

VENTURA COUNTY TRANSPORTATION COMMISSION

PROFESSIONAL SERVICES AGREEMENT

With

TABLE OF CONTENTS

	<u>Page No.</u>
Section 1. Term of Agreement	1
Section 2. Scope and Performance of Services.....	1
Section 3. Additional Services and Changes in Services.....	2
Section 4. Familiarity with Services and Site	2
Section 5. Compensation and Payment	2
Section 6. Required Documentation Prior to Performance.....	3
Section 7. Time of Performance; Excusable Delays; Extensions.	3
Section 8. Cooperation by VCTC.	4
Section 9. Project Documents.....	4
Section 10. Confidential Information; Release of Information.....	4
Section 11. Consultant’s Books and Records.....	5
Section 12. Status of Consultant.....	5
Section 13. Compliance with Applicable Laws.....	6
Section 14. Unauthorized Aliens.	6
Section 15. Conflicts of Interest.....	6
Section 16. Indemnification	7
Section 17. Insurance	8
Section 18. Assignment	8
Section 19. Default; Limitations on Liability.	9
Section 20. Termination of Agreement	9
Section 21. Notices.....	9
Section 22. General Provisions.....	10
Exhibit A – Scope Of Services	A-1
Exhibit B – Key Personnel & Compensation	B-1
Exhibit C – Insurance	C-1

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is effective as of _____, 20__ (“**Effective Date**”), and is between the Ventura County Transportation Commission (“**VCTC**”) and _____, a [corporation, partnership, LLC or LLP, or individual] (“**Consultant**”).

Section 1. Term of Agreement.

Subject to the provisions of Section 20 (Termination of Agreement), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon _____ day of _____ or the completion of Consultant’s services, whichever is later.

Section 2. Scope and Performance of Services.

- 2.1** Consultant agrees to perform the services set forth in Exhibit A (Scope of Services), which is made a part of this Agreement.
- 2.2** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3** Consultant’s designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B (Key Personnel & Compensation), which is made a part of this Agreement.
- 2.4** Consultant must make every reasonable effort to maintain the stability and continuity of Consultant’s key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify VCTC and obtain VCTC’s written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5** Consultant must obtain VCTC’s prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6** Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- 2.7** VCTC may inspect and accept or reject any of Consultant’s work under this Agreement, either during performance or when completed. Acceptance of any of Consultant’s work by VCTC will not constitute a waiver of any of the provisions of this Agreement.
- 2.8** The Consultant must maintain any work site in the VCTC in a safe condition, free of hazards to persons and property resulting from its operations.

Section 3. Additional Services and Changes in Services.

- 3.1** Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by VCTC.
- 3.2** If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the VCTC Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3** VCTC may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and VCTC. The cost or credit to VCTC resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1** By executing this Agreement, Consultant represents that Consultant:
- (a) has thoroughly investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2** If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform VCTC of such fact and will not proceed except at Consultant's own risk until written instructions are received from VCTC.

Section 5. Compensation and Payment.

- 5.1** Subject to any limitations set forth in this Agreement, VCTC agrees to pay Consultant on the basis of the hourly rates and fees as specified in Exhibit B (Key Personnel & Compensation). The total compensation for services performed under this Agreement, including reimbursement for actual expenses, may not exceed \$_____ as set forth in Exhibit B, unless additional compensation is approved in writing by VCTC.
- 5.2** The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.
- 5.3** Each month during the term of this Agreement, Consultant must furnish VCTC with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail

charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.

- 5.4 VCTC will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by VCTC, the invoice will be returned by VCTC to Consultant for correction and resubmission.
- 5.5 Except as to any charges for work performed or expenses incurred by Consultant that are disputed by VCTC, VCTC will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6 Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to VCTC at the time of payment.
- 5.7 VCTC reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found substantially inadequate.

Section 6. Required Documentation Prior to Performance.

- 1.1 Consultant may not perform any services under this Agreement until:
 - (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides VCTC with a Taxpayer Identification Number;
 - (c) VCTC gives Consultant a written notice to proceed.
- 1.2 The VCTC will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

- 7.1 Consultant must adhere to all schedules and deadlines set forth in this Agreement.
- 7.2 Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of VCTC, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.
- 7.3 If Consultant is delayed by any cause beyond Consultant's control, VCTC may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify VCTC within 48 hours, in writing, of the cause and the extent of the delay and

how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by VCTC.

All public information, data, reports, records, and maps as are existing and available to VCTC as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

9.1 All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "**Project Documents**") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of VCTC and may be used, reused or otherwise disposed of by VCTC without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of VCTC in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by VCTC, Consultant must turn over to VCTC all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. VCTC acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at VCTC's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to VCTC the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.

9.2 Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without VCTC's prior written approval.

Section 10. Confidential Information; Release of Information.

10.1 All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than VCTC without prior written authorization from the VCTC Manager, except as may be required by law.

10.2 Consultant, its officers, employees, or agents, may not, without prior written authorization from the VCTC Manager or unless requested by the VCTC legal counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives VCTC notice of such court order or subpoena.

10.3 If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then VCTC will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Consultant's conduct.

10.4 Consultant must promptly notify VCTC should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order

or subpoena from any party regarding this Agreement and the services performed under this Agreement. VCTC retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with VCTC and to provide VCTC with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by VCTC to control, direct, or rewrite such response.

- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by VCTC, unless otherwise agreed to in writing by VCTC. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by VCTC.

Section 11. Consultant's Books and Records.

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant's performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to VCTC under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.
- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by VCTC or its designated representative. Copies of such documents or records must be provided directly to VCTC for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3** Where VCTC has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, VCTC may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to VCTC, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of VCTC. Consultant has no authority to bind VCTC in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against VCTC, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by VCTC.
- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither VCTC, nor any elected or appointed boards, officers, officials, employees or agents of VCTC, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees

or agents are in any manner officials, officers, or employees of VCTC.

- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to VCTC's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 In General.** Consultant must adhere to the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.
- 13.3 Employment Laws.** Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, nondiscrimination, recordkeeping, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, military or veteran's status, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Aliens.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 and following), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against VCTC for the use of unauthorized aliens, Consultant agrees to reimburse VCTC for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by VCTC.

Section 15. Conflicts of Interest.

- 15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of VCTC or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 and following), and California Government Code section 1090.
- 15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the VCTC in which Consultant knows or has reason

to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.

- 15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to VCTC and take such action as VCTC may direct to remedy the conflict.
- 15.4** VCTC understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to VCTC, it is unaware of any stated position of VCTC relative to these projects. Any future position of VCTC on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** Consultant agrees that it will, to the fullest extent permitted by law, defend, indemnify, and hold harmless VCTC, the City of Camarillo, Union Pacific Railroad Company (UPRC) and Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency (LOSSAN), hereafter “Indemnitees” from all Services Claims and Operations Claims (each defined below) related to the performance by Consultant of this Agreement as provided in this section. Consultant acknowledges that VCTC would not enter into this Agreement in the absence of Consultant’s commitment to defend, indemnify, and hold harmless VCTC as set forth in this section.
- 16.2** For the purposes of this section, Indemnitees includes Indemnitees’ VCTC’s officers, officials, employees, agents, volunteers, and “Consultant” includes Consultant’s officers, officials, employees, agents and subcontractors and any other persons for whom Consultant is legally responsible.
- 16.3** With respect to the performance of professional services under this Agreement where the law establishes a professional standard of care for such services, Consultant agrees to indemnify, and hold harmless VCTC from and against all liabilities, damages, losses, and costs, including but not limited to reimbursement of reasonable attorney's fees and all other costs of defense, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant (collectively, “**Services Claims**”).
- 16.4** With respect to the acts and operations of Consultant under this Agreement other than the performance of professional services, Consultant agrees to defend, indemnify, and hold harmless VCTC from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and all other costs of defense, to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant, and excepting only those claims, damages, liabilities, losses, and costs caused by VCTC’s sole negligence or willful misconduct (collectively, “**Operations Claims**”).
- 16.5** Consultant must notify VCTC within five days of receipt of notice of any Operations Claims or Services Claims made or legal action initiated that arises out of or pertains to Consultant’s performance of services under this Agreement.
- 16.6** Consultant’s duty to defend Operations Claims is a separate and distinct obligation from Consultant’s duty to indemnify VCTC for any Operations Claims. With respect to Operations Claims, Consultant is obligated to defend Indemnitees in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by Indemnitees,

immediately upon tender to Consultant of an Operations Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the Operations Claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals.

- 16.7** Consultant agrees that settlement of any Operations or Services Claim against Indemnitees requires the consent of the Indemnitee which is the subject of the proposed settlement which consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify Indemnitees for the costs of any such settlement as required under this Agreement.
- 16.8** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.9** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. VCTC's failure to monitor compliance with this requirement imposes no additional obligations on VCTC and will in no way act as a waiver of any rights under this Agreement.
- 16.10** The parties acknowledge and agree that design professionals are required to defend and indemnify the Indemnitees only to the extent permitted by Civil Code section 2782.8, which allows for claims only to the extent that they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional, and also places limitations on the costs of defense that may be charged to a design professional. The term "design professional," is defined in Section 2782.8, and includes licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities that offer such services in accordance with the applicable provisions of the Business and Professions Code. The parties further acknowledge and agree that the provisions of this Section 16 are to be interpreted and applied to the fullest extent permitted by Civil Code section 2782.8.
- 16.11** The provisions of this section will survive the expiration or earlier termination of this Agreement in accordance with the applicable provisions of Exhibit C (Insurance).

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C (Insurance), which is made a part of this Agreement. All insurance policies are subject to approval by VCTC as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the VCTC Manager or VCTC legal counsel.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. VCTC has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement

or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of VCTC, which may be withheld in the VCTC's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling VCTC to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

- 19.1 In the event that Consultant is in default under the terms of this Agreement, VCTC will have no obligation or duty to continue compensating Consultant for any services performed after VCTC provides written notice to Consultant of such default.
- 19.2 Consultant agrees that no VCTC official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of VCTC, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.
- 19.3 VCTC's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1 VCTC may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2 Consultant may terminate this Agreement at any time upon 30 days' prior written notice of termination to VCTC.
- 20.3 Upon termination of this Agreement by either Consultant or VCTC, all property belonging to VCTC that is in Consultant's possession must be returned to VCTC. Consultant must promptly deliver to VCTC a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.
- 20.4 Consultant acknowledges VCTC's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from VCTC's termination of this Agreement.

Section 21. Notices.

- 21.1 All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To VCTC: Ventura County Transportation Commission
 751 E. Daily Drive
 Camarillo, CA 93001
 Attention: Aubrey Smith

To Consultant: _____

- 21.2** Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 21.3** Any party may change its notice information by giving notice to the other party in compliance with this section.

Section 22. General Provisions.

- 22.1 Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and VCTC prior to the execution of this Agreement.
- 22.3 Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the VCTC Council or VCTC Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 Electronic Signatures; Counterparts.** This Agreement and any amendment will be considered executed when the signature page of a party is delivered by facsimile or other electronic transmission. Such electronic signatures will have the same effect as an original signature. This Agreement may be executed in multiple counterparts.
- 22.6 Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by VCTC of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to

the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

22.8 Severability. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.

22.9 Venue. In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Ventura.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

VCTC

CONSULTANT

VCTC Chair

_____, CEO/President

Approved as to Form:

Steve Mattas, General Counsel

EXHIBIT A

SCOPE OF SERVICES

[Attached]

EXHIBIT B

KEY PERSONNEL & COMPENSATION

1. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are: _____.

2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$_____.

KEY PERSONNEL:

Name	Title/Position

SUBCONSULTANTS:

Name	Title/Position

FEE SCHEDULE – See Attached

EXHIBIT C
INSURANCE

1. **Required Insurance.** Before commencing any services, Consultant must procure and maintain in full force and effect during the term of this Agreement the following types of insurance with at least the minimum coverage listed and subject to the applicable additional requirements set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability	\$5,000,000 / \$10,000,000 aggregate*
Business Automobile Liability	\$2,000,000
Workers' Compensation	Statutory
Professional Liability**	\$1,000,000

2. **Insurance Rating.** All insurance required to be maintained by Consultant must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A- or better and Financial Size Category Class VII or better by the latest edition of A.M. Best's Key Rating Guide, unless otherwise approved by VCTC's legal counsel.
3. **Commercial General Liability Insurance.** The commercial general liability insurance must meet or exceed the requirements of Insurance Services Office (ISO) form CG 00 01 and must be provided on a per occurrence basis for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. The insurance must be on an "occurrence" not a "claims made" basis. Defense costs must be paid in addition to limits. There must be no cross-liability exclusion for claims or suits by one insured against another. The insurance must include a waiver of subrogation applicable to the insurance or self-insurance, a primary and non-contributory endorsement, and an additional insured endorsement, all in favor of the VCTC, its officers, employees and agents, and volunteers. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

The following persons or entities must also be named as additional insureds:

- Union Pacific Railroad Co
 - City of Camarillo
 - Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency (LOSSAN)
4. **Business Automobile Insurance.** The business automobile insurance coverage must be at least as broad as ISO Business Auto Coverage form CA 00 01, covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount stated above per combined single limit for each accident. Such insurance must include both a waiver of subrogation applicable to the insurance or self-insurance, and a primary and non-contributory endorsement, both in favor of the VCTC, its officers, employees, agents, and volunteers.
5. **Workers' Compensation.** If Consultant has any employees, Consultant must maintain workers' compensation insurance (statutory limits) and employer's liability insurance (with limits of at least \$1,000,000). Such insurance must include a waiver of subrogation endorsement in favor of VCTC, its officers, employees, agents, and volunteers.
6. **Professional Liability (Errors & Omissions) Insurance.** The professional liability insurance must cover the services to be performed under this Agreement. The coverage must be provided on a "claims made" basis. Consultant must maintain continuous coverage through a period not less than three years after the completion of the services required under this Agreement.

- 7. Umbrella or Excess Liability Insurance.** If an excess or umbrella liability policy is used to meet minimum limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella or excess liability policy must include a “drop-down provision” requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason. Coverage must be provided on a “pay-on-behalf” basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. The policy must “follow form” to the underlying primary policy. Coverage must be applicable to all insureds under the primary policies. The insurance must contain or be endorsed to contain a waiver of subrogation applicable to the insurance or self-insurance, and a primary and non-contributory endorsement for the benefit of VCTC. The scope of coverage provided is subject to approval of VCTC following receipt of the required proof of insurance. Limits are subject to review, but in no event may be less than \$10,000,000 per occurrence and aggregate.
- 8. Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by VCTC. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by VCTC in its sole discretion. At the option of VCTC, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the VCTC’s additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self- insured retentions. In the event that any policy includes a requirement that a self insured retention must be paid by the named insured as a condition to accessing policy coverage, such policy shall be modified by written endorsement to provide that additional insureds may satisfy the self insured retention in order to access policy coverage.
- 9. Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the VCTC certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or certified copies of policies as may reasonably be required by VCTC. These certificates of insurance and endorsements must be in a form approved by the VCTC’s legal counsel. Consultant must maintain current certificates and endorsements on file with VCTC during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination or cancellation of the required coverage, will be effective except upon 30 days’ prior written notice to VCTC by certified mail, return receipt requested (except for nonpayment for which a 10-day notice is required). The delivery to VCTC of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the VCTC’s right to require compliance. In the event that Consultant’s policies are materially changed, Consultant must provide the VCTC with at least 30 days’ prior written notice of the applicable changes. VCTC reserves the right to require complete, certified copies of all required insurance policies at any time.
- 10. Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the VCTC may, but is not obligated to, obtain such coverage at Consultant’s expense and deduct the cost from the sums due Consultant. Alternatively, VCTC may terminate the Agreement.
- 11. Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant’s indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to VCTC in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to VCTC to compensate it for such losses.

12. **Required Insurance for Subconsultants/Subcontractors.** Consultant agrees to ensure that any subconsultants/subcontractors providing services under this Agreement provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to review and monitor all such coverage and assumes responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement.
13. **Right to Revise Insurance Specifications.** VCTC reserves the right to change the amounts and types of insurance required by giving Consultant at least 90 days advance written notice of such change. If such change results in substantial additional cost to Consultant, the parties may renegotiate Consultant's compensation.
14. **Timely Notice of Claims.** Consultant must give VCTC prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.

5238299.1