall be identified in the report.
- (d)** An initial report of each bridge inspection shall be placed in the location designated in the bridge management program within 30 calendar days of the completion of the inspection unless the complete inspection report is filed first. The initial report shall include the information required by paragraphs (c)(1) through (c)(5) of this section.
- (e)** A complete report of each bridge inspection, including as a minimum the information required in paragraphs (c)(1) through (c)(6) of this section, shall be placed in the location designated in the bridge management program within 120 calendar days of the completion of the inspection.
- (f)** Each bridge inspection program shall specify the retention period and location for bridge inspection records. The retention period shall be no less than two years following the completion of the inspection. Records of underwater inspections shall be retained until the completion and review of the next underwater inspection of the bridge.
- (g)** If a bridge inspector, supervisor, or engineer discovers a deficient condition on a bridge that affects the immediate safety of train operations, that person shall report the condition as promptly as possible to the person who controls the operation of trains on the bridge in order to protect the safety of train operations.

**Attachment 1. List of Bridge Structures**

<b><u>Structure #</u></b>
407.48
408.02
408.84a
408.84b
408.84c
409.74
410.40
411.97
412.25
415.20
415.32
415.59b
415.69
415.79
415.82
415.92
416.21
416.32
416.63
417.24
417.96
418.02
419.42
419.92
420.20
420.46
421.05
421.23
422.53
422.89
423.28
423.44
425.15
427.64
429.79b

**EXHIBIT B**  
**CONSULTING SERVICES AGREEMENT**

**AGREEMENT BETWEEN  
VENTURA COUNTY TRANSPORTATION COMMISSION  
AND  
CONTRACTOR  
FOR BRIDGE INSPECTIONS**

This Agreement is by and between the Ventura County Transportation Commission, hereinafter referred to as VCTC, and **INSERT CONTRACTOR NAME**, hereinafter referred to as CONTRACTOR, to provide professional services to perform bridge inspections on the Santa Paula Branch Line, as detailed in the Scope of Work and Project Proposal attached to this agreement.

VCTC and CONTRACTOR agree as follows:

**1. STATEMENT OF AGREEMENT**

VCTC hereby engages CONTRACTOR, and CONTRACTOR hereby accepts such engagement, to provide engineering services to perform structural inspections to comply with 49 CFR, Part 237, Bridge Safety Standards, on the VCTC owned, Santa Paula Branch Line (SPBL). CONTRACTOR shall perform those services on the terms and conditions herein described, as set forth in Attachment 1 Scope of Work, to this agreement. CONTRACTOR hereby affirms that it has the professional qualifications, experience, and facilities to perform said services and hereby agrees to undertake and complete the performance thereof.

**2. DESCRIPTION OF SERVICES**

CONTRACTOR shall perform the services as set forth in Attachment 1, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement, and as described in Attachment 2, Proposal for Engineering Services dated **MONTH DATE**, 2021.

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 any conflict between any provisions of Attachment 1 and Attachment 2, the provisions of Attachment 1 shall prevail over conflicting provisions of Attachment 2. All work by the CONTRACTOR shall be performed in a good and workmanlike manner.

**3. COMPENSATION**

3.1 - The total compensation payable by VCTC to CONTRACTOR for the above stated services is not to exceed \$\_\_\_\_\_ for the one-time engagement. The VCTC shall not be obligated to pay CONTRACTOR for costs incurred in excess of this amount unless such excess amounts are memorialized in an amendment to this Agreement signed by both parties prior to the commencement of the work.

3.2 – CONTRACTOR will invoice VCTC by completed task deliverables in accordance with the price proposal in Attachment 2 to this agreement. VCTC will pay CONTRACTOR within thirty (30) days of approved receipt of invoice. Each invoice shall be supported by an itemized statement of costs claimed to have been incurred by CONTRACTOR in the performance of the Agreement during the period covered by each invoice. Costs in excess of those specified in the Contractors Proposal in Attachment 2 shall not be eligible for reimbursement.



#### **4. PROGRESS AND COMPLETION**

CONTRACTOR shall commence work on the services to be performed no sooner than November 1, 2021 and shall consider full execution of this Agreement as Notice to proceed. All services shall be completed in accordance with the Contractor's schedule, adjusted for start date, contained in Attachment 2 to this Agreement. Deviations from the schedule shall be approved by VCTC and all work under this agreement is to be completed by March 31, 2021.

#### **5. ASSIGNMENT AND SUBCONTRACTING**

5.1 - 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.

5.2 - CONTRACTOR shall complete all work under this Agreement and as set forth in Attachments 1 and 2. CONTRACTOR may assign duties to another subcontractor only upon prior written consent of the VCTC. Any assignment or delegation without VCTC's prior written consent shall be void.

#### **6. 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, except as provided in Attachment 1. 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.

#### **7. KEY PERSONNEL**

**INSERT ANY KEY PERSONNEL NAMES AND TITLES** 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.

#### **8. BREACHES AND DISPUTE RESOLUTION PROCEDURE**

8.1 - DISPUTES. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of VCTC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to VCTC. In connection with any such appeal, the parties shall agree to mediate or arbitrate the dispute using JAMS/Endispute or such other entity or person agreed upon by the parties and by following such entity's rules and procedures before filing an action in any court of law.

8.2 - PERFORMANCE DURING DISPUTE. Unless otherwise directed by VCTC, CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

8.3 - 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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

8.4 - RIGHTS AND REMEDIES. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VCTC or 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.

Nothing in this Section shall be construed to preclude the party who failed to prevail in mediation or arbitration from filing a civil action for resolution of the controversy, dispute, or claim; provided however, that no civil action shall be filed prior to conclusion of the mediation or arbitration conducted as set forth above.

## 9. INSURANCE

CONTRACTOR 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 and the results of that work by the CONTRACTOR, his or her agents, representatives, employees or subcontractors.

### 9.1 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, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONTRACTOR's profession, with limit no less than \$2,000,000 per occurrence or claim.

If the CONTRACTOR maintains higher limits than the minimums shown above, VCTC requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the VCTC.

### 9.2 Other Insurance Provisions

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

#### a. Additional Insured Status

VCTC, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor 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 Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

#### **b. Primary Coverage**

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

#### **c. Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days' notice to VCTC.

#### **d. Waiver of Subrogation**

CONTRACTOR hereby grants to VCTC a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the VCTC by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect 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.

#### **e. Self-Insured Retentions**

Self-insured retentions must be declared to and approved by VCTC. VCTC may require the CONTRACTOR to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Further, if the CONTRACTOR's insurance policy 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.

#### **f. 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 VCTC.

#### **g. Claims Made Policies**

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

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 CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

#### **h. Verification of Coverage**

CONTRACTOR shall furnish 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 VCTC before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. VCTC reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

#### **i. Subcontractors**

CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and CONTRACTOR shall ensure that VCTC is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 and CG 20 40.

#### **j. 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.

### **10. TERMINATION**

10.1 - VCTC may terminate this Agreement, in whole or in part, for convenience at any time by written notice to CONTRACTOR. Upon receipt of notice of termination, CONTRACTOR shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to the Executive Director for work performed up to the time of termination, CONTRACTOR shall be paid the full price for completed and approved work, as well as reasonable termination costs, up to the maximum amount payable under this Agreement. CONTRACTOR shall take all reasonable steps to minimize termination costs. If CONTRACTOR has any property in its possession belonging to VCTC, CONTRACTOR will account for the same, and dispose of it in the manner VCTC directs.

10.2 - If CONTRACTOR becomes insolvent, assigns or subcontracts the work without VCTC's prior approval, does not deliver the work specified in this Agreement or fails to perform in the manner called for, or fails to comply with any other material provision of this Agreement, VCTC may terminate this Agreement for default. Termination shall be effected by serving a ten (10) day advance written notice of termination on CONTRACTOR, setting forth the manner in which CONTRACTOR is in default. If CONTRACTOR does not cure the breach or propose a plan and schedule for curing the breach acceptable to VCTC within the ten (10) day period, VCTC may terminate this Agreement. VCTC shall pay the CONTRACTOR for completed work as described above, except that (i) in no event shall VCTC be required to compensate the CONTRACTOR for defaulted work nor CONTRACTOR's termination costs, and (ii) any amounts paid by VCTC shall be offset by any costs incurred by VCTC to correct or complete work required under this Agreement, including the difference between CONTRACTOR's price for this agreement and any higher price paid to another contractor retained to complete the work.

## **11. PERMITS**

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.

## **12. INDEMNIFICATION**

CONTRACTOR shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, indemnify, defend with counsel selected by VCTC, and hold harmless VCTC and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance ("Claims"), to the extent caused, directly or indirectly, in whole or in part, by the willful misconduct or negligent acts or omissions of CONTRACTOR or its employees, subcontractors, or agents. The foregoing obligation of CONTRACTOR shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of VCTC or its officers, employees, agents, or volunteers and (2) the actions of CONTRACTOR or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

The obligations provided in this Section 12 shall survive termination or expiration of this Agreement.

## **13. AUDIT AND INSPECTION OF RECORDS**

After receipt of reasonable notice and during the regular business hours of CONTRACTOR, CONTRACTOR shall provide VCTC, or agents of VCTC, such access to CONTRACTOR's books, records, payroll documents and facilities as VCTC deems necessary to examine, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. VCTC shall utilize the services of an outside Certified Public Accounting firm to review CONTRACTOR's cost data. CONTRACTOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONTRACTOR's performance hereunder and for a period of three (3) years from the date of final payment by VCTC hereunder.

## **14. FEDERAL, STATE AND LOCAL LAWS**

CONTRACTOR warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, regulations, and all orders and rules promulgated thereunder.

## **15. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with its performance under this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **16. PROHIBITED INTERESTS**

CONTRACTOR covenants that, for the term of this Agreement, no director, member, officer or employee of VCTC during his/her tenure in office or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **17. OWNERSHIP OF REPORTS AND DOCUMENTS**

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of, VCTC. In the event of termination or expiration prior to the completion of the work contemplated in the Scope of Work to this Agreement, CONTRACTOR shall provide any drafts or partial work to VCTC within five (5) business days of said termination or expiration. Copies may be made for CONTRACTOR's records but shall not be furnished to others without written authorization from VCTC. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by VCTC.

## **18. PATENT AND COPYRIGHT INFRINGEMENT**

18.1 - In lieu of any other warranty by VCTC or CONTRACTOR against patent or copyright infringement, statutory or otherwise, it is agreed that CONTRACTOR shall defend at its expense any claim or suit against VCTC on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and CONTRACTOR shall pay all costs and damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in writing of the suit or claim and given VCTC, information and assistance at CONTRACTOR's expense for the defense of same. However, CONTRACTOR will not indemnify VCTC if the suit or claim results from: (i) VCTC's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; (ii) the use of a deliverable in combination with other material not provided by CONTRACTOR when such use in combination infringes upon an existing U.S. letters patent or copyright; or (iii) the operation of the call box system in a manner other than as contemplated by this Agreement.

18.2 – CONTRACTOR shall have control, in consultation with VCTC, over the defense of any such claim or suit and all negotiations for settlement thereof at CONTRACTOR's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONTRACTOR, at no expense to VCTC, shall obtain for VCTC the right to use said item, or shall substitute an equivalent item acceptable to VCTC and extend this patent and copyright indemnity thereto.

## **19. GRANT OF LICENSE**

All intellectual property and proprietary rights of any type whatsoever, including without limitation all patent rights, copyright rights, trade secrets and/or know-how, contained in or used by any hardware, software, and firmware provided to VCTC hereunder or used or developed by CONTRACTOR to provide services to VCTC under this Agreement (collectively the "CONTRACTOR Proprietary Rights") belong solely and exclusively to VCTC.

## **20. FORCE MAJEURE**

20.1 - Any event beyond the control of CONTRACTOR and not due to an act or omission of CONTRACTOR that materially and adversely affects CONTRACTOR's obligations and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by CONTRACTOR shall be deemed a "Force Majeure Event", including the following:

1. Any earthquake, hurricane, flood or other natural disaster;

2. Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion, disastrous or extensive fire or explosion, or strike;
3. The suspension, termination, interruption, denial or failure to obtain, renew or amend any permit VCTC is responsible for obtaining.

20.2 - CONTRACTOR shall give notice in writing to VCTC within five (5) days of the date CONTRACTOR or its employees or agents became aware, or should have reasonably become aware, that a Force Majeure Event would prevent or delay CONTRACTOR's performance. Such notification shall: (i) describe fully such Force Majeure Event(s) and its effect on performance, (ii) state whether performance under this Agreement is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay.

20.3 - CONTRACTOR shall have the burden of proving that a Force Majeure Event(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as VCTC may reasonably request.

20.4 - If it is determined by VCTC that CONTRACTOR's delay or failure to perform resulted from a Force Majeure Event, VCTC, after setting up a new delivery or performance schedule, may allow CONTRACTOR to continue work, or treat the failure to perform as a termination for convenience in accordance with Article 14 of this Agreement.

## **21. ATTORNEY FEES**

In the event any dispute results in the use of ADR or the filing of an action in any court of law to enforce any rights under this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, in addition to any other relief granted.

## **22. GOVERNING LAW/VENUE**

This Agreement shall be governed by the laws of California with venue in the court of competent jurisdiction in the County of Ventura.

## **23. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement

## **24. SEVERABILITY**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**25. NOTICES**

All notices to VCTC under this agreement shall be in writing and sent to:

Executive Director  
Ventura County Transportation Commission  
751 E. Daily Drive, Suite 420  
Camarillo, CA 93010

All notices to CONTRACTOR under this agreement shall be in writing and sent to:

**INSERT CONTRACTOR POINT OF CONTACT NAME AND ADDRESS**

This Agreement shall be made effective upon execution by both parties.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the date first above written.

**INSERT CONTRACTOR**

**VENTURA COUNTY TRANSPORTATION  
COMMISSION**

\_\_\_\_\_

\_\_\_\_\_

NAME

Mark Watkins

TITLE

Interim Executive Director

**APPROVED AS TO FORM:**

\_\_\_\_\_

Steve Mattas

General Counsel