



VENTURA COUNTY TRANSPORTATION COMMISSION

751 E. DAILY DR., SUITE 420

CAMARILLO, CA 93010

(805) 642-1591

**REQUEST FOR PROPOSALS
TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES
FOR SESPE CREEK OVERFLOW RAILROAD BRIDGE REPAIR PROJECT
LOCATED IN VENTURA COUNTY, CALIFORNIA**

PROPOSAL RELEASE DATE: FRIDAY, NOVEMBER 3, 2023

PROPOSALS DUE: 4:00 P.M. PST, FRIDAY, DECEMBER 8, 2023

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1. INTENT

- 1.1 The Ventura County Transportation Commission (VCTC), hereinafter referred to as VCTC or “Commission,” is soliciting proposals from qualified firms, hereinafter referred to as “CONTRACTOR”, to provide construction management services for the Sespe Creek Overflow Railroad Bridge Repair Project, hereinafter referred to as “Project”, located in Ventura County, California. Interested CONTRACTOR(s) are to submit their proposals in accordance with the requirements outlined in this Request for Proposals (RFP).
- 1.2 The scope of work, in general, shall include professional engineering services required for management of a construction contract in the public sector. The services provided shall include engineering inspection services, environmental support services, materials testing, and surveying services necessary to verify the Project is constructed as specified in the Project plans and specifications.

2. LICENSING/SECURITY REQUIREMENTS

- 2.1 Interested CONTRACTORS must meet ALL of the following qualification requirements in order to be considered by VCTC:
 - 2.1.1 CONTRACTOR shall have the necessary licenses, certifications, resources, and knowledge to adequately complete the tasks outlined in Section 6, Scope of Work.
 - 2.1.2 CONTRACTOR shall have a minimum of five (5) years of experience managing and controlling the construction of bridge, railroad, and drainage related projects. Experience shall be in the State of California.
 - 2.1.3 CONTRACTOR’s project manager shall have a minimum of five (5) years specializing in bridge and railroad construction in the State of California, and thorough understanding of applicable standards and guidelines, including Federal Railroad Administration (FRA), American Railroad Engineers and Maintenance of Way Association (AREMA), California Public Utilities Commission (CPUC), and Southern California Regional Rail Authority (SCRRA).

3. BACKGROUND

- 3.1 VCTC serves as the regional transportation planning agency for Ventura County. VCTC purchased the Santa Paula Branch Line (“SPBL”) railroad in 1995 for use as a multimodal transportation corridor. The Santa Paula Branch Line consists of 32 miles of railroad right-of-way with 29 miles of serviceable track stretching from Montalvo/East Ventura to Piru, generally along the State Route 126 corridor. In 2021, VCTC entered into a 35-year Railroad Lease and Operations Agreement with Sierra Northern Railway, which governs railroad operations and maintenance of the associated right-of-way. The railroad carries freight, tourist/excursion, railbikes, television and film production, and research and development rail services.

The Sespe Creek Overflow bridge is located at approximately Mile Post 423.44, west of Fillmore, California. The bridge was constructed in 1969 and has a total length of 450 feet, vertical clearance of 14 feet, and 15 spans of 29 feet-10 inches each.

On the early morning of January 10, 2023, heavy rain, stream flow, and debris accumulated during a series of storms and washed out three spans, or approximately 90 feet, of the Sespe Creek Overflow railroad bridge. Three spans on the western end of the bridge were destroyed and require reconstruction to restore pre-disaster design, capacity, and function to restore rail service on the bridge. Bridge repair is necessary to reconnect the Fillmore-Piru segment of the SPBL railroad with the remainder of the SPBL and restore the connection to the mainline at East Ventura.

On January 14, 2023, the President of the United States issued a disaster declaration for California Severe Winter Storms, Flooding, Landslides, and Mudslides (DR-4683-CA), including Ventura County. It is anticipated that VCTC will seek reimbursement from the Federal Emergency Management Agency (FEMA) for costs to replace the Sespe Creek Overflow Bridge.

The purpose of the broader effort is to restore the pre-disaster design, capacity, and function of the Sespe Creek Overflow railroad bridge. VCTC has a need for construction management services for the Sespe Creek Overflow Railroad Bridge Repair Project. Given the urgent nature of the need to restore rail services and repair the bridge, VCTC is conducting an accelerated procurement process for the initial design and planning phase of the project. The goal is to commence work on or about May 1, 2024, and to restore service by August 31, 2024.

4. CALENDAR OF EVENTS

MILESTONE	TIME (PACIFIC) & DATE	LOCATION/ADDITIONAL INFORMATION
RFP Release date	Friday, November 3, 2023	The RFP will be available on VCTC’s website at: https://www.goventura.org/work-with-vctc/contracts
Virtual Pre-Proposal Meeting	Tuesday, November 14, 2023 11:00AM Pacific	A virtual, non-mandatory, pre-proposal conference will be held via Microsoft Teams. MS Teams Meeting ID: 227 226 348 166 Passcode: TdkjYr Or call in (audio only): +1 469-676-9415 Phone Conference ID: 117 551 987#
Questions due to VCTC	Friday, November 17, 2023	Submit all inquiries via email to: afagan@goventura.org
Proposals due	Friday, December 8, 2023, no later than 4:00p.m. Pacific	Proposals shall be received in writing with one signed original and two (2) hard copies, along with one (1) original of the Fee Proposal in a separate sealed envelope, to: Ventura County Transportation Commission Attn: Amanda Fagan 751 E. Daily Dr., Suite 420 Camarillo, CA 93010

		Proposals shall also be sent electronically to: Amanda Fagan afagan@goventura.org VCTC must receive both the electronic and hard copy versions to consider a proposal. Late proposals may not be accepted. Proposers are responsible for submitting their proposals completely and on time.
Evaluation	December 11-20, 2023	An Evaluation Committee will review proposals to select the submission that best meets the needs of VCTC. Evaluations will be conducted using a methodology derived from the evaluation criteria described herein.
Interviews/Demonstrations (At VCTC's discretion)	December 21-22, 2023	VCTC may elect to interview one, some, none, or all proposers.
Contractor Selection and Award		Selected CONTRACTOR will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms. If contract negotiations cannot be concluded successfully, VCTC reserves the right to negotiate with another CONTRACTOR or cancel the solicitation. Negotiations shall be confidential and not subject to disclosure to competing contractor unless and until an agreement is reached, all in accordance with the applicable law, including the CPRA.
Contract Execution	January 5, 2024	
Estimated Start of Construction	May 1, 2024	

4.9 Future Addenda: CONTRACTORS who received notification of this solicitation by means other than through a VCTC mailing shall contact the person designated in the VCTC POINT OF CONTACT herein to request to be added to the mailing list. Inclusion on the mailing list is the only way to ensure timely notification of any addenda and/or information that may be issued prior to the solicitation submittal date. IT IS THE CONTRACTORS' SOLE RESPONSIBILITY TO ENSURE THAT THEY RECEIVE ANY AND ALL ADDENDA FOR THIS RFP by either informing VCTC of their mailing information or by regularly checking the VCTC Contracts webpage at <https://www.goventura.org/work-with-vctc/contracts/>. Addenda are posted on the website the day they are released.

5. **VCTC POINT OF CONTACT**

5.1 Questions and correspondence regarding this solicitation shall be directed to:

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

Email: afagan@goventura.org
Phone: (805) 642-1591 ext. 103

All questions regarding this solicitation shall be submitted in writing (email is acceptable and preferable). When submitting questions, please include "Sespe Creek Overflow Bridge Repair RFP" in the subject line. Questions will be researched, and answers will be posted, on the VCTC Contracts page at <https://www.goventura.org/work-with-vctc/contracts/> by the deadline indicated in the CALENDAR OF EVENTS herein.

- 5.2 The deadline for submitting written questions regarding this solicitation is indicated in the CALENDAR OF EVENTS herein. Questions submitted after the deadline will not be answered.
- 5.3 Only answers to questions communicated by VCTC via formal written addenda will be binding.
- 5.4 Prospective CONTRACTOR shall not contact VCTC officers or employees with questions or suggestions regarding this solicitation except through the designated VCTC Point of Contact listed above.

6.0 SCOPE OF WORK

- 6.1 VCTC is soliciting proposals from qualified CONTRACTORS to provide construction management and engineering inspection services for the Sespe Creek Overflow Railroad Bridge Repair Project within Ventura County, California. The Project consists of reconstruction of an approximately 90 foot section of the Sespe Creek Overflow Railroad Bridge, including reconstruction of the abutment and two piers and replacement of an approximately 150-foot section of the railroad tracks, ties and ballast.
- 6.2 The broad construction management scope of the Project requires a diversity of expertise and the ability to respond and/or resolve specialized contract issues. Of particular concern are the qualifications and experience of the individual(s) who will be directly involved in the Project.
- 6.3 The construction management effort shall include, but is not limited to the following services and requirements:

Contract Administration: Provide overall coordination of construction management services, including supervision of contract administration, labor compliance, Disadvantaged Business Enterprises (DBE) programs, field observations and outside services. Attend regularly scheduled project meetings with VCTC or CONTRACTOR representatives to review the progress of the work, resolve field problems as they occur, and perform Project related public relations with the public and outside agencies such as the Federal Emergency Management Agency (FEMA), the Federal Railroad Administration (FRA), United States Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB), and the Ventura County Watershed Protection District (VCWPD).

General Inspection: Provide daily inspections and supervision of the work of the construction contractor's operations as construction progresses, and promptly report and resolve problems regarding performance and/or conformity with the drawings and specifications, including contract administration and construction engineering of the assigned project. Assist VCTC staff in managing construction operations. Coordinate with the Santa Paula Branch Line

Railroad lessee and operator of record, Sierra Northern Railway. In accordance with the State Standard Specifications and Special Provisions, ensure that all utility work is coordinated with the appropriate utility company and that all the appropriate permits and inspections are obtained for all items of work.

Change Orders: In accordance with the applicable State and federal requirements and the VCTC change order format, prepare, process, and make recommendations on change orders. VCTC shall review and approve all change orders.

Environmental Compliance: Coordinate and supervise pre-construction biological survey(s) and environmental monitoring. CONTRACTOR shall provide environmental monitoring and surveying services. CONTRACTOR shall coordinate with VCTC and regulatory agencies and report on the results of each survey.

Surveying: Coordinate and supervise construction surveying and staking. CONTRACTOR shall provide construction staking services.

Material Testing: Coordinate, interpret, certify, and supervise all required soils and material tests in accordance with SCRRA and/or Caltrans, as applicable, test methods and Standard Specifications. CONTRACTOR shall provide VCTC with a SCRRA or Caltrans certified materials testing services per SCRRA or Caltrans Standard Specifications.

Test Data: Review and approve copies of certificates of compliance, independent testing laboratory reports, and manufacturer's shop or mill tests to ensure conformance with contract specifications.

Plan Interpretation: With the assistance of the Design Engineer as needed, interpret the intent of the plans and specifications to protect VCTC against defects and deficiencies in construction on the part of the construction contractor.

Pre-Construction Conference: Assist in the pre-construction meeting with the construction contractor and other Project participants. This discussion affords all the parties to the contract a common understanding of the proposed work and problems, and possible solutions that may be expected during the life of the contract. Labor compliance, equal employment opportunity, safety requirements, water pollution requirements, agreements, and permits shall also be discussed. Respond to questions the construction contractor may have and address issues that need to be resolved before work commences.

Safety and Accidents: Assume the duties of the Project Safety Coordinator. Ensure the construction contractor complies with all Federal and State safety orders, and permits through normal contract administration procedures. Document all incidents with photographs and written reports. Manage safety precautions through the construction contractor for the public in construction areas. Coordinate with the City of Fillmore, County of Ventura Public Works Agency, Ventura County Watershed Protection District, Sierra Northern Railway, and others as appropriate regarding safety precautions for the Project area.

Approval Schedule: Prepare a schedule (using Microsoft Project) indicating all items that will be submitted by the construction contractor for review and approval requiring action by the VCTC. Furnish appropriate forms, as necessary, and monitor the construction contractor's adherence to the schedule.

False Work and Shop Drawings: Manage and maintain records, provide timely engineering review, and prepare written recommendations certifying the adequacy of the construction contractor's submittal for false work as well as construction of false work. Coordinate, document, and make engineering recommendations in writing on approval of shop drawings. Final submittal approvals shall be made in consultation with VCTC.

Progress Statements: Prepare and provide monthly progress statements meeting VCTC requirements including the following: monthly estimates of all items of work with source documents to verify progress payments. Submit weekly copies of daily diaries to VCTC. Submit a copy of the baseline progress schedule and monthly updates as required by the Special Provisions.

Final Walk-through and Final Inspection: Conduct Project walk-throughs prior to completion of construction. Minutes of the walk-through(s) shall be completed by CONTRACTOR and a copy shall be provided to VCTC. The final walk-through list of attendees shall be coordinated with VCTC. CONTRACTOR shall complete a final inspection of the Project and complete the required Final Report forms.

As-Built Plans: Provide VCTC with an electronic as-built plan file complete with redline changes or corrections. Such plans shall be based upon information obtained from field measurements and observations made during project construction and approved contract change orders. The electronic signature and seal of the responsible Registered Engineer or Construction Engineer shall be placed in the file.

Contract Records: Upon Project completion, submit the original set of construction books to VCTC as directed. These records shall include all correspondence, meeting minutes, photographs, agreements, hazardous waste material information and tests, labor compliance, contract administration forms, bridge work, diaries, contract item quantity documents, contract change orders, project status sheets, project record-estimate and project status, disputes, project completion documents, etc.

6.4 Construction Schedule: On-site construction will begin on or about May 1, 2024 to be completed no later than August 31, 2024 in compliance with FEMA deadlines. Off-site activities, such as fabrication of the bridge decks, are expected to occur in preparation for on-site construction and are anticipated to begin March 1, 2024, for a total duration of approximately 6 months. Construction activities in Sespe Creek are planned to occur outside of the rainy season, when surface water in the river is at its seasonal minimum.

7.0 REQUIRED CONTENT/FORMAT FOR PROPOSAL PACKAGE

7.1 Content and Layout: CONTRACTOR shall provide the information as requested and as applicable to the proposed services. The proposal shall be organized in the order of and as per the listing below. The proposal shall include at a minimum, but is not limited to, the following information below in the format indicated. Each attachment must be clearly labeled in the upper right corner RFP Sespe Bridge – Attachment "X":

7.2 Cover Letter: All proposals packages must be accompanied by a cover letter not exceeding two (2) pages providing firm and contact information as follows:

7.2.1 Firm Information: Description of the type of organization (e.g. corporation, partnership, including joint venture teams and subcontractors) and how many years in existence.

Indicate any planned or anticipated changes in business organization or operations, such as dissolution, winding-up, merger, etc., that may bear on the ability to complete services in accordance with VCTC's AGREEMENT.

7.2.2 **Contact Information:** Name, mailing address, telephone number, and email address of CONTRACTOR's primary contact person during the solicitation process through potential AGREEMENT award.

7.2.3 **Signature of Authorized Representative:** Proposals submitted without the signature of an authorized representative of the proposing firm will be deemed non-responsive.

7.4 **Signed Addenda: (Attachment B):**

Include all addenda, if any, released for this solicitation.

7.5 **General Firm Information: (Attachment C):**

Prepare an Attachment C (label as required) providing a general information summary about your firm which, at minimum, includes the information following the outline provided below:

7.5.1 **Firm Name and Address**

Year Established

Enter the year the firm (or branch office, if appropriate) was established under the current name.

7.5.2 **Data Universal Numbering System (DUNS) Number**

Provide DUNS number issued by Dunn & Bradstreet Information Services. Firm must have a DUNS number.

7.5.3 **Ownership Type**

Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

7.5.4 **Point of Contact**

Provide the point of contact information for a representative of the firm that VCTC can contact for additional information. Representative must be authorized to speak on contractual and policy matters.

7.5.5 **Former Firm Name(s)**

If any, indicate all previous firm (or branch office) name(s) during the last five (5) years. Indicate the year that any and all corporate name change or changes was/were effective and the associated DUNS number. This information is used to review past performance on Federal contracts.

7.5.6 **Employee by Discipline**

Specify all staff members of the Project team, their job titles, and their area of specialty, including licenses and/or certifications they may hold.

7.5.7 **Litigation History**

Provide a description of litigation to which your firm has been a party in the past five (5) years. Please include the following details:

- Name of Case/Court Case Number
- Date Filed
- Court in which Filed
- Judgement or Result

7.6 **Organizational Chart or Proposed Team (Attachment D):**

Provide an Attachment D illustrating your firm's organizational chart. The chart should show the names and roles of all key personnel and the firm they are associated with if they are a subcontractor. The chart should provide a clear picture of the working relationship between all key personnel on the proposed team.

7.7 **Resume(s) of Key Personnel for Project (Attachment E):**

Provide as Attachment E, resume(s) for each key person on the proposed team. VCTC will be looking at each proposed team member's relevant technical expertise to provide construction management tasks listed in the Scope of Work in Section 6. VCTC will also check that key personnel have appropriate licenses, registrations, and certifications to provide railroad and bridge engineering tasks listed in the VCTC Scope of Work in Section 6, and that some or all team members (firms) have previously worked together on similar projects.

7.8 **Project Experience & References (Attachment F):**

7.8.1 Prepare an Attachment F providing project information and include three (3) examples of construction projects relevant to VCTC within the last five (5) years, demonstrating work experience with Local, State and Federal Agencies. For each project, the following shall be provided:

- Project Name
- Brief Project Description
 - o Please include information about scope, schedule, and record of performance. The description should also discuss the entire project delivery team, i.e., subcontractors and their respective roles. Project information should discuss the type of CEQA/NEPA document prepared for the project as well as the regulatory permits obtained.
- Size of Project
- Name of General Contractor on Project
- Project Challenges or Complexities
- CONTRACTOR's staff and subcontractors assigned to Project
- Include any experience with FEMA or community outreach efforts during the construction of the Project.

7.8.2 **References:**

CONTRACTOR shall describe at least three (3) similar projects for which it provided similar services to those described in Section 6, Scope of Work. If the example projects for 7.8.1 are the same as

7.8.2, just include the client's contact information in 7.8.1. For each project, the following shall be provided:

- Project Name

- Brief Project Description:

Please include information about scope, schedule, and record of performance. The description should also discuss the entire project delivery team, i.e., subcontractors and their respective roles.

- Client Name

- Client Contact Information

Please include the telephone number and e-mail address of the Firm's Project Manager.

7.9 Project Management Approach (one page limit): Attachment G

Provide as Attachment G, a description of the approach and the steps and methods used to ensure the Project is constructed to the approved plans and specifications. Methods or steps used to minimize Project change orders and claims.

7.10 Schedule Management Approach (one page limit): Attachment H

Provide as Attachment H, a description of the schedule management approach; scheduling software used, and methods used to recover from slippage of schedule milestones; progress meetings with CONTRACTOR, system to track timely review of submittals and Request for Information (RFIs).

7.11 Fee Schedule: Submit in a separate sealed envelope.

CONTRACTOR shall provide a Cost Proposal submitted in a separate sealed envelope within their qualifications package. If fee negotiations with the firm initially determined to be best suited to VCTC's needs are not successful, and/or the fees discussed are outside the budgetary constraints for the Project, VCTC reserves the right to suspend negotiations with the initial firm and proceed to negotiate with another proposer. Selection of CONTRACTOR shall be based on qualifications per the Selection Criteria listed herein.

Cost Proposal shall include the following:

The fee proposal shall be submitted for the consultant services outlined in the scope of work. The basis of payment for the services provided under this agreement shall be maximum not-to-exceed fee. The fee proposal shall be identified for each phase of work.

The CONTRACTOR shall submit a breakdown of the anticipated costs by task. Indicate the number of staff hours and hourly rates. Include any and all labor, materials and equipment costs that will be necessary in completing this project. The proposed scope of services section of the RFP and successful company's work plan will be included as Exhibit A and the Fee Proposal included as Exhibit B to the Contractor Services Agreement.

7.12 Exceptions Submittal (if applicable)

Submit any and all exceptions to this solicitation and Template Agreement on separate pages, and clearly identify at the top of each page, "EXCEPTION TO SESPE BRIDGE PROJECT." Each exception shall reference the page number and section number, as appropriate. CONTRACTOR should note

that the submittal of an exception does not obligate VCTC to revise the terms of the RFP or AGREEMENT.

7.13 Appendix:

CONTRACTOR may provide any additional information it believes applicable to this proposal package and include such information in an Appendix section.

8.0 SUBMITTAL INSTRUCTIONS & CONDITIONS

8.1 Submittal Identification Requirements: All submittals mailed or delivered containing proposal must be sealed and bear on the outside, prominently displayed in the lower left corner the solicitation name "SESPE BRIDGE REPAIR CONSTRUCTION MANAGEMENT SERVICES" and CONTRACTOR's firm name. CONTRACTOR must include one (1) original hard copy, two (2) copies, and one (1) original Fee Schedule in a separate sealed envelope. Proposals shall also be sent electronically to Amanda Fagan at: afagan@goventura.org. VCTC must receive both the electronic and hard copy versions to consider a proposal. Late proposals may not be accepted.

8.2 Mailing Address:

Proposals shall be mailed to VCTC point of contact at the mailing address indicated on RFP Signature Page.

8.3 Due Date:

Proposal packages must be received by VCTC ON OR BEFORE the time and date specified in Section 4, Calendar of Events. It is the sole responsibility of CONTRACTOR to ensure that the proposal package is received at or before the specified time. Postmarks and facsimiles are not acceptable. Proposal packages received after the deadline may be rejected and returned unopened.

8.4 Shipping Costs:

Charges for transportation, containers, packaging, and other related shipping costs shall be borne by the sender.

8.5 Acceptance:

Proposals are subject to acceptance at any time within ninety (90) days after opening. VCTC reserves the right to reject any and all proposal packages, or part of any proposal package, to postpone or adjust the scheduled deadline date(s), to make an award in its own best interest, and to waive any informalities or technicalities that do not significantly affect or alter the substance of an otherwise responsible proposal package and that would not affect CONTRACTOR's ability to perform the work adequately as specified.

8.6 Ownership:

All submittals in response to this solicitation become the property of VCTC.

8.7 Compliance:

Proposal packages that do not follow the format, content and submittal requirements as described herein, or fail to provide the required documentation, may receive lower evaluation scores or be deemed non-responsive.

8.8 CAL-OSHA:

The items proposed shall conform to all applicable requirements of the CAL-OSHA Act of 1973.

8.9 Pre-Proposal Conference:

A virtual pre-proposal conference will be held on Tuesday, November 14, 2023 at 11:00 AM Pacific time via MS Teams. Meeting information is included below:

Microsoft Teams
Meeting ID: 227 226 348 166
Passcode: TdkjYr
Or call in (audio only):
+1 469-676-9415
Phone Conference ID: 117 551 987#

9.0 SELECTION CRITERIA

9.1 The selection of CONTRACTOR and subsequent AGREEMENT award will be based on the criteria contained in this RFP, as demonstrated in the submitted proposal package. CONTRACTOR should submit information sufficient for VCTC to evaluate proposals regarding the selection criteria. The absence of required information may cause the proposal to be deemed non-responsive and may be cause for rejection.

9.2 The scoring criteria includes the following:

CRITERIA	Scoring Criteria
Proposal Package Content	Pass/Fail
Cover letter including Firm and Contact Information	
Signed RFP Signature Page: Attachment A	
Signed Addenda: Attachment B (if any addenda for this solicitation)	
General Firm Information: Attachment C	
Organizational Chart of Proposed Team: Attachment D	
Resume(s) of Key Personnel for the Project: Attachment E	
Project Experience & References: Attachment F	

Project Management Approach (one page limit): Attachment G	
Schedule Management Approach (one page limit): Attachment H	
Sealed Fee Schedule	
Proposed Team Qualifications and Resume (0 – 35 points)	Points
Organizational Chart of Proposed Team provides a clear picture of the working relationship between all key personnel on the proposed team	
Proposed team members have relevant technical expertise to provide engineering inspection services, material testing, and surveying and construction staking tasks listed in Section 6, Scope of Work	
Staff has appropriate licenses, registrations, and certifications to provide engineering task listed in Section 6, Scope of Work	
Some or all team members/firms have previously worked together on similar projects	
Project Experience (0-30 points)	Points
Example Project 1 description indicates: (1) Previous experience with project of similar scope and/or complexity; (2) Specific role the team member(s) had in the project; (3) Project funding and funding reporting requirements; (4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project; (5) Construction contractor change orders negotiated and approved; (6) Project documentation and file management system used; (7) Conformance to project’s construction schedule and budget.	
Example Project 2 description indicates: (1) Previous experience with project of similar scope and/or complexity; (2) Specific role the team member(s) had in the project; (3) Project funding and funding reporting requirements; (4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project; (5) Construction contractor change orders negotiated and approved; (6) Project documentation and file management system used; (7) Conformance to project’s construction schedule and budget.	
Example Project 3 description indicates: (1) Previous experience with project of similar scope and/or complexity; (2) Specific role the team member(s) had in the project; (3) Project funding and funding reporting requirements; (4) Experience with complying with approved environmental CEQA/NEPA document as well as regulatory permits obtained for the project; (5) Construction contractor change orders negotiated and approved; (6) Project documentation and file management system used; (7) Conformance to project’s construction schedule and budget.	

Experience with FEMA Public Assistance (0-10 points)	Points
Firm's proposed project team has experience with FEMA Public Assistance procedures.	
Client References (0-5 points)	Points
List of client references	
Project Specific Quality Components	
Project Management Approach as described (one page limit) – (0-10 points)	Points
Describes the steps and methods used to ensure project is constructed to the approved plans and specifications. Methods or steps used to minimize project change orders and claims.	
Schedule Management Approach as described (one page limit) (0-10 points)	Points
Describes schedule management approach; scheduling software used, and methods used to recover from slippage of schedule milestones; progress meetings with contractor, system to track timely review of submittals and request for information (RFI's).	
Total (100 Points Possible)	

9.3 AGREEMENT award will be based on the proposal that is best suited to VCTC's needs and interests; cost is only one factor.

9.4 VCTC may conduct interviews and utilize references during selection process.

9.5 The award resulting from this RFP will be made to the CONTRACTOR that submits a response that, in the sole opinion of VCTC, best serves the overall interest of VCTC.

9.6 The award made from this RFP is subject to approval by the Ventura County Transportation Commission.

10.0 AGREEMENT AWARD

10.1 No Guaranteed Value:

VCTC does not guarantee a minimum or maximum dollar value for any Agreement resulting from this solicitation.

10.2 Commission Approval:

The award made from this solicitation is subject to approval by the Ventura County Transportation Commission.

10.3 Interview:

VCTC reserves the right to interview contractors before an AGREEMENT is awarded. The costs of attending any interview are the contractor's responsibility.

10.4 Incurred Costs:

VCTC is not liable for any cost incurred by Contractors in response to this solicitation.

10.5 Notification:

All CONTRACTORS who have submitted a proposal package will be notified of the final decision as soon as it has been determined.

10.6 VCTC's Best Interest:

The award resulting from this solicitation will be made to the CONTRACTOR that submits a response, in the sole opinion of VCTC, best serves the overall interest of VCTC.

11.0 SEQUENTIAL AGREEMENT NEGOTIATION

11.1 VCTC will pursue AGREEMENT negotiations with CONTRACTOR who submits the best proposal or is deemed the most qualified in the sole opinion of VCTC, and which is in accordance with the criteria as described within the solicitation. If the AGREEMENT negotiations are unsuccessful, in the opinion of either VCTC or CONTRACTOR, VCTC may pursue AGREEMENT negotiations with the entity that submitted a proposal which VCTC deems to be the next best qualified to provide the services, or VCTC may issue a new solicitation, cancel the solicitation, or take any other action which it deems to be in its best interest.

12.0 AGREEMENT TERMS AND CONDITIONS

12.1 The term of the AGREEMENT will be for the duration of the construction of the Project. VCTC estimates that the construction will last no more than a period of one (1) year and one (1) additional year to satisfy mitigation compliance requirements for a total of a two-year term with the option to extend the AGREEMENT for two (2) additional one (1) year periods.

12.2 VCTC does not have to give a reason if it elects not to extend or renew the AGREEMENT.

12.3 AGREEMENT shall contain a clause that provides that VCTC reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with thirty (30)-days written notice, or immediately, with cause.

12.4 If this RFP includes options for renewal or extensions, CONTRACTOR must commence negotiations for rate changes a minimum of ninety (90) days prior to the expiration of the AGREEMENT. Both parties shall agree upon rate extensions or changes in writing.

12.5 CONTRACTOR selected through the solicitation process will be expected to execute a formal AGREEMENT with VCTC for the provision of the requested service. The AGREEMENT shall be written by VCTC in a standard format approved by the VCTC General Counsel and Risk Manager, substantially similar to the SAMPLE AGREEMENT provided in Appendix I. Submission of a signed proposal package and the RFP SIGNATURE PAGE will be interpreted to mean CONTRACTOR HAS AGREED TO ALL THE TERMS AND CONDITIONS set forth in the pages of this solicitation and the standard provisions included in the AGREEMENT. VCTC may but is not required to consider including language from the CONTRACTOR's proposed AGREEMENT, and any such submission shall be included in the EXCEPTIONS submittal of CONTRACTOR's proposal.

12.6 Solicitation Terms & Conditions

- 12.6.1 VCTC reserves the right to alter, amend, or modify any provisions of this solicitation, including modification of the deadlines and schedule and/or the scope of work, or to withdraw this solicitation, in whole or in part, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of VCTC to do so.
- 12.6.2 VCTC reserves the right to request clarification of any proposal term from Proposers.
- 12.6.3 VCTC may contact the references provided; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process.
- 12.6.4 The type of documentation required from the Proposer to satisfy VCTC will be commensurate with the size and complexity of the contract and Proposers should submit accordingly. If the information submitted by the Proposer, or available from other sources, is insufficient to satisfy VCTC as to the Proposer's qualifications, experience and/or contractual responsibility, VCTC may request additional information from the Proposer or may deem the proposal non-responsive.
- 12.6.5 VCTC reserves the right to waive informalities and minor irregularities in proposals received and/or the RFP process.
- 12.6.6 VCTC reserves the right to reject any or all proposals received prior to contract award; to negotiate with any, all, or none of the Proposers; and to award a contract to one or more Proposers. If agreement cannot be reached with the highest-ranked firm, VCTC may terminate negotiations with that firm and commence negotiations with the next most qualified firm, in VCTC's sole determination. If VCTC is unable to negotiate a satisfactory agreement with the top-ranked Proposer, with terms and conditions VCTC determines, in its sole judgment, to be fair and reasonable, then VCTC may commence negotiations with the next most qualified Proposer in sequence, until an agreement is reached. If necessary, VCTC may repeat this process until a final contract has been negotiated or VCTC may make a determination to reject all submittals and not enter into an agreement with any Proposer.
- 12.6.7 VCTC's determination of the Proposer's responsibility, for the purposes of this solicitation, shall be final.
- 12.6.8 VCTC reserves the right to remedy technical errors in the RFP process.
- 12.6.9 VCTC reserves the right to approve or disapprove the use of any particular subcontractors.
- 12.6.10 Unless otherwise specified, VCTC reserves the right to award contracts to multiple contractors.
- 12.6.11 VCTC shall not be obligated to accept the lowest priced proposal but will make an award based on the best interests of the Commission after all factors have been evaluated.

- 12.6.12 Any irregularities or lack of clarity in the solicitation should be brought to the VCTC Staff designee's attention as soon as possible so that corrective addenda may be furnished to Proposers if deemed necessary by VCTC.
- 12.6.13 Any final contract will include VCTC's standard insurance and indemnification requirements, substantially in the form outlined in this RFP, specifically Sections 15, and 16 below, and as outlined in the SAMPLE AGREEMENT in Appendix I. Proposals must include any exception to VCTC's standard insurance and/or indemnification requirements and shall include any and all of Proposer's proposed terms and conditions, including the Proposer's standard contract language. The omission of these documents may render a proposal non-responsive.
- 12.6.14 Alterations, modifications or variations to a proposal may not be considered unless authorized by the solicitation or by addendum or amendment.
- 12.6.15 Proposals which appear unrealistic in terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of the Agreement, may be rejected.
- 12.6.16 Proposals may be withdrawn by written notice received prior to the proposal opening time.
- 12.6.17 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement, or disclosure with or to any other contractor or prospective contractor.
- 12.6.18 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 12.6.19 Prices offered by Proposers in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded Contractor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded Contractor for implementation of their proposal.
- 12.6.20 VCTC is not liable for any costs incurred by Proposers prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by VCTC.
- 12.6.21 Proposal will become a public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label applicable parts of a proposal as "CONFIDENTIAL" and shall subsequently describe the exemption that applies for withholding applicable parts of a proposal. By submitting a proposal, Proposer thereby agrees to indemnify, defend, and hold harmless VCTC for any costs and/or liability associated with withholding such information marked confidential and/or otherwise honoring such a designation by Proposer. The failure to label information as confidential prior to submission of a Proposal shall constitute a complete waiver of any and all claims for damages caused by any release of the information by VCTC.

12.6.22 A proposal submitted in response to this solicitation must identify any subcontractors and outline the contractual relationship between the Proposer and each subcontractor. An official of each proposed subcontractor must sign and include as part of the proposal submitted in response to this solicitation, a statement to the effect that the subcontractor has read and will agree to abide by the Proposer's obligations. VCTC may approve or disapprove the use of particular subcontractors.

12.6.23 If the CONTRACTOR elects to use subcontractors, VCTC requires that the awarded CONTRACTOR provide proof of payment of any subcontractors used for this project. Proposals shall include a plan by which VCTC will be notified of such payments.

12.6.24 This project includes disadvantaged business enterprise (DBE) requirements. Proposer must take the following steps to ensure the use of small and minority businesses, women's business enterprises, and labor surplus area firms when possible, pursuant to 2 C.F.R. Section 200.321. Proposer shall take the following steps, and shall require all subcontractors to take the following steps:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

12.6.25 If the CONTRACTOR elects to use subcontractors, CONTRACTOR shall ensure compliance related to the use of small and minority businesses, women's business enterprises, and labor surplus area firms, when possible, in accordance with applicable federal law and requirements. DBEs and other small businesses are strongly encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Proposer should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, or disability or AIDS/HIV status in the award and performance of subcontracts. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs. Proposer also represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of the foregoing.

- 12.6.26 Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this solicitation. Any such relationship that might be perceived or represented as a conflict should be disclosed. VCTC reserves the right to disqualify any Proposer on the grounds of actual or apparent conflict of interest.
- 12.6.27 Each Proposer must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, suspensions, debarments, any civil or criminal litigation or investigation pending which involves the Proposer or in which the Proposer has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. VCTC reserves the right to reject any proposal based upon the Proposer's prior history with VCTC or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.
- 12.6.28 VCTC reserves the right to negotiate final contract terms with any Proposers selected. The contract between the parties will consist of the solicitation together with any modifications thereto, and the awarded CONTRACTOR's proposal, together with any modifications and clarifications thereto that are submitted at the request of VCTC during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the solicitation, any modifications and clarifications to the awarded CONTRACTOR's proposal, and the awarded CONTRACTOR's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 12.6.29 VCTC will not be responsible for or bound by any oral communication or any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the VCTC Contact.
- 12.6.30 Any contract resulting from this solicitation shall not be effective unless and until approved by the Commission or Executive Director, as applicable.
- 12.6.31 VCTC will not be liable for Federal, State, or Local excise taxes.
- 12.6.32 Submission of a proposal for this solicitation shall constitute an agreement to all terms and conditions specified in the solicitation, except such terms and conditions that the Proposer expressly excludes.
- 12.6.33 Proposer understands and acknowledges that the representations in the proposal are material and important and will be relied on by VCTC in evaluation of the proposal. Any Proposer misrepresentation shall be treated as fraudulent concealment from VCTC of the true facts relating to the proposal.
- 12.6.34 Proposals shall be kept confidential until a contract is awarded in accordance with applicable law, including the CPRA.
- 12.6.35 No announcement concerning the award of a contract as a result of this solicitation may be made without the prior written approval of VCTC.

12.6.34 By submitting a proposal, Proposer represents and warrants that it has thoroughly examined and is familiar with work required under this RFP, that Proposer has conducted such additional investigation as it deems necessary and convenient, that Proposer is capable of providing the services requested by VCTC in a manner that meets the stated objectives and specifications as outlined in this RFP, and that Proposer has reviewed and inspected all materials submitted in response to this RFP. Once the Contractor has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for Contractor to requested additional compensation.

12.6.35 This project may be funded by FEMA. Thus, by submitting a proposal you agree to comply and assist VCTC in complying with all federal requirements associated with the expenditure or acquisition of FEMA funds.

12.7 Contract Terms & Conditions

12.7.1 The awarded CONTRACTOR will be solely responsible for the performance of the Scope of Work and CONTRACTOR's contractual obligations under the final agreement. VCTC will look solely to the awarded CONTRACTOR for the performance of all contractual obligations which may result from an award based on this solicitation, and the awarded CONTRACTOR shall not be relieved for the non-performance of any or all subcontractors.

12.7.2 The awarded Contractor shall maintain, for the duration of its contract, insurance coverages as required by VCTC. Work on the contract shall not begin until after the awarded Contractor has submitted acceptable evidence of the required insurance coverages.

12.7.3 All work performed in connection with construction shall be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 et seq. of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction.

12.7.4 Contractor shall comply with the defense and indemnification obligations outlined in Section 15 below in any final AGREEMENT.

12.7.5 The provisions of this Section shall survive the expiration or termination of the Contract.

13.0 COLLUSION

13.1 CONTRACTOR shall not conspire, attempt to conspire, or commit any other act of collusion with any other interested party for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the solicitation that would bring about any unfair conditions.

14.0 RIGHTS TO PERTINENT MATERIALS

14.1 All responses, inquiries, and correspondence related to this solicitation and all reports, charts, displays, schedules, exhibits, and other documentation produced by the CONTRACTOR that are submitted as part of the submittal will become the property of VCTC when received by VCTC and may be considered public information under applicable law. Any proprietary information in the

submittal must be identified as such and marked "CONFIDENTIAL INFORMATION" or "PROPRIETARY INFORMATION". VCTC will not disclose proprietary information to the public, unless required by law; however, VCTC cannot guarantee that such information will be held confidential.

As a California government entity, VCTC is subject to the California Public Records Act (CPRA) and other public transparency laws and, as such, cannot guarantee the confidentiality of information marked confidential or proprietary. VCTC will respond to requests for disclosure of records related to this solicitation in accord with applicable law on disclosure requirements and exemptions to disclosure.

15.0 INDEMNIFICATION

15.1 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for VCTC under this Indemnification Agreement that is permitted by law shall be provided by CONTRACTOR.

15.2 Indemnification for Design Professional Services Claims: Contractor shall indemnify, defend (with counsel acceptable to VCTC) and hold harmless VCTC, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, its employees, subcontractors, and agents in the performance of any design professional services under the AGREEMENT, excepting only liability arising from the sole negligence, active negligence or willful misconduct of VCTC, or defect in a design furnished by VCTC, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against VCTC is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

15.3 To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, protect and hold harmless VCTC, its Boards, Commissions, and their officials, employees and agents, and those of VCTC's partner agencies("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) CONTRACTOR's breach or failure to comply with any of its obligations contained in the AGREEMENT, including any obligations arising from the CONTRACTOR's compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq., and/ or (2) negligent, reckless, or willful acts, errors, omissions or misrepresentations committed by CONTRACTOR, its officers, employees, agents, subcontractors, or anyone under CONTRACTOR's control, in the performance of work or services under the AGREEMENT (collectively "Claims" or individually "Claim").

- A. In addition to CONTRACTOR's duty to indemnify, CONTRACTOR shall have a separate and wholly independent duty to defend Indemnified Parties at CONTRACTOR's expense by legal counsel approved by VCTC, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of CONTRACTOR shall be required for the duty to defend to arise. VCTC shall notify CONTRACTOR of any Claim, shall tender the defense of the Claim to CONTRACTOR, and shall assist CONTRACTOR, as may be reasonably requested, in the defense.
- B. If CONTRACTOR elects to use subcontractors, CONTRACTOR agrees to require its subcontractors to indemnify Indemnified Parties and to provide insurance coverage to the same extent as CONTRACTOR. If the CONTRACTOR elects to use subcontractors, the CONTRACTOR shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.
- C. The provisions of this Section shall survive the expiration or termination of the Agreement.

16.0 INSURANCE REQUIREMENTS

16.1 Before beginning any work under the AGREEMENT, CONTRACTOR, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the CONTRACTOR and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, CONTRACTOR shall provide proof satisfactory to VCTC of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to VCTC. CONTRACTOR shall maintain the insurance policies required by this section throughout the term of the Agreement. The cost of such insurance shall be included in the CONTRACTOR's Proposal. CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until CONTRACTOR has obtained all insurance required herein for the subcontractor(s). CONTRACTOR shall maintain all required insurance listed herein for the duration of the Agreement.

16.1.1 Workers' Compensation. CONTRACTOR shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONTRACTOR. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, CONTRACTOR may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of VCTC's Contract Administrator. The insurer, if insurance is provided, or the CONTRACTOR, if a program of self-insurance is provided, shall waive all rights of subrogation against VCTC and its officers, officials, employees, and volunteers for loss arising from work performed under the Agreement.

16.1.2 Commercial General and Automobile Liability Insurance.

- a. Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$3,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability. Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- c. Said policies shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.
- d. Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
 - i. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - ii. Any failure of CONTRACTOR to comply with reporting provisions of the policy shall not affect coverage provided to VCTC and its officers, employees, agents, and volunteers.

16.1.3 Professional Liability Insurance

16.1.3.1 General requirements. CONTRACTOR, at its own cost and expense, shall maintain for the period covered by the Agreement professional liability insurance for licensed professionals performing work pursuant to the Agreement in an amount not less than \$2,000,000 per claim or per occurrence covering the licensed professionals’ errors and omissions. Any deductible or self-insured retention shall not exceed one hundred fifty thousand dollars (\$150,000) per claim. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

- 16.1.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - 16.1.3.2.1 The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - 16.1.3.2.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - 16.1.3.2.3 If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of the Agreement, CONTRACTOR shall purchase an extended period coverage for a minimum of five (5) years after completion of work under the Agreement or the

work. VCTC shall have the right to exercise, at the CONTRACTOR's sole cost and expense, any extended reporting provisions of the policy, if the CONTRACTOR cancels or does not renew the coverage.

16.1.3.2.4 A copy of the claim reporting requirements must be submitted to VCTC for review prior to the commencement of any work under the Agreement.

16.1.4 All Policies Requirements

16.1.4.2.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

16.1.4.2.2 Verification of coverage. Prior to beginning any work under the Agreement, CONTRACTOR shall furnish VCTC with complete copies of all policies delivered to CONTRACTOR by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If VCTC does not receive the required insurance documents prior to the CONTRACTOR beginning work, this shall not waive the CONTRACTOR's obligation to provide them. VCTC reserves the right to require complete copies of all required insurance policies at any time.

16.1.4.2.3 Notice of Cancellation of Coverage. A certified endorsement shall be attached to all Commercial General Liability and Automobile Liability insurance obtained pursuant to the Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CONTRACTOR. In the event that any coverage required by this section is cancelled, CONTRACTOR shall provide written notice to VCTC at CONTRACTOR's earliest possible opportunity and in no case later than ten (10) working days after CONTRACTOR is notified of the change in coverage.

16.1.4.2.4 Additional insured; primary insurance. VCTC and its officers, employees, agents, and volunteers, and those of VCTC's partner agencies, Sierra Northern Railway and its officers, employees, agents, and volunteers, shall be covered on the General Liability and Automobile Liability policies as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of CONTRACTOR, including VCTC's general supervision of CONTRACTOR; products and completed operations of CONTRACTOR, as applicable; premises owned, occupied, or used by CONTRACTOR; and automobiles owned, leased, or used by the CONTRACTOR in the course of providing services pursuant to the Agreement. The coverage shall contain no special limitations on the scope of protection afforded to VCTC or its officers, employees, agents, or volunteers.

16.1.5 A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to VCTC and its officers, officials, employees and volunteers, and that

no insurance or self-insurance maintained by VCTC shall be called upon to contribute to a loss under the coverage.

16.1.6 Deductibles and Self-Insured Retentions. CONTRACTOR shall disclose to and obtain the approval of VCTC for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of the Agreement. Further, if the CONTRACTOR's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by the agreement so as to not prevent any of the parties to the agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by the Agreement, only upon the prior express written authorization of Contract Administrator, CONTRACTOR may increase such deductibles or self-insured retentions with respect to VCTC, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that CONTRACTOR procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

16.1.7 Subcontractors. CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all requirements stated herein.

16.1.8 Variation. VCTC may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that VCTC's interests are otherwise fully protected.

16.1.9 Remedies. In addition to any other remedies VCTC may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, VCTC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies VCTC may have and are not the exclusive remedy for CONTRACTOR's breach:

16.1.10.1 Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

16.1.10.2 Order CONTRACTOR to stop work under the Agreement or withhold any payment that becomes due to CONTRACTOR hereunder, or both stop work and withhold any payment, until CONTRACTOR demonstrates compliance with the requirements hereof; and/or terminate the Agreement.

**AGREEMENT BETWEEN
VENTURA COUNTY TRANSPORTATION COMMISSION
AND
[CONTRACTOR]
FOR CONSTRUCTION MANAGEMENT
TO RECONSTRUCT THE SESPE CREEK OVERFLOW BRIDGE
ON THE SANTA PAULA BRANCH LINE**

ARTICLE I – GENERAL PROVISIONS

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONTRACTOR and the Ventura County Transportation Commission, hereinafter referred to as, VCTC:

The name of the “CONTRACTOR” is as follows:
[CONTRACTOR NAME]
Incorporated in the State of [STATE]

The Project Manager for the CONTRACTOR will be: [PROJECT MANAGER NAME]

The Contract Administrator for VCTC will be: [VCTC CONTRACT ADMINISTRATOR NAME]

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONTRACTOR’s Cost Proposal dated [DATE]. The approved CONTRACTOR’s Cost Proposal is attached hereto (Attachment A) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONTRACTOR To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, protect and hold harmless VCTC, its Boards, Commissions, and their officials, employees and agents, and those of VCTC’s partner agencies (“Indemnified Parties”), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys’ fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) CONTRACTOR’s breach or failure to comply with any of its obligations contained in the AGREEMENT, including any obligations arising from the CONTRACTOR’s compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 et seq., and/ or (2) negligent, reckless, or willful acts, errors, omissions or misrepresentations committed by CONTRACTOR, its officers, employees, agents, subcontractors, or anyone under CONTRACTOR’s control, in the performance of work or services under the AGREEMENT (collectively “Claims” or individually “Claim”).
1. In addition to CONTRACTOR’s duty to indemnify, CONTRACTOR shall have a separate and wholly independent duty to defend Indemnified Parties at CONTRACTOR’s expense by legal counsel approved by VCTC, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of CONTRACTOR shall be required for the duty to defend to arise. VCTC shall notify CONTRACTOR of any Claim, shall tender the defense of the Claim to CONTRACTOR, and shall assist CONTRACTOR, as may be reasonably requested, in the defense.
 2. If CONTRACTOR elects to use subcontractors, CONTRACTOR agrees to require its subcontractors to indemnify Indemnified Parties and to provide insurance coverage to the same extent as CONTRACTOR If the CONTRACTOR elects to use subcontractors, the

CONTRACTOR shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.

3. The provisions of this Section shall survive the expiration, suspension, or termination of this Agreement
- D. CONTRACTOR in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of VCTC.
- E. VCTC is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of the AGREEMENT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONTRACTOR's assigned personnel. CONTRACTOR, in the performance of its obligation hereunder, is only subject to the control or direction of the VCTC as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third-party person(s) employed by CONTRACTOR shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. CONTRACTOR hereby agrees to indemnify and hold VCTC harmless from any and all claims that may be made against VCTC based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT, including any contentions by CONTRACTOR's employees related to eligibility for benefits under the Public Employee Retirement System ("PERS") pursuant to the relationship created under this Agreement.
- G. Except as expressly authorized herein, CONTRACTOR's obligations under this AGREEMENT are not assignable or transferable, and CONTRACTOR shall not subcontract any work, without the prior written approval of the VCTC. However, claims for money due or which become due to CONTRACTOR from VCTC under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the VCTC.
- H. In accordance with CONTRACTOR's obligations outlined in Section C above, CONTRACTOR shall be as fully responsible to the VCTC for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONTRACTOR.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONTRACTOR as provided herein, shall be in compensation for all of CONTRACTOR's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II – CONTRACTOR'S REPORTS OR MEETINGS

- A. CONTRACTOR shall submit progress reports at least once a month. The report should be sufficiently detailed for the VCTC's Contract Administrator to determine, if CONTRACTOR is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

- B. CONTRACTOR's Project Manager shall meet with VCTC's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III – STATEMENT OF WORK

A. Contractor Services

The purpose of this AGREEMENT is to provide construction management services for the Sespe Creek Overflow Railroad Bridge Repair Project, hereinafter referred to as "Project", located in Ventura County, California. The scope of work shall include professional engineering services required for management of a construction contract, including engineering inspection services, environmental support services, materials testing, and surveying services necessary to verify the Project is constructed as specified in the Project plans and specifications. The scope of work shall also include project management support services and coordination with the Railroad Operator, Sierra Northern Railway.

B. VCTC Obligations

All data applicable to the Project and in possession of VCTC, another agency, or government agency that are to be made available to CONTRACTOR are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONTRACTOR are to be stated clearly.

C. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the VCTC, State, and/or FEMA. Costs incurred by CONTRACTOR for meetings, subsequent to the initial meeting are included in the fee.

D. Checking Shop Drawings

Any payment for checking shop drawings by CONTRACTOR is included in the AGREEMENT fee.

E. CONTRACTOR Services During Construction

CONTRACTOR's services may be requested during the course of construction as material testing, construction surveys, etc., are completed. Payment for these services will be on a time and material basis based on the rates specified under this AGREEMENT.

F. Documentation and Schedules

CONTRACTOR shall document the results of the work to the satisfaction of VCTC, and if applicable, the State and FEMA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

G. Deliverables and Number of Copies

The CONTRACTOR shall furnish three (3) hard copies and one (1) electronic copy of deliverables, including reports, brochures, sets of plans, specifications, and maps.

ARTICLE IV – PERFORMANCE PERIOD

- A. This AGREEMENT shall be effective as of [DATE], 2024, and CONTRACTOR shall commence work after notification to proceed by VCTC'S Contract Administrator. The AGREEMENT shall terminate on [DATE], 2024, unless extended by AGREEMENT amendment.
- B. CONTRACTOR is advised that any recommendation for AGREEMENT award is not binding on VCTC until the AGREEMENT is fully executed and approved by VCTC.

ARTICLE V – ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONTRACTOR will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONTRACTOR, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONTRACTOR and VCTC. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by VCTC.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONTRACTOR. If CONTRACTOR fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, VCTC shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONTRACTOR shall not commence performance of work or services until this AGREEMENT has been approved by VCTC and notification to proceed has been issued by VCTC'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONTRACTOR will be reimbursed within thirty (30) days upon receipt by VCTC'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONTRACTOR is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due VCTC that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONTRACTOR's work unless a later date is approved by the VCTC. Invoices shall be mailed to VCTC's Contract Administrator at the following address:

Ventura County Transportation Commission
Attn: Amanda Fagan
751 E. Daily Dr., Suite 420
Camarillo, CA 93010
- E. The total amount payable by VCTC shall not exceed \$[AMOUNT].

ARTICLE VI – TERMINATION

- A. This AGREEMENT may be terminated by VCTC for convenience or for cause upon CONTRACTOR's breach of a material provision of this Agreement, provided that VCTC gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- B. If VCTC provides notice of intent to terminate this AGREEMENT for cause upon CONTRACTOR's breach of a material provision of this Agreement, the notice shall specify the nature of the breach and provide CONTRACTOR with an opportunity to cure. If CONTRACTOR fails to cure the breach and/or fails to reasonably commence a satisfactory cure, in VCTC's sole discretion, prior to the end of the 30-day notice period, then VCTC may immediately terminate the AGREEMENT upon the date specified in the notice.
- C. Upon termination, VCTC shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- D. VCTC may temporarily suspend this AGREEMENT, at no additional cost to VCTC, provided that

CONTRACTOR is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If VCTC gives such notice of temporary suspension, CONTRACTOR shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.

- E. Notwithstanding any provisions of this AGREEMENT, CONTRACTOR shall not be relieved of liability to VCTC for damages sustained by VCTC by virtue of any breach of this AGREEMENT by CONTRACTOR, and VCTC may withhold any payments due to CONTRACTOR until such time as the exact amount of damages, if any, due VCTC from CONTRACTOR is determined. In the event of a breach, VCTC may take over the Work and prosecute the same to completion by VCTC or otherwise, and the CONTRACTOR shall be liable to VCTC for reasonable costs incurred by VCTC in making necessary arrangements for completion of the work by others. The rights and remedies of VCTC provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT. VCTC shall have the right to set-off any such amounts it incurs in order to complete the Work or otherwise related to the termination of CONTRACTOR against any payments owed to CONTRACTOR for that portion of the Work which has been completed and accepted by VCTC.
- F. In the event of termination, CONTRACTOR shall be compensated for work satisfactorily completed consistent with this AGREEMENT. Upon termination, VCTC shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONTRACTOR agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONTRACTOR also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONTRACTOR to VCTC.
- D. When a CONTRACTOR or Subcontractor is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VII – RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONTRACTOR, Subcontractors, and VCTC shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONTRACTOR's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. VCTC, Caltrans Auditor, FEMA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONTRACTOR, Subcontractors, and the CONTRACTOR's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation. CONTRACTOR agrees to permit any of the above listed parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

ARTICLE IX – AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by VCTC'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONTRACTOR may request a review by VCTC'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by VCTC will excuse CONTRACTOR from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONTRACTOR and subcontractor AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONTRACTOR's responsibility to ensure federal, VCTC, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONTRACTOR and approved by VCTC Contract Administrator to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by VCTC at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the federal, VCTC or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONTRACTOR's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONTRACTOR and approved by the VCTC Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONTRACTOR to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
 - a. During IOAI's review of the ICR audit work papers created by the CONTRACTOR's independent CPA, IOAI will work with the CPA and/or CONTRACTOR toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, VCTC will reimburse the CONTRACTOR at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- i. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- ii. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- iii. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be

seventy-five percent (75%) of the proposed rate.

- b. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONTRACTOR to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONTRACTOR's and/or the independent CPA's revisions.
- c. If the CONTRACTOR fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
- d. CONTRACTOR may submit to VCTC final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of VCTC; and, (3) IOAI has issued its final ICR review letter. The CONTRACTOR MUST SUBMIT ITS FINAL INVOICE TO VCTC no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between VCTC and the CONTRACTOR, either as a prime or subcontractor, with the same fiscal period ICR.

ARTICLE X – SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the VCTC and any Subcontractors, and no subagreement shall relieve the CONTRACTOR of its responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to the VCTC for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR's obligation to pay its Subcontractors is an independent obligation from the VCTC's obligation to make payments to the CONTRACTOR.
- B. The CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the VCTC Contract Administrator, except that which is expressly identified in the CONTRACTOR's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subcontractors unless otherwise noted.
- D. CONTRACTOR shall pay its Subcontractors within Fifteen (15) calendar days from receipt of each payment made to the CONTRACTOR by the VCTC.
- E. Any substitution of Subcontractors must be approved in writing by the VCTC Contract Administrator in advance of assigning work to a substitute Subcontractor.
- F. Prompt Progress Payment

CONTRACTOR or Subcontractor shall pay to any Subcontractor, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONTRACTOR on account of the work performed by the Subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONTRACTOR or Subcontractor to a Subcontractor, CONTRACTOR or Subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the

licensee to a penalty, payable to the Subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to the prevailing party's attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

G. Prompt Payment of Withheld Funds to Subcontractors

VCTC may hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the VCTC, of the contract work, and pay retainage to CONTRACTOR based on these acceptances. No retainage will be held by the VCTC from progress payments due to CONTRACTOR. CONTRACTORS and Subcontractors are prohibited from holding retainage from Subcontractors. Any delay or postponement of payment may take place only for good cause and with the VCTC's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or Subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or Subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient Subcontractor performance and/or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractors.

H. Any violation of these provisions shall subject the violating CONTRACTOR or Subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontract performance, or noncompliance by a subcontractor.

ARTICLE XI – EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. For purchase of any item, service, or consulting work not covered in CONTRACTOR's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by VCTC's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

B. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

a. CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, VCTC shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONTRACTOR may either keep the equipment and credit VCTC in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established VCTC procedures; and credit VCTC in an amount equal to the sales price. If CONTRACTOR elects to keep the equipment, fair market value shall be determined at CONTRACTOR's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by VCTC and CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by VCTC.

b. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII – STATE PREVAILING WAGE RATES

- A. No CONTRACTOR or Subcontractor may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONTRACTOR shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at VCTC construction sites, at VCTC facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve VCTC projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
- a. Each CONTRACTOR and Subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONTRACTOR or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - b. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONTRACTOR under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by VCTC representatives at all reasonable hours at the principal office of the CONTRACTOR. The CONTRACTOR shall provide copies of certified payrolls or permit inspection of its records as follows:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of VCTC, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to VCTC, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONTRACTOR.
 - iii. The public shall not be given access to certified payroll records by the CONTRACTOR. The CONTRACTOR is required to forward any requests for certified payrolls to the

VCTC Contract Administrator by both email and regular mail on the business day following receipt of the request.

- c. Each CONTRACTOR shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 - d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by VCTC shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONTRACTOR or Subcontractor performing the work shall not be marked or obliterated.
 - e. The CONTRACTOR shall inform VCTC of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - f. The CONTRACTOR or Subcontractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONTRACTOR or Subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to VCTC, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by VCTC from payments then due. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
- E. When prevailing wage rates apply, the CONTRACTOR is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the VCTC Contract Administrator.
- F. Penalty
- a. The CONTRACTOR and any of its Subcontractors shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONTRACTOR and any Subcontractor shall forfeit to the VCTC a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONTRACTOR or by its Subcontractor in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 - b. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONTRACTOR or Subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the CONTRACTOR or Subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the CONTRACTOR or Subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONTRACTOR or Subcontractor had knowledge of the obligations under the Labor Code. The CONTRACTOR is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 - c. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR or Subcontractor.

- d. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by the Subcontractor, the prime CONTRACTOR of the project is not liable for the penalties described above unless the prime CONTRACTOR had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime CONTRACTOR fails to comply with all of the following requirements:
 - i. The AGREEMENT executed between the CONTRACTOR and the Subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - ii. The CONTRACTOR shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor.
 - iii. Upon becoming aware of the Subcontractor's failure to pay the specified prevailing rate of wages to the Subcontractor's workers, the CONTRACTOR shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
 - iv. Prior to making final payment to the Subcontractor for work performed on the public works project, the CONTRACTOR shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor had paid the specified general prevailing rate of per diem wages to the Subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.

Pursuant to Labor Code §1775, VCTC shall notify the CONTRACTOR on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.

If VCTC determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if VCTC did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONTRACTOR shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by VCTC.

ARTICLE XIII – EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, CONTRACTOR agrees as follows:

- A. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, ancestry, religion, creed, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military status, veteran status, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their status under the aforementioned categories. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, ancestry, religion, creed, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military status, veteran status, or national origin.

- C. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONTRACTOR's legal duty to furnish information.
- D. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. CONTRACTOR will include the portion of the sentence immediately preceding paragraph and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

VCTC will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally or state assisted construction work: Provided, that if the applicant so participating is a State, Territorial, or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

VCTC will assist and cooperate actively with the administering federal agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish

the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

VCTC agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, VCTC agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

ARTICLE XV – CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- C. Withholding for unpaid wages and liquidated damages. VCTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- D. Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

ARTICLE XVI – CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- A. Clean Air Act. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - a. CONTRACTOR agrees to report each violation to the VCTC and understands and agrees that VCTC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - b. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- B. Federal Water Pollution Control Act. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - a. CONTRACTOR agrees to report each violation to the VCTC and understands and agrees that VCTC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

 - b. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

ARTICLE XVII – DEBARMENT AND SUSPENSION

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- B. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- C. This certification is a material representation of fact relied upon by VCTC. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to VCTC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE XVIII – ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

ARTICLE XIX – PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

ARTICLE XX – ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- A. CONTRACTOR agrees to provide VCTC, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. CONTRACTOR agrees to provide the FEMA Administrator or authorized representative[s] access to construction or other work sites pertaining to the work being completed under the Agreement.
- D. In compliance with the Disaster Recovery Act of 2018, VCTC and CONTRACTOR acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

ARTICLE XXI – DHS SEAL, LOGO, AND FLAGS

CONTRACTOR shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

ARTICLE XXII – COMPLIANCE WITH FEDERAL LAW, REGULATION, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. CONTRACTOR will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives as currently applicable and as may be amended from time to time whether or not specifically referenced herein.

ARTICLE XXIII – NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the VCTC, CONTRACTOR, or any other party pertaining to any matter resulting from the Agreement.

ARTICLE XXIV – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR'S actions pertaining to this Agreement.

ARTICLE XXV – INSURANCE

Before beginning any work under this Contract, CONTRACTOR, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the CONTRACTOR and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, CONTRACTOR shall provide proof satisfactory to VCTC of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to VCTC. CONTRACTOR shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the CONTRACTOR's compensation provided hereunder. CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until CONTRACTOR has obtained all insurance required herein for the subcontractor(s). CONTRACTOR shall maintain all required insurance listed herein for the duration of this Agreement.

- A. Workers' Compensation. CONTRACTOR shall, at its sole cost and expense, maintain Workers' Compensation insurance as required by the State of California with Statutory Limits and Employer's Liability insurance with no less than \$1,000,000 per accident for bodily injury or disease. In the alternative, CONTRACTOR may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator, as defined in Section 10.9. The insurer, if insurance is provided, or the CONTRACTOR, if a program of self-insurance is provided, shall waive all rights of subrogation against VCTC and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.
- B. Commercial General and Automobile Liability Insurance.
 - a. Commercial General Liability (CGL). Insurance Services Office Form CG 0001 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. No endorsement shall be attached limiting the coverage. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.
 - b. Automobile Liability. Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition). Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.
 - c. Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
 - i. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- ii. Any failure of CONTRACTOR to comply with reporting provisions of the policy shall not affect coverage provided to VCTC and its officers, employees, agents, and volunteers.

C. Professional Liability Insurance.

- a. General requirements. CONTRACTOR, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$3,000,000 per claim or per occurrence covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed one hundred fifty thousand dollars (\$150,000) per claim.
- b. Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - i. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, CONTRACTOR shall purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement or the work. VCTC shall have the right to exercise, at the CONTRACTOR's sole cost and expense, any extended reporting provisions of the policy, if the CONTRACTOR cancels or does not renew the coverage.
 - iv. A copy of the claim reporting requirements must be submitted to VCTC for review prior to the commencement of any work under this Agreement.

D. All Policies Requirements

- a. Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- b. Verification of coverage. Prior to beginning any work under this Agreement, CONTRACTOR shall furnish VCTC with complete copies of all policies delivered to CONTRACTOR by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If VCTC does not receive the required insurance documents prior to the CONTRACTOR beginning work, this shall not waive the CONTRACTOR's obligation to provide them. VCTC reserves the right to require complete copies of all required insurance policies at any time.
- c. Notice of Cancellation of Coverage. A certified endorsement shall be attached to all Commercial General Liability and Automobile Liability insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to VCTC. In the event that any coverage required by this section is cancelled, CONTRACTOR shall provide written notice to VCTC at CONTRACTOR's

earliest possible opportunity and in no case later than ten (10) working days after CONTRACTOR is notified of the change in coverage.

- d. Additional insured; primary insurance. VCTC and its officers, employees, agents, and volunteers, and those of VCTC's partner agencies that utilize the subject data, and Sierra Northern Railway and its officers, employees, agents, and volunteers, shall be covered on the General Liability and Automobile Liability policies as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of CONTRACTOR, including VCTC's general supervision of CONTRACTOR; products and completed operations of CONTRACTOR, as applicable; premises owned, occupied, or used by CONTRACTOR; and automobiles owned, leased, or used by the CONTRACTOR in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to VCTC or its officers, employees, agents, or volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to VCTC and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by VCTC shall be called upon to contribute to a loss under the coverage.

- E. Deductibles and Self-Insured Retentions. CONTRACTOR shall disclose to and obtain the approval of VCTC for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the CONTRACTOR's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, CONTRACTOR may increase such deductibles or self-insured retentions with respect to VCTC, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that CONTRACTOR procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

- F. Subcontractors. CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- G. Variation. VCTC may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that VCTC's interests are otherwise fully protected.
- H. Remedies. In addition to any other remedies VCTC may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, VCTC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies VCTC may have and are not the exclusive remedy for CONTRACTOR's breach:

Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

Order CONTRACTOR to stop work under this Agreement or withhold any payment that becomes due to CONTRACTOR hereunder, or both stop work and withhold any payment, until CONTRACTOR demonstrates compliance with the requirements hereof; and/or terminate this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first herein written above.

VENTURA COUNTY TRANSPORTATION COMISSION

By: _____

Date: _____

Martin R. Erickson

Executive Director

APPROVED AS TO FORM: VCTC

By: _____

Date: _____

Steven T. Mattas, General Counsel

[CONTRACTOR]

By: _____

Date: _____

[CONTRACTOR SIGNATOR NAME AND TITLE]

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, [CONTRACTOR NAME], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

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