



VENTURA COUNTY TRANSPORTATION COMMISSION
751 E. DAILY DR., SUITE 420
CAMARILLO, CA 93010
(805) 642-1591

**REQUEST FOR PROPOSALS
TO PROVIDE CONSULTANT SERVICES TO
UPDATE THE SANTA PAULA BRANCH LINE
TRAIL MASTER PLAN AND
ENVIRONMENTAL IMPACT REPORT /
ENVIRONMENTAL IMPACT STATEMENT
LOCATED IN VENTURA COUNTY, CALIFORNIA**

**PROPOSAL RE-RELEASE DATE: WEDNESDAY, NOVEMBER 20, 2024
PROPOSALS DUE: 4:00 P.M. PST, FRIDAY, JANUARY 10, 2025**

I. PROCUREMENT SCHEDULE

Project Name	Santa Paula Branch Line Trail Master Plan Update and Environmental Impact Report/Environmental Impact Statement
Issuance Date	Wednesday, November 20, 2024
Project Period	VCTC anticipates plan completion and approval by December 2026
Pre-Proposal Conference (Optional)	Thursday, December 12, 2024 @ 11:00 AM (PST) via Microsoft Teams Meeting
Questions from Proposers Deadline	Wednesday, December 18, 2024 @ 4:00 PM (PST)
VCTC Responses to Questions	Friday, December 20, 2024
Proposal Submittal Due Date/Time	Friday, January 10, 2025 @ 4:00 PM (PST)
Interviews	January 20, 2025, via Microsoft Teams Meeting (If needed)
Proposal Submittal Location	<p>Via hard copy to: Ventura County Transportation Commission Attn: Amanda Fagan 751 E. Daily Dr., Suite 420 Camarillo, CA 93010</p> <p>Via email to afagan@goventura.org</p>
Anticipated Contract Award*	February 7, 2025
Solicitation Contact	Amanda Fagan afagan@goventura.org
Contract Type	Firm, fixed fee compensated per task completion as identified in Scope of Work

All items contained in the procurement schedule above are subject to change. It is the Proposer's responsibility to check VCTC's website at <https://www.goventura.org/work-with-vctc/contracts/> for updates.

II. MINIMUM REQUIREMENTS

Proposer shall have completed at least three (3) trail master plans or similar projects (e.g., Active Transportation Plans, bicycle/pedestrian trail/path/route plans) with associated environmental review (Environmental Impact Report / Environmental Impact Study) within the last seven (7) years.

The proposer shall also provide a minimum of three (3) references from the last seven (7) years for completed trail master plans with environmental review or similar projects. Please ensure contact information for each reference is up to date.

III. PROPOSAL SUBMITTAL INSTRUCTIONS

The Ventura County Transportation Commission (VCTC), hereinafter referred to as VCTC or “Commission,” is soliciting proposals from qualified firms, hereinafter referred to as “Consultant”, to provide consultant services to update the Santa Paula Branch Line (SPBL) Recreational Trail Master Plan and Environmental Impact Report (EIR) / Environmental Impact Statement (EIS), for the portion of the trail from Saticoy to Piru, hereinafter referred to as “Project”, located in Ventura County, California. Interested Consultant(s) are to submit their proposals in accordance with the requirements outlined in this Request for Proposals (RFP).

The scope of work, in general, shall include professional planning and engineering services required for planning and environmental review of a multi-use path (trail) project along an active railroad corridor in the public sector. The scope of work includes the following tasks:

1. Project Management
2. Existing Conditions Analysis
3. Outreach and Engagement
4. Conceptual Planning
5. Plan Production and Approval
6. Project Definition
7. Technical Studies
8. Draft EIR/EIS
9. Public Participation
10. Final EIR/EIS
11. Regulatory Process

A. Proposal Submittal Instructions

Proposals shall be submitted 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.

Proposals received after 4:00 PM (PST) on Friday, January 10, 2025, will be deemed non-responsive and will not be considered. Appendices may be included as part of the technical or cost proposal.

Any questions concerning this RFP should be directed to Amanda Fagan, VCTC Director of Planning and Sustainability, by email: afagan@goventura.org no later than 4:00 PM PST on Friday, December 18, 2024. All questions and responses will be posted on VCTC's website (<https://www.goventura.org/work-with-vctc/contracts/>) as an addendum to the RFP.

There is no expressed or implied obligation for VCTC to reimburse responding firms for any expenses incurred in the preparation or delivery of proposals in response to this request. VCTC reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected. All submissions are considered a matter of public record. All proposals must include the items listed below. VCTC reserves the right to deem any proposal(s) that do not adhere to any of the instructions contained in the RFP and/or addendums as non-responsive.

B. Proposal Information and Content

Proposals should be organized as follows and shall adhere to the following page limits for the proposal submittal:

1. **Cover Page** (*1 Page Maximum*) – Indicate RFP subject, name of proposer's firm, local address, telephone number, name of contact person, and date of proposal as well as the names and contact information of any subcontractors. Provide the names and titles of individuals authorized to make representations for the proposer.
2. **Table of Contents** (*1 Page Maximum*) – Include a clear identification of the material in the RFP by section and page number.
3. **Letter of Transmittal** (*1 Page Maximum*) – Briefly state the proposer's understanding of the work to be performed and illustrate commitment to perform the work within the specified duration.
4. **Profile of the Proposer** (*1 Page Maximum*) – State whether the firm is local, national, or international, and provide a summary of representative experience relevant to the work outlined in the RFP.
5. **Statement of Qualifications** (*4 Pages Maximum*) – Provide a brief statement of similar/relevant projects performed. Identify individuals who performed work on similar projects and individuals that will be assigned to this project. Provide a list of references for whom similar work has been performed, as well as references for any proposed subconsultants.
6. **Study Approach** (*6 Pages Maximum*) – Provide a detailed description of approaches to each task contained in the RFP. This should include potential challenges and methods to minimize or eliminate identified challenges.

7. **Project Team** (10 Pages Maximum) – Provide an organization chart with role descriptions and include key team member resumes.
8. **Innovative Approaches** (2 Pages Maximum) – Provide proposed innovative approaches to any tasks outlined in the RFP.
9. **Fee Structure** (See Cost Proposal Template – Attachment B) – Proposer shall submit a cost proposal by only utilizing the Excel template provided, refer to Attachment B. Note, in each section there are additional lines for any additional proposed costs. If necessary, proposers are allowed to add a single page explanation of costs to supplement their cost proposal and/or to clarify any costs.

In addition, the cost proposal shall be provided in two formats: 1) an Excel version with fields unlocked for ease of analysis and 2) a signed PDF version. These two cost proposal formats shall be submitted as separate documents, separate from the technical proposal. There are no formulas provided/contained in the Excel template and the proposer is responsible for any errors related to formulas or other inputs submitted to VCTC.

10. **Disadvantaged Business Enterprises (DBE)** (2 Pages Maximum, including Exhibit 10-O2) - CONSULTANT shall demonstrate that it has taken necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract in accordance with 49 CFR Part 26. To ensure equal participation of DBEs provided in 49 CFR 26.5, VCTC has established a **DBE goal of 12%** for this contract. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers. CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. DBE requirements are further described in the Template Agreement (Article XVIII) included with this RFP. Proposals shall include the completed form (Exhibit 10-O2) available as Attachment C and a fillable version online available here:

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c10/10o2.pdf>.

C. Proposal Evaluation Criteria

Proposals will be reviewed by an evaluation committee established by VCTC. At VCTC's sole discretion, interviews will be arranged with some, all, or none of the proposers via Microsoft Teams on Monday, January 20, 2025. The time and date of interviews are subject to change. The following guidance is provided to help produce quality and concise proposals:

The study approach should effectively communicate the proposer's understanding of the project and their management approach. In addition to describing or explaining the project, this section should include an identification of requirements and constraints to consider and address. It should demonstrate that the consultant has the knowledge required and the capability needed to perform the tasks described in the scope.

The list of relevant projects would benefit from descriptions of those projects and the relevant work that the proposing firm or its team members performed as a part of that project – especially for projects that VCTC staff may not be familiar with.

The project team organization chart descriptions should convey the expected roles, responsibility, and availability of the project manager and key staff. It should be clear who is doing what work. It should be clear that the project manager and team members have the necessary experience and qualifications to perform the work, including any certificates or licenses that may be appropriate.

Selection criteria and maximum points per category are as follows:

CRITERIA	POINTS
Understanding of Project (0 – 15 points)	
Proposed Team Qualifications & Resumes (0 – 25 points)	
Project Experience (0 – 25 points)	
Client References (0 – 10 points)	
Project and Schedule Management Approach (0 – 15 points)	
Cost Proposal and Fee Schedule (0 – 10 points)	
TOTAL (100 Points Possible)	

IV. RESERVATION OF RIGHTS

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

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

V. FUNDING PARTNER AND OVERALL PROGRAM GOALS

This Project is funded primarily through Surface Transportation Block Grant (STBG) funds. The federal STBG program funds projects to preserve and improve the conditions and performance of highways, bridges, public roads, pedestrian and bicycle infrastructure and transit capital projects. Project funding is also provided by a grant from the Southern California Association of Governments (SCAG) Regional Early Action Planning (REAP) County Transportation Commissions Partnership Program. Program goals include Promoting Infill Development that Facilitates Housing Supply, Choice, and Affordability; Affirmatively Furthering Fair Housing, and Reducing Vehicle Miles Traveled. The Project will align with these goals.

VI. SANTA PAULA BRANCH LINE TRAIL MASTER PLAN UPDATE AND ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

SCOPE OF WORK

Background and Context

VCTC serves as the regional transportation planning agency for Ventura County. VCTC purchased the Santa Paula Branch Line (“SPBL”) railroad and associated right-of-way in 1995 for use as a multimodal transportation corridor. The SPBL consists of 32 miles of railroad right-of-way with 29 miles of serviceable track stretching from East Ventura/Montalvo within the City of Ventura to the unincorporated community of Piru within the Santa Clara River Valley (also known as Heritage Valley). 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.

VCTC acquired the SPBL corridor with the intent to build a trail for active transportation and recreation. The 1996 SPBL Recreational Trail Master Plan documented preliminary design and environmental work. In 2000, VCTC adopted a Master Plan and Environmental Impact Report (EIR) for the SPBL Recreational Multi-Use Trail. The SPBL Trail project is identified within the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy as RTP ID 5N011.

Sections of the SPBL Trail have been built out within the Cities of Santa Paula and Fillmore and within the Piru community.

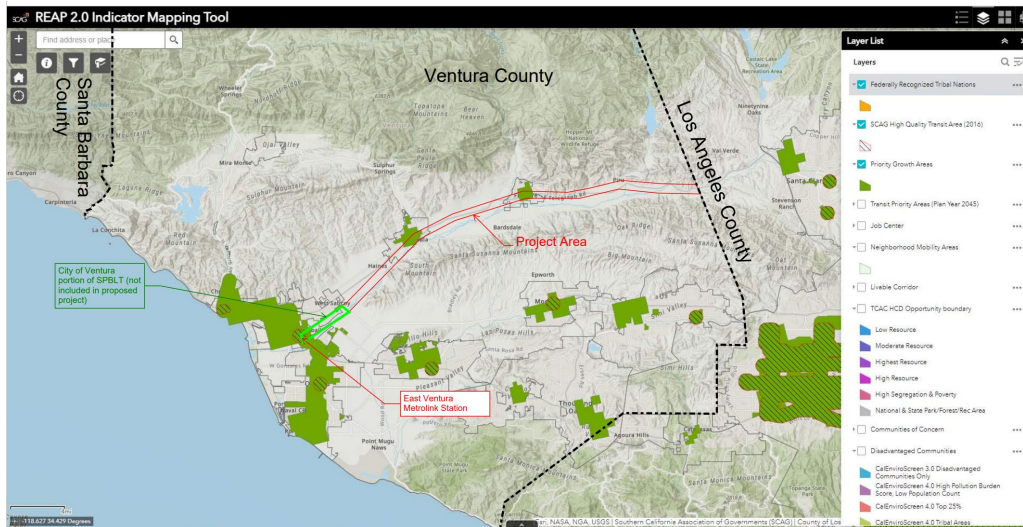
In April 2022, VCTC adopted a goal to “reinvigorate the process to complete the SPBL trail,” and in April 2023, VCTC adopted a new Strategic Plan that includes Strategy A8: “Update the Santa Paula Branch Line trail master plan, validate trail alignment, connections, and amenities, and update existing conditions to facilitate trail completion, with stakeholder engagement.”

To accomplish these goals, VCTC applied for and received a grant from the SCAG Regional Early Action Planning (REAP) County Transportation Commissions Partnership Program in July 2023. With funding from this grant award, this Request for Proposals (RFP) will result in an updated Master Plan and a new Environmental Impact Report/Environmental Impact Statement (EIR/EIS), hereinafter referred to as the “Project”. The Project will update existing conditions, phasing plans, and cost estimates, with a focus on equitable transportation investments in the Santa Clara River Valley, improving active transportation and connections to housing, transit, and job centers, and reducing Vehicle Miles Traveled (VMT) and Greenhouse Gas (GHG) emissions.

The original trail planning effort completed an EIR in compliance with the California Environmental Quality Act (CEQA) but did not include an Environmental Impact Statement (EIS) component to comply with the National Environmental Policy Act (NEPA). A NEPA / EIS component is included in this RFP and Trail Master Plan Update to open up the future possibility of applying for Federal funding opportunities to construct the trail.

Study Area

While the original *SPBL Recreational Trail Master Plan* adopted in 2000 covers the full railroad corridor from the East Ventura/Montalvo Metrolink Station to the area east of the unincorporated community of Piru, the focus of this Project will be from Saticoy Station through Piru. Design and construction of the approximately 4-mile trail section from East Ventura/Montalvo to Saticoy is currently advancing through a separate and distinct project effort led by the City of Ventura. An additional approximately 1.5-mile of trail is also currently advancing through a separate project effort led by the City of Santa Paula.



Past Plans, Studies, and Best Practices

Proposers are not required to read the following documents, but they provide context for the SPBL Trail Master Plan Update and EIR/EIS and will serve as a foundation for the update to the Master Plan and environmental documents. These documents are available online as noted below:

- Santa Paula Branch Line Master Plan (1996)
- <https://www.goventura.org/wp-content/uploads/2023/12/SPBL-Master-Plan.pdf>
- Santa Paula Branch Line Recreational Trail Master Plan and Environmental Impact Report (2000)
<https://www.goventura.org/wp-content/uploads/2023/12/SPBL-Rec-Trail-Master-Plan.pdf>
- Santa Paula Branch Line Trail Compatibility Survey (2015)
<https://americantrails.org/resources/santa-paula-branch-line-recreational-trail-compatibility-survey>
- Best Practices and Lessons Learned for Rails with Trails (Federal Railroad Administration, 2021)
<https://railroads.dot.gov/sites/fra.dot.gov/files/2021-06/Rails%20with%20Trails%20Best%20Practices%20and%20Lessons%20Learned.pdf>
- Ventura County Bicycle Wayfinding Plan (2017)
https://www.goventura.org/wp-content/uploads/2018/03/VCTC_Bicycle_Wayfinding_Plan_April_2017_FINAL.pdf

Agricultural Resource Protection

The Santa Paula Branch Line travels through a heavily agricultural area, particularly in the unincorporated areas between the corridor cities. Protection of agricultural resources has always been, and remains to this day, integral to SPBL Trail planning and design. As stated in the 1996 Santa Paula Branch Line Master Plan, “The Santa Paula Branch Line and its stations were an integral part of not only the development of the Santa Clara River Valley and its agricultural history as well. The discussions in the previous chapters illustrate that this Master Plan is based in large part on restoring and preserving the rail line’s place in the valley’s history and economy. The acquisition of the line by VCTC was not based solely on the use of the corridor for rail and rail-related purposes. The line was also purchased for the purpose of developing a recreational trail that would ultimately connect bicycle facilities in Santa Clarita to the beaches and the California Coastal Pathway (bike and hiking trail). ... It is recognized that despite all efforts to the contrary, conflicts between agricultural and recreational uses may sometimes be unavoidable. Because it is the agricultural activities that make the Santa Clara River Valley truly unique in Southern California, if not the country, it must be protected to the greatest extent possible. Therefore, an underlying principle of this Master Plan is that where there is a high potential for conflict between agricultural and planned recreational activities, all reasonable alternatives must be explored and all feasible mitigation measures implemented prior to construction of any recreational trail facilities.” Design Criteria and mitigation measures included in the 1996 Master Plan, 2000 Recreational Trail Master Plan and EIR, and 2015 Trail Compatibility Survey will be combined with the results of stakeholder engagement and application of modern design techniques and technologies to foster compatibility and minimize impacts to agriculture to the greatest extent possible through this Master Plan Update. As such, experience with commercial agriculture and planning to address impacts to agriculture will be an important aspect of a successful response to this Request for Proposals.

Deliverables

The Project includes two major deliverables – an updated Master Plan and a new combined EIR/EIS, which will include substantial public participation and technical studies, and will be conducted in parallel.

1. Project Management

1.1. Meetings

The Consultant shall report the status of the work effort, progress, and schedule on a monthly basis. Any modification to the frequency of project meetings (i.e. Project Development Team, or PDT) shall be approved by both VCTC and the Consultant. The Consultant shall use systems that are compatible with already established VCTC systems, policies, software, procedures, and practices. Reports shall provide the necessary information to assure VCTC that the work is being accomplished as required and to facilitate invoice review and approval. The Consultant’s project management system shall feature safeguards for the early identification of issues and their effective resolution.

1.2. Project Reporting

The Consultant’s Project Manager is responsible for monitoring project performance and, if necessary, adjusting project resources to accomplish activities in a manner consistent with the adopted scope, budget, and schedule. The Consultant’s Project Manager shall notify VCTC Project Manager or designee of any modification requests to the project scope, budget, and/or schedule and will adhere to the project requirements that are mutually agreed upon between VCTC and the Consultant. The base project schedule shall be submitted prior to the project kick-off meeting and will be reviewed and finalized within seven (7) business days of the kick-off meeting. The Consultant shall also report all corrective

measures to the VCTC Project Manager for review and approval. The deliverables are anticipated to be completed no later than November 30, 2025. An additional one (1) month will be allotted for completion of final drafts, reviews, formatting, and administrative tasks.

The Consultant shall provide a minimum of fourteen (14) calendar days to VCTC staff to thoroughly review each deliverable. More complex deliverables may require up to three (3) to four (4) additional weeks for VCTC review. A deliverable is not accepted until formal written notice is provided by VCTC's Project Manager or designee. This process shall ensure that quality is achieved through checking, reviewing, and the managing of work activities for both VCTC and the Consultant. The status of the work efforts shall be reflected in monthly progress reports documenting the Consultant's effort during the billing period, tasks to be accomplished over the next 30 days as well as any forthcoming challenges and issues and potential methods for resolution.

Prior to acceptance and finalization, **ALL** deliverables shall be submitted to VCTC at 90% completion for review. Work deliverables should be proofread before submission to VCTC and include minimal to no grammatical or spelling errors. Incomplete deliverables and/or deliverables submitted with excessive errors may be rejected until errors have been fixed.

DELIVERABLES:

1. Project schedule – Updated on monthly basis
2. Meeting agendas
3. Meeting minutes

2. Existing Conditions

2.1. Existing Conditions Analysis and Assessment. The purpose of this task is to gather existing conditions information that includes current mode share, description of land use and destinations, existing bicycle parking, existing wayfinding, and existing non-infrastructure programs.

2.2. Existing Bicycle and Pedestrian Facilities Map. The purpose of this task is to develop a map of existing pedestrian facilities and existing bicycle facilities within the corridor.

2.3. Equity Data and Analysis. The purpose of this task is to identify census tracts that are considered to be disadvantaged or low-income and identify the bicycle and pedestrian needs.

DELIVERABLES:

1. Existing Conditions Technical Memorandum
2. Map of existing pedestrian facilities and existing bicycle facilities
3. Equity Analysis Technical Memorandum

3. Outreach and Engagement

Outreach and engagement will be key to ensure buy-in and collecting input. The Consultant, in collaboration with VCTC staff, shall develop a universally accessible outreach plan that will establish comprehensive and meaningful strategies for engaging stakeholders and soliciting input. This outreach plan will be adjusted as conditions permit.

Key to Outreach and Engagement will be establishing two committees to help guide the SPBL Trail Master Plan Update and EIR/EIS preparation.

- 3.1 Technical Advisory Committee.** A Technical Advisory Committee (TAC) comprised of local agencies will be established. Schools involved in the project include Ventura Unified School District, Santa Paula Unified School District, Fillmore Unified School District. The local area agencies and groups include the County of Ventura Public Works, Parks, Agricultural Policy Advisory Committee (APAC), Supervisor District 1, District 3, Farmworker Resource Program Advisory Committee (FRPAC), Saticoy MAC, Cities of Ventura, Santa Paula, and Fillmore Public Works, Parks & Recreation, Community Development, and Police Departments, Caltrans District 7, and Sierra Northern Railway, among others. Present and gather feedback at municipal advisory council meetings, telephone, town hall meetings.
- 3.2 Citizens Advisory Committee.** A Citizen's Advisory Committee will be formed consisting of identified stakeholders to meet quarterly to guide the plan development. Potential project champions will be identified. Potential stakeholders and partner organizations include but are not limited to: Agricultural-oriented organizations such as Fillmore High School Farm, 4H clubs, Ventura County Fair; Community organizations include the Fillmore Association of Businesses, Santa Paula Rotary Club, The Mixteco/Indigena Community Organizing Project (MICOP), Santa Paula Latino Town Hall, and Ventura (County); Community Partners, such as Santa Paula Chamber of Commerce. Farm Bureau of Ventura County and CoLAB will also be invited to participate. Other stakeholders include cyclists such as Channel Islands Bike Club, Bike Ventura, CycleCalCoast, and Ventura County Recumbent Riders.
- 3.3 Targeted Stakeholder Meetings.** Meetings with other known agricultural stakeholders will also be conducted, including with the Ventura County Coalition of Labor, Agriculture, and Business (CoLAB), County Agricultural Commissioner, Ventura County Agriculture Association, California Avocado Commission Board, Ventura County Chapter of California Women for Agriculture, Ventura County Spray Safe Committee, and approximately 25 companies or major landowners. These meetings will be to solicit feedback on a 1:1 basis.
- 3.4 Website, Social Media Page, and Surveys.** This task will include creation of a website and social media page for plan announcements and documents to be posted. This task also includes graphic design for these media outlets. Also include an advertisement campaign, online surveys and e-newsletters.
- 3.5 Community Workshop.** This task includes hosting three (3) community workshops in various parts of the county and varying times to gain community input on new bicycle and pedestrian facilities. The community meetings will include a Spanish translator. TAC member agencies will be invited to up to two (2) design charettes.
- 3.6 Attend Community Events.** Attend at least 10 different community events to gather public input. Events will include community ride-alongs on built portions, listening sessions, sharing project materials and information for their dissemination, "pop-ups" at stakeholder events, presentations, and interacting with youth and caretakers at family events, cultural events, libraries, health fairs, on-trail QR code surveys, interactive feedback mechanisms, demonstration projects, and farmers markets/swap meets. This task will also involve schools and offer learning opportunities for kids through school, conduct listening sessions with parents at school and PTA events, appoint student advisors/liaisons, and create a public comment database.

The outreach will focus on gathering the data needed to update the Santa Paula Branch Line Trail Master Plan and Environmental Impact Report / Environmental Impact Statement. Specific questions at key milestones in the project will allow members of the diverse communities and stakeholders to give insightful and

meaningful input into the planning process. Maps, graphics, pictures and results will be posted in accessible formats online to solicit input.

DELIVERABLES:

1. TAC formation and meetings, Meeting Agendas and Minutes
2. CAC formation and meetings, Meeting Agendas and Minutes
3. Targeted Stakeholder Meetings, Meeting Agendas and Minutes
4. Website, Surveys, Advertisements
5. Workshops and Charettes, Meeting Agendas and Minutes
6. Attendance at events, Notes from Input Received
7. Presentations, Notes from Input Received

4. Conceptual Planning

The purpose of this task is to identify constraints and opportunities, develop proposed alternatives, prepare concept-level cost estimates, evaluate alternatives, identify and evaluate risks, financial needs, and create an implementation strategy.

4.1. Identify Constraints and Opportunities.

The Consultant shall identify "low hanging fruit", consider institutional constraints on reasonability, develop Impact Avoidance and Minimization strategies, review disadvantaged community and geographical sharing of benefits and risks.

4.2 Proposed Alternatives Development.

The purpose of this task is to create maps of the proposed pedestrian and bicycle facilities, and potential NI programs based on the community and stakeholder input and the TAC. Description will include estimated mode shift from identified projects and programs.

4.3 Develop Concept-Level Programmatic Cost Estimates. The purpose of this task is to prepare order of magnitude cost estimates including PS&E, Right of Way acquisition, Tenant Eviction costs, major utility relocation, construction engineering, and closeout.

4.4 Alternative Evaluation. Develop a methodology for project evaluation and conduct analysis.

4.5 Risk Register. The purpose of this task is to enumerate risks and assign probability, and to develop potential contingency plans to keep project construction on schedule.

4.6 Identify Financial Needs. This task includes identifying the financial needs for future projects and programs by listing anticipated costs, revenue sources and potential grant funding.

4.7 Create an Implementation Strategy. The purpose of this task is to prepare a description of steps necessary to implement the plan and the reporting process that will be used to keep the adopting agency and community informed of the progress being made in implementing the plan. This strategy includes maintenance considerations and a proposed timeline for implementation.

DELIVERABLES:

1. Constraints and Opportunities Technical Memorandum
2. Alternative conceptual layouts
3. Programmatic cost estimates
4. Alternative Evaluation Technical Memorandum
5. Master Project Risk Register
6. Funding Strategies Technical Memorandum
7. Implementation Schedule

5. Plan Production and Approval

5.1. Draft Plan. The Consultant shall prepare a draft plan and receive comments.

5.2. Draft Final Plan. The Consultant shall prepare a draft final plan and receive comments.

5.3. Final Plan. The Consultant shall prepare the final plan.

5.4. Resolution. The Consultant shall, in collaboration with VCTC staff, present the final plan to VCTC Board for approval.

DELIVERABLES:

1. Draft Master Plan
2. Draft Final Master Plan
3. Final Master Plan
4. Presentation
5. Resolution from VCTC Board

6. Project Definition

The consultant will contact public agencies and tribal governments and include correspondence with agencies. A Notice of Preparation (NOP) with Initial Study will be prepared as well as a Notice of Intent (NOI). A public scoping meeting will be conducted by VCTC with support from the consultant team. The consultant will describe the public participation method used for the proposed project and the process.

DELIVERABLES:

1. Notice of Intent
2. Notice of Preparation

7. Technical Studies

7.1. Section 4(f) and 6(f)

The Consultant shall develop a technical study that discusses parks, recreational facilities, wildlife refuges, and historic properties found within or next to the project area that do not trigger Section 4(f) protection. Analyze all archaeological and historic sites within the Section 106 area of potential effects (APE) and all parks, recreational facilities, and wildlife and waterfowl refuges within the Section 4(f) study area to determine whether they are protected Section 4(f) properties. The Section 4(f) study area should include properties within and immediately adjacent to the project limits, and nearby properties to ensure that proximity impacts can be considered. The project should include a special focus on Saticoy Depot, which is on the National Register. Section 6(f) may also be required due to proximity to the Santa Clara River watershed and possible conversion of non-transportation properties.

7.2 Human Environment Technical Studies

The Consultant shall develop a technical study that includes Land Use, Community Impacts (Employment and Income, Jobs/Housing Balance, Public Transportation, Agriculture),

Utilities/Emergency Services, Traffic and Transportation/Pedestrian and Bicycle Facilities (Traffic Impact Analysis), Cultural Resources.

7.3 Physical Environment Technical Studies

The Consultant shall develop physical environment technical studies that include Geologic Hazards, Hazards Waste/Materials, Geology and Soils, Hydrology, and Phase 1 Environmental Site Assessment.

7.4 Biological Environment Technical Studies

The Consultant shall prepare physical environment technical studies that include Natural Environment Study (NES) for the proposed project, develop Natural Communities and Plant Species sections.

7.5 Climate Change

The Consultant shall identify and assess vehicle miles traveled (VMT) and greenhouse gas emissions.

DELIVERABLES:

1. Section 4(f) Individual, Programmatic, or De minimis determination
2. Transportation Impact Analysis
3. Cultural Resources Study
4. Community Impact Assessment
5. Phase 1 Environmental Site Assessment
6. Geology and Soils Report
7. Hydrology Study
8. Natural Environment Study
9. Climate Change Study

8. Draft EIR/EIS

8.1. Alternatives

The Consultant shall develop a range of reasonable alternatives, in coordination with preparation of the Master Plan Update. Alternatives shall incorporate Impact Avoidance and Minimization Features. Comparison of alternatives will focus on the criteria used for evaluating the alternatives and explain how the criteria were developed and how the criteria will be used to reach a decision. Alternatives shall include the no-build alternative in the comparison discussion. Identify and explain the rationale for identifying the locally preferred alternative. The identification decision shall be structured, analytical, and clearly address the specific evaluation criteria developed for the project. Explain rationale for no further study of eliminated alternatives.

8.2. Cumulative Impacts

The Consultant shall evaluate cumulative impacts by considering the direct and indirect effects of the proposed project.

8.3. Determining Significance under CEQA/NEPA

The purpose of this task is to make a significant impact determination and identify mitigations. NEPA requires that an EIS be prepared when the proposed project as a whole has the potential to "significantly affect the quality of the human environment." NEPA does not require that a

determination of significant impacts be stated in the environmental documents. CEQA does require the identification of each "significant effect on the environment" resulting from the project and ways to mitigate each significant effect.

8.4. CEQA Environmental Checklist and MMRP

The consultant shall identify physical, biological, social and economic factors that might be affected by the proposed project. This task also includes preparation of a Mitigation and Monitoring Plan (MMRP).

8.5. Section 4(f) and 6(f) Evaluations

The consultant shall analyze all public and private parks, recreational facilities, and wildlife refuges within the Section 4(f) study area to determine whether they are protected Section 4(f) properties.

8.6. Draft EIR/EIS

The consultant shall prepare a draft Environmental Impact Report/Environmental Impact Statement.

DELIVERABLES:

1. Narrative on alternatives, affected environment, environmental consequences
2. Narrative on cumulative impacts
3. Significant impact determination, identification of mitigations
4. CEQA Checklist
5. Mitigation and Monitoring Plan (MMRP)
6. Section 4(f) and 6(f) evaluation sections
7. Draft EIR/EIS Document

9. Public Participation

9.1. Public Outreach meetings

These meetings will be focused on satisfying the specific regulatory requirements of NEPA and CEQA. Additional public and stakeholder meetings will take place as part of the Master Plan development.

9.2. Circulation to Reviewing Agencies

The Consultant shall circulate the Draft EIR/EIS to reviewing agencies, including California Department of Conservation (DOC), California Department of Fish and Wildlife, South Coast Region 5 (CDFW), California Department of Parks and Recreation, California Department of Transportation, District 7 (DOT), California Highway Patrol, California Native American Heritage Commission (NAHC), California Regional Water Quality Control Board, Los Angeles Region 4 (RWQCB), California State Lands Commission (SLC), Office of Historic Preservation, Resources Agency, and other agencies as determined appropriate.

9.3. Comments and Responding to Comments

The Consultant shall conduct a mandatory public comment period and modify the Draft EIR/EIS document to reflect all comments and responses to comments.

DELIVERABLES:

1. Up to three (3) geographically spaced and noticed public outreach meetings
2. Distribution to agencies
3. Incorporation of and response to comments

10. Final EIR/EIS

The purpose of this task is to prepare a final EIR/EIS document.

10.1. Final EIR/EIS.

The Consultant shall prepare a Final EIR/EIS that includes response to comments received on the Draft EIR/EIS and identify the preferred alternatives.

10.2. Supplemental Technical Study Updates

The Consultant shall include potential effort required for supplemental study updates.

DELIVERABLES:

1. Final EIR/EIS
2. Supplemental Technical Studies

11. Regulatory Process

11.1. Findings and Statement of Overriding Considerations

The Consultant shall prepare Findings and Statement of Overriding Considerations.

11.2. Permits: USACE, RWQCB, CDFW

The Consultant shall identify necessary environmental regulatory permits and prepare and assist VCTC to secure permits from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife, if/as required. The Santa Clara River and certain tributaries may be under the jurisdiction of these agencies.

11.3. Record of Decision/Notice of Determination

The Consultant shall prepare a Record of Decision (ROD) / Notice of Determination (NOD) and required regulatory approvals.

DELIVERABLES:

1. Findings and Statement of Overriding Considerations
2. 404 Permit (if required)
3. 401 Certification (if required)
4. 1602 Agreements (if required)
5. Section 408 Permit (if required)
6. ROD/NOD

VII. VCTC'S PROTEST PROCEDURES

A. General

1. This policy specifies procedures for Interested Parties (as hereinafter defined) protesting the following staff actions:
 - a) A written notice, by, or on behalf of, the Executive Director denying a bidder's or proposer's request for a change in contract requirement; and
 - b) A written recommendation to Ventura County Transportation Commission ("VCTC") or a decision made by, or on behalf of, the Executive Director to disqualify a proposer, bidder or subcontractor; and
 - c) A written recommendation by, or on behalf of, the Executive Director that VCTC award a contract to a particular bidder or proposer.
2. This policy does not govern any VCTC staff decision not listed in this Section.
3. When a protest has been properly filed, pursuant to the procedures hereinafter set forth, prior to contract award, the VCTC shall not award the contract prior to deciding the protest. When a protest has been properly filed before the opening of bids, bids shall not be opened prior to the VCTC decision on the protest. When a protest has been filed properly after the contract is awarded, the contract shall not be executed until the protest is resolved by the VCTC.
4. Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:
 - a) The information is designated proprietary by the person submitting the information to VCTC. If the person submitting material to VCTC considers that the material contains proprietary material which should be withheld, a statement advising of this fact shall be affixed to the front page of the material submitted and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

B. Filing a Protest

1. Protests may be filed only by "Interested Parties". "Interested Parties" are defined as (a) bidders who have responded, and prospective bidders who may respond, to a request for bids, (b) prospective professional services contractors who may respond, and professional service contractors who have responded, to a request for proposals on a VCTC contract and/or a generally funded

contract, and (c) subcontractors or suppliers at any tier who have a substantial economic interest in an award, a provision of the specifications, or a bid or proposal submitted to VCTC by a prime contractor, or in the interpretation of the provisions of such documents.

2. Protests to a contract requirement must be filed at least ten (10) working days prior to bid opening or the deadline for receiving proposals. Protests to VCTC staff actions must be filed within five (5) working days of receipt by the bidder or proposer from the Executive Director, or a person authorized to act on behalf of the Executive Director, or written notice of the VCTC staff action.
3. Protests shall be addressed to Ventura County Transportation Commission, 751 E. Daily Drive, Suite 420, Camarillo CA 93010, or such other address as may appear on the request for proposal for bid solicitation.
4. Protests shall be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest shall be submitted by the protestor in the time and manner specified in this section.
5. The Executive Director, or an authorized person acting on behalf of the Executive Director, shall provide notice, by telephone, telephone facsimile (FAX) or by letter, to all bidders and/or persons who have submitted proposals on the contract which is subject to the protest known to VCTC. Such notice shall state that a protest has been filed with VCTC and identify the name of the protestor. The notice shall be given not more than five (5) working days after receipt of a properly filed protest. The notice shall state that bidders will receive further information relative to the protest only by submitting a written request for further information to the Executive Director.

C. VCTC Preliminary Response to a Protest: Meeting with Staff to Attempt Early Resolution of the Protest

1. Not more than ten (10) working days after receipt of a properly filed protest, the Executive Director, or a person authorized to act on his or her behalf, shall prepare and distribute to the protestor and to all persons specified in Section B.5, above:
 - a) A written preliminary response to the protest. This response shall include a brief explanation of the reasons why the protested VCTC staff action is justified; and
 - b) The time, date and place of the meeting described in Section C.2, below.
2. The Executive Director and/or appropriate VCTC staff shall meet with the protestor to discuss and attempt to resolve the protest within thirty (30) days of the response required by C.1 (a) above.
3. After the meeting required by Section C.2, above the protestor shall within five (5) working days give the Executive Director written notice that either the protest is withdrawn or, alternately, that the protestor requests further consideration of the protest. In the event that the protestor fails to file the notice required by this Section C.3 at the office of the Executive Director within five (5) working days after the meeting, the protest shall be deemed withdrawn.

D. Further Investigation

1. If a protest is not withdrawn pursuant to Section C.3, above, the Executive Director shall, within thirty (30) days of receipt of the notice from the protestor described in Section C.3, above, further investigate the protest with the assistance of the VCTC staff.
2. The Executive Director may contract for third-party consulting services when necessary to investigate a protest. The Executive Director may negotiate with the protestor and other interested parties the sharing of the cost of such consulting services.

3. As part of the investigation, the Executive Director shall establish a reasonable time within which VCTC, the protestor, and other interested parties shall exchange all documents and arguments relevant to the protest; provided, however, that such time shall not exceed thirty (30) days without the concurrence of the protestor and the Executive Director.

E. Intended Decision: Comments by Protestor and Other Parties

1. Following investigation, the Executive Director shall, within thirty (30) days, prepare and distribute to the protestor and all persons specified in Section B.5:
 - a) An intended decision recommending actions which the Executive Director believes the VCTC should take to resolve the protest and specifying the reasons for the recommended action of the VCTC.
 - b) A statement of the date within which the protestor and other persons must submit written comments with respect to the intended decision. Such date shall allow a reasonable period for rebuttal and shall vary according to the complexity of the particular protest;
 - c) Given written notice to all Interested Parties of the time, date and place of the VCTC meeting at which the protest will be considered.
2. The following materials shall be included in the agenda package sent to VCTC members prior to the VCTC meeting and shall be available to any person at the VCTC office at least five (5) working days before the hearing:
 - a) The intended decision described in Section E.1(a), above.
 - b) All written comments received within the submittal period described in Section E.1(b), above.
 - c) If the Executive Director has revised his/her intended decision since its distribution pursuant to Section E.2(a), above, a written description of the new intended decision and the reasons for revision.

F. VCTC Consideration

1. At the hearing, VCTC staff and any person may present evidence relating to the protest. At the beginning of the hearing, the Chair of the VCTC may announce time limits on testimony and other procedural rules which, in the opinion of the Chair, are reasonably necessary to preclude repetitious or irrelevant testimony and afford all persons wishing to testify the opportunity to be heard.
2. In rendering its decision on the protest:
 - a) VCTC may adopted or amend the intended decision and findings of fact prepared by the Executive Director and Staff; or
 - b) Make findings and adopt a decision different from the findings and intended decision of the Executive Director; or
 - c) Elect to defer its decision and direct VCTC staff
 - d) To Further investigate the protest; or
 - e) Hire an impartial hearing officer to conduct a hearing and prepare a written recommended decision, including findings of fact, to be returned to VCTC for decision which shall be made pursuant to the procedures outlined in this Section.

ATTACHMENT A – DRAFT CONTRACT

**SANTA PAULA BRANCH LINE TRAIL MASTER PLAN UPDATE
AND EIR/EIS
TEMPLATE AGREEMENT**

NOVEMBER 20, 2024

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ARTICLE I INTRODUCTION

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, VCTC:

The name of the “CONSULTANT” is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the “CONSULTANT” will be
(NAME)

The name of the LOCAL AGENCY is as follows:

VENTURA COUNTY TRANSPORTATION COMMISSION

The Contract Administrator for VCTC will be:

Amanda Fagan, Director of Planning & Sustainability

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT'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. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless VCTC, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of VCTC, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. VCTC is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, 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 CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds VCTC harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the VCTC. However, claims for money due or which become due to CONSULTANT from City 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. CONSULTANT shall be as fully responsible to the VCTC for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- 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 CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the VCTC's Contract Administrator to determine, if CONSULTANT 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. CONSULTANT's Project Manager shall meet with VCTC's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

The purpose of this AGREEMENT is to provide consultant services to update the Santa Paula Branch Line Trail Master Plan and environmental documents, as further described in the Request for Proposals Scope of Work, dated November 20, 2024, attached and incorporated herein as Attachment B. The Project includes two major deliverables – an updated Master Plan and a new combined EIR/EIS, which will include substantial public participation and technical studies, and will be conducted in parallel.

A. Right of Way

Right of Way requirements are to be determined and shown by CONSULTANT. Land surveys and computations with metes and bounds descriptions are to be made to the extent practicable. Available Right of Way parcel maps and associated documentation will be furnished to the CONSULTANT by VCTC.

B. Surveys

The CONSULTANT has the responsibility for performing preliminary surveys as further described in the Request for Proposals.

C. Subsurface Investigations

Subsurface investigations, including borings or other specialized services, are not anticipated to be included in the scope of work for this project.

D. 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 CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

E. 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 FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting are included in the fee.

F. Checking Shop Drawings

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

G. CONSULTANT Services During Construction

CONSULTANT'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.

H. Documentation and Schedules

CONSULTANT 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.

I. Deliverables and Number of Copies

The CONSULTANT 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 go into effect on (DATE), contingent upon approval by VCTC, and CONSULTANT shall commence work after notification to proceed by VCTC'S Contract Administrator. The AGREEMENT shall end on December 31, 2026, unless extended by AGREEMENT amendment.
- B. CONSULTANT 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 CONSULTANT 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 CONSULTANT, 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 CONSULTANT 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 CONSULTANT. If CONSULTANT 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. CONSULTANT 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. CONSULTANT 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 CONSULTANT 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 CONSULTANT'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, provided that VCTC gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. 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.
- B. VCTC may temporarily suspend this AGREEMENT, at no additional cost to VCTC, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If VCTC gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to VCTC for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in 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 CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT 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 CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to VCTC.
- D. When a CONSULTANT or Subconsultant 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 VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, 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 CONSULTANT'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, FHWA, 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 CONSULTANT, Subconsultants, and the CONSULTANT'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.

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, CONSULTANT 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 CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant 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 CONSULTANT'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 CONSULTANT and approved by VCTC Contract Administrator to conform to the audit or review recommendations. CONSULTANT 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 CONSULTANT 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. CONSULTANT'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 CONSULTANT 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 CONSULTANT 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.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT 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 CONSULTANT 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:

- a. 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.
 - b. 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.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT 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 CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT 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.
 4. CONSULTANT 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 CONSULTANT 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 CONSULTANT, either as a prime or subconsultant, 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 Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the VCTC for the acts and omissions of its Subconsultants 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 CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the VCTC's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT 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 CONSULTANT'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 Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the VCTC.
- E. Any substitution of Subconsultants must be approved in writing by the VCTC Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant'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 CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant 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 subconsultant, 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 his or her 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 subconsultants.

- G. Prompt Payment of Withheld Funds to Subconsultants

The VCTC may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the VCTC, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The VCTC shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

No retainage will be held by the VCTC from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. 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 CONSULTANT or subconsultant 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 CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

- H. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant 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 CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by VCTC's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

- B. For purchase of any item, service, or consulting work not covered in CONSULTANT'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.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT 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, CONSULTANT 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 CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT'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 CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by VCTC.
 - 2. 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 RESERVED

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with VCTC that may have an impact upon the outcome of this AGREEMENT or any ensuing VCTC construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing VCTC construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to VCTC any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise VCTC of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either VCTC ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any VCTC employee. For breach or violation of this warranty, VCTC shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING VCTC, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or VCTC appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. 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 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by VCTC to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the VCTC upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources

of information and its facilities as said Department or VCTC shall require to ascertain compliance with this clause.

- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the VCTC components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to VCTC. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (VCTC), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the VCTC shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTs who enter into a federally-funded agreement will assist the VCTC in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 12 %. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10- 02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. Contract Assurance Under 49 CFR 26.13(b):
- CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Replacement of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the VCTC's written consent. CONSULTANT shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the VCTC. Unless the VCTC's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form.

Termination of DBE Subconsultants

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the VCTC:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The VCTC stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the VCTC's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The VCTC determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the VCTC. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the VCTC by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with

the request as if the DBE had agreed to CONSULTANT's written notice.

3. Submit CONSULTANT's DBE termination request by written letter to the VCTC and include:
 - a. One or more above listed justifiable reasons along with supporting documentation.
 - b. CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
 - c. The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The VCTC shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

Replacement of DBE Subconsultants

After receiving the VCTC's written authorization of DBE termination request, CONSULTANT must obtain the VCTC's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the VCTC which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Description of scope of work and cost proposal
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of VCTC's authorization to terminate the DBE. CONSULTANT may request the VCTC's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
 - Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
 - Solicitations of DBEs for performance of work identified
 - Correspondence with interested DBEs that may have included contract details and requirements
 - Negotiation efforts with DBEs that reflect why an agreement was not reached
 - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive

- Copies of each DBE's and non-DBE's price quotes for work identified, as the VCTC may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports CONSULTANT's GFE

The VCTC shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

F. Commitment and Utilization

The VCTC's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The VCTC shall request CONSULTANT to:

1. Notify the VCTC's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each first-tier consultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the VCTC. On work completion, CONSULTANT shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the VCTC within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the VCTC within 90 days of contract acceptance. The VCTC will withhold \$10,000 until the form is submitted. The VCTC will release the withhold upon submission of the completed form.

In the VCTC's reports of DBE participation to Caltrans, the VCTC must display both commitments and attainments.

G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or

without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the VCTC at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the VCTC these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the VCTC immediately if they believe the DBE may not be performing a CUF.

The VCTC will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional VCTC evaluations. The VCTC must evaluate DBEs and their CUF performance throughout the duration of a Contract. The VCTC will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the VCTC must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the VCTC determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of VCTC's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the VCTC determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. VCTC may deny payment for the noncompliant portion of the work. VCTC will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will

correct the noncompliance findings for the remaining portion of the DBE's work. VCTC has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the VCTC's approval. The VCTC will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to VCTC's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the VCTC administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

Before beginning any work under this Contract, CONSULTANT, 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 CONSULTANT and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, CONSULTANT 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. CONSULTANT 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 CONSULTANT's compensation provided hereunder. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until CONSULTANT has obtained all insurance required herein for the subcontractor(s). CONSULTANT shall maintain all required insurance listed herein for the duration of this Agreement.

A. **Workers' Compensation.** CONSULTANT 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, CONSULTANT 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 CONSULTANT, 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.**

1. **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.
2. **Automobile Liability.** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage. 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.
3. **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 CONSULTANT 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.**

1. **General requirements.** CONSULTANT, 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.
2. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- The retroactive date of the policy must be shown and must be before the date of the Agreement.
- 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.
- 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, CONSULTANT 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 CONSULTANT's sole cost and expense, any extended reporting provisions of the policy, if the CONSULTANT cancels or does not renew the coverage.
- 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

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.
2. Verification of coverage. Prior to beginning any work under this Agreement, CONSULTANT shall furnish VCTC with complete copies of all policies delivered to CONSULTANT 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 CONSULTANT beginning work, this shall not waive the CONSULTANT's obligation to provide them. VCTC reserves the right to require complete copies of all required insurance policies at any time.
3. 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, CONSULTANT shall provide written notice to VCTC at CONSULTANT's earliest possible opportunity and in no case later than ten (10) working days after CONSULTANT is notified of the change in coverage.
4. 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 CONSULTANT, including VCTC's general supervision of CONSULTANT; products and completed operations of CONSULTANT, as applicable; premises owned, occupied, or used by CONSULTANT; and automobiles owned, leased, or used by the CONSULTANT 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.** CONSULTANT 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 CONSULTANT'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, CONSULTANT 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT 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 CONSULTANT'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 CONSULTANT to stop work under this Agreement or withhold any payment that becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof; and/or terminate this Agreement.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to VCTC for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or VCTC governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. VCTC has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by VCTC's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by VCTC's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, VCTC has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of VCTC's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by VCTC Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit VCTC, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by VCTC Safety Officer and other VCTC representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, VCTC has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take

all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal- aid contracts).
- E. VCTC may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY VCTC's CONSTRUCTION CONTRACTOR

- A. If claims are filed by VCTC's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with VCTC'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that VCTC considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from VCTC.
Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with VCTC's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to VCTC's operations, which are designated confidential by VCTC and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by VCTC relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or VCTC's actions on the same, except to VCTC's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by VCTC, and receipt of VCTC'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by VCTC. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI PROMPT PAYMENT

A. PROMPT PAYMENT FROM VCTC TO CONSULTANT

The VCTC shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the VCTC fails to pay promptly, the VCTC shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the VCTC shall act in accordance with both of the following:

1. The VCTC shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
2. The VCTC must return any payment request deemed improper by the VCTC to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

B. PROMPT PAYMENT CERTIFICATION

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the VCTC administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or

manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

The VCTC must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The VCTC must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

ARTICLE XXXII TITLE VI ASSURANCES

- A. TITLE VI - APPENDIX A. During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:
1. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
 2. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
 3. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 4. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
 5. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - b. cancellation, termination or suspension of the Agreement, in whole or in part.
 - a. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

B. TITLE VI - APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must

take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

ARTICLE XXXIII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

(NAME) ,Project Manager

(ADDRESS)

VCTC:

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

ARTICLE XXXIV CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named VCTC, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXV SIGNATURES

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

[CONSULTANT]

By: _____

Date: _____

[CONSULTANT SIGNATOR NAME AND TITLE]

ATTACHMENT B – COST PROPOSAL FORM

NOTE: Refer to electronic version of Cost Proposal Form
available in Excel Format at goventura.org/contracts.

Consultant:
Project Name: Santa Paula Branch Line Trail Master Plan and EIR/EIS Update
Agency Name: Ventura County Transportation Commission
Project Manager Name:
Project Manager Contact Info:

List each principle task and subtask, providing both the budget and timeline for each. Add or delete rows or columns as needed.

Task #	Task Title	Consultant	Subconsultant 1	Subconsultant 2	Total Cost	2019-20				2020-21				2021-22	
						Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
1	Project Management														
1.1	RESERVED FOR VCTC - RFP Procurement														
1.2	RESERVED FOR VCTC - Consultant Selection and Contract														
1.3	Project Development Team (PDT) Meetings														
2	Existing Analysis and Assessment														
2.1	Existing Conditions Analysis														
2.2	Existing Bicycle and Pedestrian Facilities Map														
2.3	Equity Data and Analysis														
3	Outreach and Engagement														
3.1	Technical Advisory Committee														
3.2	Citizens Advisory Committee														
3.3	Targeted Stakeholder Meetings														
3.4	Website, Social Media Posts, and Surveys														
3.5	Community Workshop (Quarterly)														
3.6	Attend Community Events														
4	Conceptual Planning														
4.1	Identify Constraints and Opportunities														
4.2	Proposed Alternatives Development														
4.3	Develop concept-level programmatic and estimates														
4.4	Alternative Evaluation														
4.5	Risk Register														
4.6	Identify Financial Needs														
4.7	Create an Implementation Strategy														
5	Plan Production and Approval														
5.1	Draft Plan														
5.2	Draft Final Plan														
5.3	Final Plan														
5.4	Resolution														
6	Project Definition														
7	Technical Studies														
7.1	Section 4(f) and 4(f)														
7.2	Human Environment Technical Studies														
7.3	Physical Environment Technical Studies														
7.4	Biological Environment Technical Studies														
7.5	Cumulative Change														
8	Draft EIR/EIS														
8.1	Alternatives														
8.2	Cumulative Impacts														
8.3	Determining Significance under CEQA/NESA														
8.4	CEQA Environmental Checklist and MNP														
8.5	Section 4(f) and 4(f) Evaluations														
8.6	Draft EIR/EIS														
9	Public Participation														
9.1	Public Outreach meetings														
9.2	Consultation to Reviewing Agencies														
9.3	Comments and Responding to Comments														
10	Final EIR/EIS														
10.1	Final EIR/EIS														
10.2	Supplemental Technical Study Updates														
11	Regulatory Process														
11.1	Findings and Statement of Overriding Considerations														
11.2	Permits: USACE, RWQCB, CDFW														
11.3	ROD/NOI														
12	RESERVED FOR VCTC - Administrative														
13	CONTINGENCY														
TOTAL		\$0	\$0	\$0	\$0										

*Please note all projects must be completed by
December 31, 2026.

ATTACHMENT C – DBE COMMITMENT FORM

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____
8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section		14. TOTAL CLAIMED DBE PARTICIPATION	\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 15. Preparer's Signature _____ 16. Date _____ 17. Preparer's Name _____ 18. Phone _____ 19. Preparer's Title _____	

DISTRIBUTION: 1. Original – Local Agency
2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.