



VCTC OF CAMARILLO
PROFESSIONAL SERVICES AGREEMENT

With

RailPros, Inc.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of April 7, 2023 ("**Effective Date**"), and is between the Ventura County Transportation Commission ("**VCTC**") and RailPros, Inc., 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 31 day of December 2026 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. Consultant shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Services, it being understood that VCTC will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Services
- 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.

2.9 After Consultant's project design development process has received VCTC's approval of the Pre-Final (90% Design) Phase Submittal, the Consultant and its subconsultants, shall at no additional cost to VCTC, be responsible for promptly revising and correcting all post Pre-Final (90% Design Submittal), plus plans, specifications and contract documents which contain errors, omissions, deficiencies, incomplete, poor quality or poorly coordinated work. This requirement for the Consultant to promptly revise and correct errors, omissions, deficiencies, incomplete, poor quality or poorly coordinated work at no cost to VCTC shall extend from the Pre-Final (90% Design submittal) of the project through the remaining design, construction and project close out phases. Contract documents which contain errors, omissions, deficiencies, incomplete, poor quality or poorly coordinated work will require for Consultant and its subconsultants to promptly revise and correct errors, omissions, deficiencies, incomplete, poor quality or poorly coordinated work at no cost to the VCTC shall extend from the pre-final (90% design submittal) of the project through the remaining design, construction and project close out phases.

2.10 In order to ensure the accuracy of the construction budget for the benefit of the public works bidders and VCTC's budget process, Consultant shall accomplish the design services required under this Agreement so as to permit the award of a contract, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth by VCTC. When bids or proposals for the construction contract are received that exceed the estimated price, Consultant shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price for which the services were specified. However, Consultant shall not be required to perform such additional services at no cost to VCTC if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

Consultant will promptly advise VCTC if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, VCTC will review Consultant's revised estimate of construction cost. VCTC may, if it determines that the estimated construction contract price is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth by VCTC, or VCTC may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, VCTC shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance within the funding limitation.

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 \$ 1,245,340.00 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 within thirty (30) days of approval. 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.
- 5.8 After VCTC has approved the Pre-Final (90% Design Submittal) Phase, the Consultant shall not invoice VCTC for the cost of performing revisions and corrections to project design and contract documents which are caused by the Consultant or subconsultants errors, deficiencies, omissions, incomplete, poor quality or poorly coordinated work. This requirement for the Consultant to promptly revise and correct errors, omissions, deficiencies, incomplete, poor quality or poorly coordinated work at no cost to VCTC will extend from the Pre-Final (90% Design submittal) of the project through the remaining design, construction and project close out phases.
- 5.9 If errors and omissions are discovered during construction of a project that the Consultant designed, the Consultant will be liable for correction of the drawings at their own cost, and will reimburse VCTC for the difference between what the "correct" construction will cost (as a change order issued to the construction contractor) and what it would have cost in the original contract had the drawings been correct.

Section 6. Required Documentation Prior to Performance.

- 6.1 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.

- 6.2 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, specifications, techniques, plans, reports, working papers, 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 including any and all associated intellectual property rights in these Project Documents. including, but not limited to, any copyrights, unpatented inventions, patent applications, patents, design rights, and any other proprietary rights and derivatives thereof. The Project Documents 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 interests 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.

9.3 Consultant represents and warrants that the Project Documents prepared herein under this Agreement, are the original work of Consultant and do not infringe upon any Intellectual Property or proprietary rights of third parties. For those portions of the Project Documents that are not the original work of Consultant, Consultant represents and warrants that it has secured all appropriate licenses, rights, and/or permission from appropriate third parties to include such materials in the Project Documents.

9.4 Consultant shall defend, indemnify and hold VCTC harmless against any claims by third parties based on infringement of copyright, patent, trade secret, trademark, or any other claimed Intellectual Property or proprietary right, arising from VCTC's use of the Project Documents created, prepared, or supplied by Consultant under this Agreement. Consultant will also indemnify and defend at its sole expense, any action brought against VCTC based on a claim that the Project Documents furnished hereunder by Consultant infringe any copyright, patent, trade secret, trademark, or any other claimed Intellectual Property or proprietary right of third parties, and Consultant will pay any settlement amounts, costs, damages and attorney's fees incurred by VCTC. VCTC will notify Consultant promptly and in writing of any such action or claim and will permit Consultant to fully participate in the defense thereof. This indemnity shall survive the expiration or earlier termination of this Agreement. Further, if the use of the Project Documents is enjoined as a result of such suit or claim, Consultant, at no expense to VCTC, shall obtain for VCTC the right to use said item or materials, or shall substitute equivalent materials acceptable to VCTC and extend this indemnity thereto.

9.5 Consultant shall additionally bear all costs arising from the use of patented equipment, designs, materials, devices, and/or processes used on and/or incorporated into the Project Documents or in other work provided hereunder the Agreement. When uses of these equipment, materials, devices, and/or processes are judged to be an infringement and their use is banned, the Consultant, at its own expense, shall, with the concurrence of the VCTC, do one of the following:

- Secure for the VCTC the right to continue using said equipment, materials, devices, and/or processes by suspension of the injunction or by procuring a license(s);
- Replace said equipment, materials, devices, and/or processes with non-infringing equipment, materials, devices, and/or processes;
- Modify said equipment, materials, devices, and/or processes so that they become non-infringing; or

- Remove said equipment, materials, devices, and/or processes and refund the sum paid therefore without prejudice to any other rights of the VCTC.

Consultant shall affix the following notice to all Project Documents, and otherwise as VCTC may direct: "© Copyright 2023 (or such other appropriate date of first publication), VCTC. All Rights Reserved."

9.6 Any work created or produced, including the Project Documents, as a part of this Agreement that may be defined under Section 101, Title 17, U.S.C. will be considered "work for hire" as it pertains to ownership rights. The Consultant, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with the VCTC. Consultant further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law that may be created or produced under this Agreement by its suppliers, vendors or subconsultants. Deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by VCTC. Consultant shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of the VCTC.

9.7 Shop drawings and working drawings submitted to the VCTC by the Consultant, its subconsultants or suppliers of any tier pursuant to the Agreement, are the property of the VCTC, and VCTC may use and disclose, in any manner and for any purpose, Shop Drawings and Working Drawings delivered under the Agreement to the extent required or permitted by law, including the Public Records Act.

Technical data, as used herein, means any form or format of technical writing, including operations/maintenance manuals, pictorial reproductions, drawings or other graphic representations, calculations and documents of a technical nature, including computer software and program listings, which are developed or required to be delivered pursuant to the Agreement. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

VCTC shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so to the extent required or permitted by law, including the Public Records Act.

Consultant shall agree to grant to VCTC and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, translate, reproduce, deliver, and use as it deems fit all technical data covered by copyright supplied for the Agreement. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for VCTC to use such in the manner herein described. Consultant shall secure and deliver to VCTC the written permission for third parties claiming patent, copyright, or proprietary rights in technical data for VCTC to use such technical data in the manner herein described.

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) directly 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 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.

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: RailPros, Inc.
1320 Greenway Drive, Suite 490
Irving, TX 75038
Attention: Daniel Carter

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.

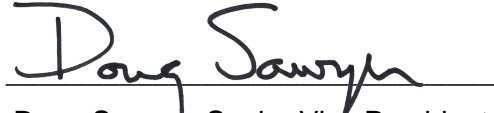
- 22.7 Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. 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 will be exclusively in a state court in the County of Ventura.
- 22.10 Public Records Act.** All records, documents, drawings, plans, specifications and other material relating to conduct of VCTC's business, including materials submitted by Consultant in its proposal and during the course of performing the services under this Agreement, shall become the exclusive property of VCTC and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. VCTC's use and disclosure of its records are governed by this Act. VCTC will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. VCTC will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by Consultant. VCTC will endeavor to notify Consultant of any request of the disclosure of such materials. Under no circumstances, however, will VCTC be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistakes or negligence on the part of VCTC or its officers, employees and/or Consultants. In the event of litigation concerning the disclosure of any material submitted by Consultant, VCTC's sole involvement will be as a stakeholder, retaining the material until otherwise ordered by a court. Consultant, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold VCTC harmless from all costs and expenses, including attorneys' fees, in connection with such action
- 22.11 Payment of Taxes.** Consultant shall pay all taxes and duties applicable to and assessable against any work, equipment, materials, services, processes, and operations incidental to or involved in the Agreement, including but not limited to retail sales and use, transportation, export, import, business, and special taxes, as required to pay by laws and regulations. Consultant is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements to pay them. Consultant will maintain auditable records, subject to VCTC reviews, confirming that tax payments are current at all times. The Agreement not to exceed ("NTE") amount shall include compensation for all taxes that the Consultant is required to pay by laws in effect on the date the Agreement was awarded.

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

VCTC

VCTC Chair

CONSULTANT

A handwritten signature in black ink that reads "Doug Sawyer". The signature is written in a cursive style and is positioned above a horizontal line.

Doug Sawyer, Senior Vice President – West,
RailPros, Inc.

Approved as to Form:

Steve Mattas, General Counsel

EXHIBIT A

Scope of Work

1 Preliminary Engineering and Final Design

1.1 Annual Inspection and Report Update 2023-2026

Activities and Deliverables

- Project Control: Baseline schedule, work Plan, Reporting
- Client Meeting (12 meetings, 3 meetings per year kickoff, draft, and final meeting)
- Site Inspection (6 site visits with 6 days of Flagging)
- Comment resolution Meeting (4 meetings)
- Deliverable Review Meeting (5 meetings, 1 per year, 2 in 2026)
- Identify non-compliance items in Psomas report
- Non-compliance Inspection and certification of directional signage (draft and Final)
- Report summarizing USDOJ non-compliance items (draft and Final)
- Report summarizing all non-USDOJ items (draft and Final)
- Exhibits for each Report
- Prepare an Accessibility Assessment Report that includes the following
 - Comments on the Evaluation Report
 - Identify issues that are not in compliance with federal section 504/ADA and California Title 24 CBC codes, including but not limited to the accessibility-related provision of these codes and standards
 - Initial Report that Identifies items that can be addressed quickly with remedification recommendations
 - Flash Drive that includes all the survey inventory database
- Address Comment and Submit Final deliverables for each year (2023,2024,2025,2026)
- Each Report will have the following:
 - Deliver Draft Remediation Deliverable to VCTC, with:
 - Cover Page
 - Exec Summary that only provides site visit dates, table of remediated items from the Report to the USDOJ in a Bluebeam markup.
 - Certification page for each item, showing the photograph of the remediated item. We will certify each non-compliance item (one certification per deficiency), as laid out in the Settlement Agreement # DJ 204-12C-493, USAO #2018V00600, Section IV Remedial Actions to be Taken by VCTC
- Final Verification that all items have been addressed (limited to 2026) from ADA Audit Report to VCTC. Verification will be done in the form of a checklist only using the original USDOJ report

Task Assumptions

- Assumes all meetings are held virtually
- Assumes flagging protection is needed.
 - Assumes RailPros will include 6 days of flagging for rail platform areas as an ODC.

- Assumes all field audits are checked only against this code: Appendix A to 49 C.F.R. Part 37, as codified in the October 1, 2006, edition of the Code of Federal Regulations, which was the 1991 ADA Standards, 28 C.F.R. Part 36 49 C.F.R. & 37.9(c)(1).
- No new tables or lists will be developed in the re-inspection (will use the original report document to markup/color code as needed)
- Directional Signage Design will be completed by NTP. Only certification will be provided
- No excel/table edits will be needed to the original ADA deficiencies. It's assumed notes to the remediated items can be marked by simple Bluebeam notes.
- This task excludes the following:
 - GeoJot +files will not be required.
 - Site keymap
 - Remediation status of non-USDOJ Deficiencies. (All 2019 CBC and 2010 ADA standard deficiencies).

1.2 Project Management and Team Coordination

RailPros' Project Manager will lead the technical efforts, including the direction of subconsultants. RailPros' Project Manager and other key personnel will provide the necessary support and expertise to complete the project.

The Project Manager shall conduct, oversee, and manage the performance of the work, including:

- Coordination of the development of the overall work tasks
- Management of the Schedule, budget, and staff resources
- Reporting work progress and schedule updates to VCTC's Project Manager
- Scheduling, coordinating, and providing Project Development Team (PDT) meeting minutes.
- Quality assurance and quality control

RailPros' Project Manager will conduct status and review meetings with subconsultants to review their progress, and ensure up-to-date information is being used and the appropriate activities are being performed. Subconsultants will submit all reports and plans to the RailPros Project Manager to review conformity with the project scope of work, directives, applicable codes, design criteria, and any other project requirements. All deliverables to VCTC will be made through the RailPros Project Manager. The RailPros Project Manager will meet with the design team on a periodic basis to establish design development tasks and to determine Schedule and budget status.

Activities and Deliverables

- Project Controls – Cost, Scope, Schedule, Quality, Reporting
 - Quality Management Plan (ensures our RailPros Standard Quality Plan is adhered to)
 - Baseline Schedule
 - Monthly Updates, including CPM baseline schedule utilizing Primavera P6 (Assumed 1 per month for 12 months)
 - Baseline schedule to be submitted within 15 days of NTP.

Task Assumptions

- Assumes a 12-month period for PS&E

1.3 Meetings

Activities and Deliverables

- Kickoff, PDT, and technical meetings include preparing the associated agenda, minutes, and action items.
- Assume RailPros will participate in 6 PDT (including kickoff meeting) meetings and 6 technical meetings (all meetings are held virtually) Biweekly PM to PM meetings (26 meetings)

Task Assumptions

- Assumes all meetings are virtual

1.4 Stakeholder Coordination

Activities and Deliverables

- Coordinate with stakeholders (VCTC various departments, Metrolink, LOSSAN, Amtrak City, Fire department, utility agencies, etc.)
 - Including preparing agenda, meeting minutes, and formal action items (if needed)
 - Limited to 8 meetings
 - Include Agreements Coordination (limited to the hours in the fee matrix)
 - Letter of Agreement or Design Services Agreement (Metrolink)
 - Preliminary Engineering Agreement (UPRR)
 - Construction & Maintenance Agreement (UPRR)
- Coordination with City on Underpass Project (including 4 meetings, file transfers, Technical Design coordination, etc.)
- Prepare stakeholder exhibits (limited to 3 exhibits with 2 iterations)
- Limited Public Outreach Support (limited to the hours in the fee Matrix)
- Right of Entry Coordination (1 ROE)

Task Assumptions

- All hours are limited to the amount shown on the fee breakdown
- Assumes VCTC will lead all public outreach meetings
- Assumes no agreement with LOSSAN or Amtrak will be needed
- Assumes no agreement with Caltrans will be needed
- Assume the following UPRR Agreements are excluded, and no modifications will be needed to the following agreements
 - Station License/Lease
 - Crossing Agreement
 - Drainage Agreement
 - Right of Entry Permit and Flagging (Contractor)
- Excludes all city/stakeholder/railroad costs related to permits, right-of-entry, licenses, leases, easements, agreements, acquisitions, etc., and that VCTC will pay these costs directly to the appropriate stakeholder if applicable. This excludes all fees for ROE Schedule of Fees.
- Assumes that design review comments are received within 3 weeks of submission.

- All communications with the public or the press will be made by the Client, with the RailPros design team providing support if needed

1.5 Miscellaneous Technical Design Support

Activities and Deliverables

- **2** Site Visits
- Review available as-built plans with the condition found in the field.
- Prepare Basis of Design Memo
- Site visits notes and pictures
- Coordinate Flagging Days (**12** Days – at **\$1,750** each Flagging Day)

Task Assumptions

- Available and applicable as-builts will be provided by the VCTC
- Excludes potholing services (provided by others)
- Excludes geotechnical services (provided by others)
- Assumes no CM observation is required from UPRR; only flagging will be needed. If UPRR determines this is needed, RailPros PM will notify VCTC immediately about the change and await direction from VCTC.

1.6 Design Topographic Survey

Activities and Deliverables

- Topographic and Design Survey to include non-compliant items identified in the Accessibility Evaluation Report
- Right of Way Map and Centerline Survey

Assumptions

- Assumes **10** days for the design and topographic Survey
- Assumes **5** days for Right of Way and Centerline Survey
- Assumes all right of entry permit/ fees will be paid by VCTC

1.7 Civil Improvements (Including Platform and Signing and Striping)

Activities and Deliverables

- All Plans will include **3** submittals (60%,90%, and100% PS&E)
 - General Sheets
 - Demolition plans
 - Sidewalk, Curb, and Platform Improvement Plans
 - Detail plans
 - Cross Sections
 - Signing and Striping
 - Phasing Plans
- Prepare General Sheet Plans that are detailed, including project overview sheets and general notes, vicinity, and project location maps
- Prepare Phasing Plans that are detailed and to scale that define the limits and type of work at each phase and required work windows

- Prepare demolition plan within the project footprint and scope
- Prepare layout, grading, drainage, erosion control, signing and striping, and detail plans.

Task Assumptions

- All hours are limited to the amount shown on the fee breakdown
- Assumes General Sheet will be prepared per SCRRRA DPM form 34
- Assumes SCRRRA General notes will govern the work performed
- Assumes Phasing plans to be to scale and may not include all details (major work elements and work activities)
- Assumes no field meetings to confirm existing features
- The ADA path of travel compliance work assumes the key findings by our team will be the same as the non-compliance items ADA Audit Report
- Assumes the new pavement section will match the existing one. No geotechnical investigation is included within this scope.
- The cost estimate and specifications assume the pay items and unit of measurement will not change after 90%.
- Assumes Utility work will be limited to surface improvements such as adjustments to grade, new utility covers, etc.
- No post-construction BMPs are included in this scope. It is anticipated that this work will be exempt from BMP/LID requirements.
- Assumes the site will be exempt from hydromodification and that detention/retention basins will not be required as the total impervious surface will not be significantly increased.
- Assumes only replacement of non-compliant signage. No new signage or wayfinding will be required.

1.8 PS&E Submittal Requirements, Comment Resolution, and Final Approvals and Permits

Activities and Deliverables

- Submittal Compilation
- Quantity Backup Documentation
- Overall Submittal Quality Assurance (QA)
- Participate in 13 Comment Resolution Meetings with key stakeholders at: 30%, 90% 100%
- Request final approval via email from key stakeholders and submit SCRRRA Form 43
- Constructability Analysis to ensure the best application of construction technology and simplify the design to reduce cost and accelerate the Schedule (100% and Camera-Ready Submittals)
- Design Review Comment Matrix (SCRRRA DPM Form 31) and provide all responses
- Cost Estimate Compilation:
 - Engineer's Estimate (SCRRRA DPM Form 16)
 - Schedule of Quantities and Prices (SCRRRA DPM Form 18) for our Schedule B only for our portion of the work.

Task Assumptions

- Assumes **3** Comment Resolutions meetings per submittal
- Comments will be resolved prior to or during this meeting to allow the design to continue.
- Coordination and development of documentation are limited per the fee breakdown.

- PS&E will be developed in line with SCRRRA DPM requirements and guidance documents with the associated exclusions below.

Exclusions

- Excludes architecture plans, reports, calculations, or landscaping plans, reports, and calculations
- Excludes geotechnical Report, Noise and Vibration Report, and Potholing report.
- Assume no design exceptions will be required for this project
- Excludes the following SCRRRA forms and submittals:
 - Design Submittal Report
 - SCRRRA Requests for Special Design Considerations (DPM Form 13)
 - Design Interface Matrix (DPM Form 14)
 - Project Estimate (DPM Form 15)
 - Materials List (DPM Form 17)
 - Permit Matrix DPM Form-21)
 - Utilities Matrix (DPM Form 19)
 - Submittal Letter (DPM Form 22)
 - Design Checklists (DPM Forms 23-29)
 - Bid Documents Checklist (DPM Form 29)
 - Standard specification Checklist (DPM Form-34)
 - Bid Quantity Items Checklist (DPM Form 35)
- Risk Matrix and Risk Management Process
- Standards Drawing List (These will just be called out on the plans)
- Quantity Backup Documentation

1.9 Additional Design Services

RailPros will provide additional design services on an as-needed basis with an email authorization from VCTC. All hours are limited to the amount shown on the fee breakdown

2 Bid Phase

Activities and Deliverables

- Project Management and controls during the bid phase and progress reporting
- Attend Pre-Bid meeting in person (1 site visit)
- Stakeholder Coordination (6 months) (limited to the hours in the fee matrix)
- Prepare the technical documents for the bid package
- Assist VCTC in responding to Bidders' Questions during the bid period.
- Respond to 15 questions from prospective contractors
- Prepare 1 minor addendum affecting 2 sheets (limited to hours)
- Bid Tabulation in excel formats with email summary on findings (limited to our work only)
- Draft preliminary Construction Schedule (Schedule will be finalized by Construction Manager)

Task Assumptions

- All hours are limited to the amount shown on the fee breakdown
- Assume 6 months Bid phase months
- Assumes VCTC will prepare the Bid Contract, Bid Package (other than PS&E documents)
- Assumes pre-bid meeting agenda and meeting minutes will be prepared by VCTC
- Assumes VCTC will lead all public outreach meetings
- Assumes site field meeting will be part of the Pre-bid conference meeting
- Assumes no support is needed from our team to support the bid scheduling and tracking process.
- Assumes limited stakeholder coordination during this phase

- Excludes preparing SCRRA DPM form 29- Bidding and Documents Checklist and Liquidated Damages Form (SCRRA DPM Form 30)

3 Design Support During Construction

3.1 Construction Support

Activities and Deliverables

- RailPros will participate in **2** onsite meetings for Pre-Construction and Construction kickoff. We will provide, as required, communication during meetings to address any questions, provide construction document clarification, and review the project scope.
- RailPros will participate in **1** on-site construction meeting and **25** virtual meetings (includes review of agenda, preparation, review of minutes, participation, and attendance)
- Assist with Schedule, tracking, project control, and reporting (limited to RailPros scope of work, excludes construction schedule and activities)
- RailPros' team will review contractor-issued Submittals (**10** Submittals) for compliance with the construction documents prepared by RailPros. Provide a response via submittal review stamp indicating approved, approved as noted, revised, resubmitted, or rejected.
- Submittals assumed are as listed below. Any changes or deviations from this submittal list would require a re-elevation of our budget.
 - Concrete, Asphalt, Base, Railing, Striping Paint, Pullbox, Signage, Grating, Domes, and Telephone.
- RailPros' team will provide responses/recommendations/resolutions to clarification questions issued as an RFI (**10** RFI's) during the construction portion of the project.
- RailPros will review **3** minor contractor change orders
- Provide minor Design modifications **2** minor affecting **3** sheets, each limited to the assumptions section)
- Prepare Construction conformed set

Task Assumptions

- All hours are limited to the amount shown on the fee breakdown
- Assume **18** months for construction Phase
- Assumes VCTC will lead all public outreach meetings
- Assumes pre-construction meeting and kick-off meeting agenda and meeting minutes will be prepared by VCTC

3.2 Record Drawings and Project Closeout

Activities and Deliverables

- Review Record Drawings redlines provided by the Contractor for completeness and clarity and perform **1** Site Visit
- At the ending of the project construction phase, RailPros will participate in a punch list site walk over **2** days on-site for observation of completeness, identification of visible work items, and documentation of those items that are not in compliance with the construction documents, including RFIs, and any approved design modifications. Our team will create a comprehensive punch list of items needed to be completed to meet all project requirements and design

objectives. At project closeout, prior to project completion signoff, RailPros will participate in a final site walk-through to verify all punch list items have been completed.

- Prepare final Record drawings based on approved contractor markups in pdf format (no mylars).

Task Assumptions

- All hours are limited to the amount shown on the fee breakdown
- Assumes VCTC will lead all public outreach meetings
- Assumes **1** round of reviewing all record drawings markups. It is assumed all record drawings markups will be combined and provided in a single submittal to be evaluated by our team and request any clarifications needed. We assume these redlines will be provided as digital markups (Bluebeam, adobe, or equivalent) and not hand-drawn markups.
- Assumes punch list **1** at the end of the project and **1** closeout visit to confirm all items were addressed. Assumes no follow-up site visits are required even if deficiencies are identified and that the CM team will close this out.
 - This assumes a punch list walk is not required after any construction phase.
 - Assumes this punch list walk-through by the design team is supplemental to the CM's official punch list, who is ultimately responsible for the final punch list. This assumes the CM will close out all items on the punch list identified by the design team.
- Record Drawings:
 - Assumes there will not be multiple submittals of this set.
 - Assumes the Record drawings markups will be provided by the Contractor/CM and that no field walk by RailPros team is needed to verify as-built markups.
 - Assumes contractor record drawings markups are approved by the VCTC and ready for finalization
 - Record Drawings are based solely on the Contractor's approved as-built markups.
 - Excludes any changes/updates to reports, estimates, matrices, lists, tables, checklists, specifications, etc.
 - Assumes Record Drawings will be prepared on pdf files and not on mylar sheets.
 - Assumes CADD files are not required to be updated.
 - Assumes no review of the Construction Schedule will be needed

Exclusions

- Excludes Review or coordination of Warranties, Maintenance Manuals, Permits, etc.
- Excludes Construction Management Services, which include but are not limited to reviewing pay applications, invoices, values engineer phasing changes, change orders, etc.
- Excludes any emergency field support in its entirety
- Excludes all construction monitoring and field inspection services for QA QC. (Performed by others)
- Excludes review of Contractor and or subcontractor invoices, pay items reports (will be performed by others)
- Excludes any acceptance and any walk-through (will be handled by others)
- Excludes any and all railroad coordination, ROW, services easements license, agreements
- Excludes Construction Schedule changes and updates (performed by others)
- Excludes Construction ROE and it will be obtained by the Contractor

- Excludes all Construction Flagging. During the Construction phase, if the Contractor elects to hire RailPros for flagging services, this will be billed under a flagging contract directly between the Contractor and RailPros field services.
- Excludes Survey: staking, tie-in, confirmation survey, PTC, As built., etc
- Excludes geotechnical and potholing services
- Excludes addressing unforeseen conditions
- Excludes any changes to any/all documents from the design phase, including reports, estimates, matrices, lists, tables, checklists, specifications, etc.
- If elective alternative design or phasing options are (submitted by the Contractor) to be incorporated into the plan, then this will require a review and evaluation of our scope and fee, accordingly, excluded herein.

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: Doug Sawyer.

2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$ 1,245,340.00.

KEY PERSONNEL:

Name	Title/Position
Doug Sawyer	Senior Vice President – West, RailPros, Inc.
Danielle Libring	Project Manager – RailPros, Inc.

SUBCONSULTANTS:

Name	Title/Position
Jim Keenan	Subcontract Manager – Anil Verma Associates
Daniel Rahe	Survey Manager - Psomas

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.
15. **Waiver of Subrogation.** Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity 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 Entity has received a waiver of subrogation endorsement from the insurer.
16. **Claims Made. (note – should be applicable only to professional liability)**
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.

FEE SCHEDULE

Task	Description	Cost
1	Preliminary Engineering and Final Design	\$1,005,558
2	Bid Phase	\$58,812
3	Design Support During Construction	\$153,320
ODC	Other Direct Costs	\$27,650
	Total Not-to-Exceed Amount	\$1,245,340

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