Request for Proposals for On Call Rail Engineering Services for the Santa Paula Branch Line - Response to Questions Received as of November 24, 2026

1) **Section 6, Draft Contract: Cost Proposal/Fee Schedule: Would it be acceptable to provide a rate sheet only with escalation instead of the fee breakdown? If the fee schedule is required, is there a sample project or estimated amount of design reviews to support our cost proposal development?**
    a. It is acceptable to provide a rate sheet with escalation.
2) **Section 3, Draft Contract: Attachment B Proposal for Services Dated April 18, 2024 is missing or unknown. Is this referencing the RFP provided with this solicitation?**
    a. The reference to a proposal Dated April 18, 2024 was erroneously retained from a prior contract used to prepare the Draft Contract. Attachment B will refer to the selected proposer's proposal with an updated date consistent with the current solicitation. An updated Template Contract with the corrected reference is enclosed.
3) **Is there a maximum or minimum page count for the response? Would the page count include attachments or appendices such as resumes or project samples.**
    a. Please limit proposals to no more than 10 pages, not including attachments, resumes or appendices.
4) **The email below states the proposal is due on 12/11/26, but the due date in the RFP attachment is December 6, 2026? Can you confirm the correct due date?**
    a. Proposals are due by Friday, December 11, 2026 no later than 4:00 p.m. An updated RFP with the corrected due date is enclosed.
5) **Does VCTC already have on-call or prequalified design firms expected to perform this work? If so, could you share which firms are eligible or suggest how we might connect with them?**
    a. VCTC does not currently have an on-call or pre-qualified design firm expected to perform this work.
    b. The solicitation is open to all qualifying rail engineering firms. The Request for Proposals has been shared directly with the following firms:
        i. Koppers
        ii. Pacific Pros
        iii. RailPros
        iv. Rail Star Engineering
        v. Wilson & Co.
6) **May a firm participate as a subconsultant to more than one proposing team?**
    a. Yes, a firm may participate as a subconsultant to more than one proposing team for this Request for Proposals.

Request for Proposals for Plan Check & Engineering Services

for the Santa Paula Branch Line Right-of-Way

November 18, 2026 (Updated Nov. 25, 2026)

The Ventura County Transportation Commission (VCTC) is seeking proposals from qualified railroad engineering firms for on-call plan check and engineering support for the approximately 32-mile VCTC-owned Santa Paula Branch Line (SPBL) railroad right-of-way, which extends from East Ventura through the cities of Santa Paula and Fillmore to the unincorporated Piru community. The railroad is operated by Sierra Northern Railway.

The selected Consultant will review plans and engineering documents submitted by others, including applicants for leases, licenses, and encroachments, and sponsors of projects within or adjacent to the right-of-way. Reviews should help VCTC to avoid, minimize and/or mitigate impacts to railroad operations, VCTC property, and other public projects on the corridor, including a planned Class I bike trail along the corridor.

Tasks include: (1) Review of plans, engineered drawings, and other materials related to leases, licenses, proposed projects adjacent to and within the railroad right-of-way, and other plans and projects that may impact the railroad; (2) Coordination as needed with the railroad operator, Sierra Northern Railway.

Scope of Work

The Contractor shall perform plan check and engineering services to ensure proposed rail modifications comply with American Railway Engineering and Maintenance of Way Association (AREMA) guidelines, Southern California Regional Railway Authority (SCRRA) Engineering Standards, and applicable California Public Utility Code (CPUC) standards. Where AREMA and SCRRA standards differ, the more stringent standards shall govern. When applicable, reviews shall also ensure that proposed drainage structures along the SPBL are sufficient to accommodate anticipated flows and protect VCTC's property.

Tasks may include, but not be limited to:

- Review and provide comments on proposed rail modification plans and engineering documents for compliance with industry standards and California Public Utility Code compliance, including track, structures, and clearances;
- Review and provide comments on rail modification plans and engineering documents for compliance with VCTC plans and policies as directed by VCTC;
- Review and provide comments on utility, pipeline, and wiring crossings, and longitudinal encroachments within the right-of-way;

- Review and provide comments on proposed modifications to at-grade and/or grade-separated crossings;
- Review and provide comments on design and/or construction plans within or adjacent to the right-of-way, including excavation and shoring near track, temporary access, overhead or crane work, and fencing and trespass measures;
- Review and provide comments and on hydrology/drainage plans and planned structures to ensure adequacy of design and protection of VCTC property; and
- Review and provide comments on proposed work for compatibility with the planned Class I bike trail;
- Review and provide comments for consistency with VCTC plans and policies, as directed by VCTC;
- Conduct site visits or meetings as directed by VCTC; and,
- Coordinate with the railroad operator, Sierra Northern Railway, on an as-needed basis regarding review of plans and engineering documents.

Deliverables

Deliverables may include but are not limited to:

- Annotated or marked up plans and documents; and,
- Review memos or independent reports.

Invoices shall itemize charges by individual application or project.

Contract Terms

VCTC anticipates awarding a time-and-materials contract with a not-to-exceed amount and a 12-months term, with up to three 12-month extensions. The selected firm will be required to execute VCTC's standard professional services agreement and meet its insurance requirements (see attached).

Proposal Contents

Submit proposals as a single PDF. Proposals should include:

- Brief workplan to demonstrate understanding of the requested work;
- Identified personnel available to lead and work on reviews;
- Qualifications of personnel to conduct reviews;
- Turn-around timelines, and estimated delivery dates to complete reviews; and,

- Disclosure of any potential conflicts of interest, including current or anticipated work for applicants or projects along the SPBL, and a commitment not to review plans prepared by the firm or its affiliates.

Fee Schedule

Submit a Cost Proposal with a Fee Schedule as a separate PDF, including hourly rates by classification, reimbursable expenses, and any proposed escalation.

We would appreciate your consideration and submitting a proposal **by Friday, December 11, 2026, no later than 4:00 PM**.

Reservation of Rights

In connection with this RFP, VCTC reserves the right to do any of the following:

1. Accept or reject any and all proposals, or any item or part thereof, or to waive any informalities, requirements, or irregularities in a proposal or any item or part thereof.
2. Withdraw or cancel this RFP at any time without prior notice and VCTC makes no representation that any Contract will be awarded to any contractor responding to this RFP.
3. Reject all Proposals and to re-issue (or not re-issue) a new RFP for the same or similar work.
4. Postpone proposal openings, review and/or evaluation for its own convenience. Proposers may withdraw their proposals before the proposal submittal date by submitting a written request signed by an authorized representative of the proposer, and delivered to VCTC at the address identified herein.
5. Award multiple contracts as a result of this RFP and reserves the right to award contracts for similar services outside of this RFP process.
6. Alter the Selection Process Dates.
7. Remedy technical errors in the RFP process.
8. Request additional information from Proposers and investigate the qualifications of all firms under consideration.
9. Confirm any part of the information furnished by a Proposer.
10. Obtain additional evidence of managerial, financial or other capabilities.
11. Negotiate with any, all, or none of the Proposers;
12. Solicit best and final offers from all or some of the Proposers;
13. Accept other than the lowest-priced Proposal;

Please direct any questions and proposals to Amanda Fagan, Director of Planning and Sustainability, at afagan@goventura.org.

AGREEMENT BETWEEN
VENTURA COUNTY TRANSPORTATION COMMISSION
AND
[CONSULTANT]
FOR PLAN CHECK AND ENGINEERING SERVICES
ON THE SANTA PAULA BRANCH LINE
2027

This Agreement is by and between the Ventura County Transportation Commission, hereinafter referred to as VCTC, and [INSERT CONSULTANT NAME], hereinafter referred to as CONSULTANT, to provide plan check and engineering services for review of proposed broadband infrastructure on the Santa Paula Branch Line, as detailed in the Scope of Work and Project Proposal attached to this agreement.

VCTC and CONSULTANT agree as follows:

1. STATEMENT OF AGREEMENT

VCTC hereby engages CONSULTANT, and CONSULTANT hereby accepts such engagement, to provide on-call plan check and engineering services for the Santa Paula Branch Line. Contractor shall perform those services on the terms and conditions herein described, as set forth in Attachment 1 Scope of Work, to this agreement. Contractor hereby affirms that it has the professional qualifications, experience, and facilities to perform said services and hereby agrees to undertake and complete the performance thereof.

2. VCTC DESIGNEE

The VCTC Executive Director, or his designee, shall act for and exercise any of the rights of VCTC as set forth in this Agreement.

3. STATEMENT OF WORK

The Contractor shall perform plan check and engineering services to ensure proposed rail modifications are within industry and California Public Utility Code standards and that proposed drainage structures along the Santa Paula Branch Line are sufficient to accommodate anticipated flows and protect VCTC property. All plans to be checked shall be submitted by others. CONSULTANT shall perform the work in a manner satisfactory to VCTC as set forth in Attachment A, entitled “Scope of Work,” attached to and incorporated by this reference, and as described in Attachment B Proposal for Consultant Services dated [INSERT PROPOSAL DATE].

In the event of a conflict between any specific provision of this Agreement and any provision of Attachment A or Attachment B, the provisions of this Agreement shall prevail.

In the event of any conflict between any provisions of Attachment A and Attachment B, the provisions of Attachment A shall prevail over conflicting provisions of Attachment B. All work by the CONSULTANT shall be performed in a good and workmanlike manner.

4. TERM OF AGREEMENT

This Agreement shall commence upon January [DATE], 2027 and shall continue in full force and effect through December 31, 2027, unless earlier terminated as provided in this Agreement ("Initial Term"). In VCTC's sole discretion, VCTC may exercise up to three (3) 12-month extensions of the term for a maximum total Agreement duration of fourty-eight (48) months ("Extension Term").

5. CHANGES IN THE WORK

The VCTC may, at any time, by written order to CONSULTANT make changes within the general Scope of Work, including but not limited to revising or adding to work or deleting portions thereof. Upon receipt of such notice of change to the Scope of Work, CONSULTANT shall immediately take all necessary steps to comply therewith and to minimize the incurrence of cost allocable to work eliminated or suspended.

6. COMPENSATION

6.1 - The total compensation payable to CONSULTANT, by VCTC, for the above stated services shall be not to exceed $[AMOUNT] for the Initial Term, and as described in Contractor's proposal, Attachment B to this Agreement .

The VCTC shall not be obligated to pay CONSULTANT for any costs incurred in excess of this amount.

6.2 – CONSULTANT will bill VCTC monthly for reasonable expenses incurred during the month. VCTC will pay CONSULTANT within thirty (30) days of receipt of invoice and monthly progress report. Each invoice shall be supported by an itemized statement of costs claimed to have been incurred by CONSULTANT in the performance of the Agreement during the period covered by such invoice.

7. KEY PERSONNEL

The Project Manager for the project shall be [NAME KEY PERSONNEL]. This individual is considered essential to the work being performed under this Agreement; substitution for this individual will not be made without the prior written consent of the VCTC.

8. ASSIGNMENT AND SUBCONTRACTING

8.1 - This Agreement is for professional services and CONSULTANT may not assign its rights under this Agreement nor delegate the performance of its duties without the VCTC's prior written consent.

8.2 - CONSULTANT shall complete all professional services under this Agreement and as set forth in Attachment A. CONSULTANT may assign duties to another subcontractor upon prior written consent of the VCTC. Any assignment or delegation without VCTC's prior written consent shall be void.

9.3 - CONSULTANT shall promptly notify VCTC of any monetary adjustment required by the paragraph above and assert its claim for adjustment within thirty (30) days after receipt of the written order.

10. BREACHES AND DISPUTE RESOLUTION PROCEDURE

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

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

10.3 - CLAIMS FOR DAMAGES. Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

10.4 - RIGHTS AND REMEDIES. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VCTC or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

11. RELATIONSHIP OF THE PARTIES

Both parties to this agreement agree that the relationship of the parties shall be that CONSULTANT is an independent CONSULTANT and shall represent the will of VCTC only as to the results of the subject matter of this contract, and not as to the manner in which the services herein are performed, except as provided in Attachment A. CONSULTANT shall have complete control and responsibility over the details and performance of the services herein required to complete the agreement, and in no event shall CONSULTANT be considered an officer, agent, servant or employee of VCTC.

12. INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his or her agents, representatives, employees or subcontractors.

12.1 MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than $2,000,000 per accident for bodily injury and property damage.
3. Workers’ Compensation: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): Insurance appropriate to the CONSULTANT’s profession, with limit no less than $2,000,000 per occurrence or claim.

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

12.2 Other Insurance Provisions

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

a. Additional Insured Status

VCTC, their officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

b. Primary Coverage

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

c. Notice of Cancellation

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

d. Waiver of Subrogation

CONSULTANT hereby grants to VCTC a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the VCTC by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the VCTC has received a waiver of subrogation endorsement from the insurer.

e. Self-Insured Retentions

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

Further, if the 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.

f. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to VCTC.

g. Claims Made Policies

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

h. Verification of Coverage

CONSULTANT shall furnish VCTC with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by VCTC before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. VCTC reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

i. Subcontractors

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

j. Special Risks or Circumstances

VCTC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

13. TERMINATION

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

13.2 - If CONSULTANT becomes insolvent, assigns or subcontracts the work without VCTC's prior approval, does not deliver the work specified in this Agreement or fails to perform in the manner called for, or fails to comply with any other material provision of this Agreement, VCTC may terminate this Agreement for default. Termination shall be affected by serving a ten (10) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or propose a plan and schedule for curing the breach acceptable to VCTC within the ten (10) day period, VCTC may terminate this Agreement. VCTC shall pay the CONSULTANT for completed and approved work as described above, except that (i) in no event shall VCTC be required to compensate the CONSULTANT for defaulted work, and (ii) any amounts paid shall be offset by any costs incurred by VCTC or damages suffered to correct or complete work required under this agreement, including the difference between CONSULTANT's price for this agreement and any higher price paid to another contractor retained to complete the work.

14. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to VCTC, and hold harmless VCTC and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of VCTC.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by VCTC, unless this time has been extended by VCTC. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by VCTC, may be retained by VCTC until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of VCTC, Consultant shall indemnify, defend, and hold harmless VCTC for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of VCTC.

15. AUDIT AND INSPECTION OF RECORDS

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

16. FEDERAL, STATE AND LOCAL LAWS

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

17. EQUAL EMPLOYMENT OPPORTUNITY

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

18. PROHIBITED INTERESTS

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement are the property of VCTC and shall be delivered to VCTC upon request or otherwise at the termination or expiration of this Agreement. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from VCTC. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by VCTC.

20. PATENT AND COPYRIGHT INFRINGEMENT

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

20.2 - CONSULTANT shall have sole control, in consultation with VCTC, over the defense of any such claim or suit and all negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify VCTC under any settlement made without CONSULTANT's consent or in the event VCTC fails to cooperate in the defense of any suit or claim,

provided, however, that said defense shall be at CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to VCTC, shall obtain for VCTC the right to use and sell said item, or shall substitute an equivalent item acceptable to VCTC and extend this patent and copyright indemnity thereto.

22. FORCE MAJEURE

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

1. Any earthquake, hurricane, flood or other natural disaster;
2. Any epidemic, blockade, rebellion, war, riot, act of sabotage or civil commotion, disastrous or extensive fire or explosion, or strike;
3. The suspension, termination, interruption, denial or failure to obtain, renew or amend any permit VCTC is responsible for obtaining;
4. Any change in a governmental rule or regulation, or change in the judicial or administrative interpretation of a governmental rule or regulation, or adoption of any new governmental rule or regulation that by its nature imposes additional costs or delays on CONSULTANT and that was not reasonably foreseeable at the Proposal Date; and
5. Any lawsuit seeking to restrain, enjoin, challenge or delay completion of the Project or the granting or renewal of any governmental approval.

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

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

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

23. ATTORNEY FEES

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

24. NOTICES

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

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

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

[INSERT CONSULTANT CONTACT INFO HERE]

25. Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Ventura County or in the United States District Court for the Central District of California.

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

27. No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

28. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

29. Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

30. Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of VCTC or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political

Reform Act, codified at California Government Code Section 81000 *et seq.* Consultant shall not employ any VCTC official in the work performed pursuant to this Agreement. No officer or employee of VCTC shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of VCTC. If Consultant was an employee, agent, appointee, or official of VCTC in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse VCTC for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

31. **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

32. **Contract Administration.** This Agreement shall be administered by Amanda Fagan ("Contract Administrator"). All correspondence, communications and meetings shall be directed to or through the Contract Administrator or their designee. The Consultant shall only take direction regarding the services provided under this Agreement from the Contract Administrator. Furthermore, Consultant agrees that the Contract Administrator shall be included any meeting, teleconference or written communication between any VCTC representative including Commission members and the Consultant. VCTC may modify the Contract Administrator at any time upon providing written notice to the Consultant.

33. **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

_____ Seal and Signature of Registered Professional with report/design responsibility.

34. Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, represents the entire and integrated agreement between VCTC and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services and Compensation Schedule

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

36. Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

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

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

[INSERT CONSULTANT NAME]

_____

CONSULTANT SIGNATORY

TITLE

VENTURA COUNTY TRANSPORTATION COMMISSION

_____

Martin Erickson,

Executive Director

APPROVED AS TO FORM:

_____

Lindsay D’Andrea

General Counsel

Attachment A – Scope of Work

The Contractor shall perform plan check and engineering services to ensure proposed rail modifications comply with American Railway Engineering and Maintenance of Way Association (AREMA) guidelines, Southern California Regional Railway Authority (SCRRA) Engineering Standards, and applicable California Public Utility Code (CPUC) standards on an on-call basis. Where AREMA and SCRRA standards differ, the more stringent standards shall govern. When applicable, reviews shall also ensure that proposed drainage structures along the SPBL are sufficient to accommodate anticipated flows and protect VCTC's property.

Tasks may include, but not be limited to:

- Review and provide comments on proposed rail modification plans and engineering documents for compliance with industry standards and California Public Utility Code compliance, including track, structures, and clearances;
- Review and provide comments on rail modification plans and engineering documents for compliance with VCTC plans and policies as directed by VCTC;
- Review and provide comments on utility, pipeline, and wiring crossings, and longitudinal encroachments within the right-of-way;
- Review and provide comments on proposed modifications to at-grade and/or grade-separated crossings;
- Review and provide comments on design and/or construction plans within or adjacent to the right-of-way, including excavation and shoring near track, temporary access, overhead or crane work, and fencing and trespass measures;
- Review and provide comments and on hydrology/drainage plans and planned structures to ensure adequacy of design and protection of VCTC property; and
- Review and provide comments on proposed work for compatibility with the planned Class I bike trail;
- Review and provide comments for consistency with VCTC plans and policies, as directed by VCTC;
- Conduct site visits or meetings as directed by VCTC; and,
- Coordinate with the railroad operator, Sierra Northern Railway, on an as-needed basis regarding review of plans and engineering documents.

Deliverables

Deliverables may include but are not limited to:

- Annotated or marked up plans and documents; and,
- Review memos or independent reports.