

**CONSULTING SERVICES AGREEMENT BETWEEN
THE VENTURA COUNTY TRANSPORTATION COMMISSION AND
CONSULTANT**

THIS AGREEMENT for consulting services is made by and between the Ventura County Transportation Commission ("VCTC") and _____ ("Consultant") (together sometimes referred to as the "Parties") as of _____ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to VCTC the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement, Exhibit A, and Exhibit B, Consultant Proposal, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____ unless extended in writing.
- 1.2 **Standard of Performance.** Consultant shall perform all work required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that VCTC, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from VCTC of such desire of VCTC, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. VCTC hereby agrees to pay Consultant a sum not to exceed \$ _____ notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. VCTC shall pay Consultant a monthly retainer of \$ _____ for services rendered pursuant to Exhibit A. Consultant shall provide VCTC with monthly hours reports which include the name and title of personnel who performed work pursuant to this Agreement during a given month, as well as the hourly rate and number of hours performed by that personnel. The payments specified below shall be the only payments from VCTC to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to VCTC in the manner specified herein. Except as specifically authorized by VCTC in writing, Consultant shall not count hours for duplicate services performed by more than one person. Notwithstanding any other provision of this Agreement, in the event that VCTC determines that the monthly retainer amount is not appropriate given the average amount of hours completed by the Consultant as reflected in the monthly hours reports, VCTC may execute an amendment to this Agreement adjusting such retainer to appropriately reflect the average number of hours worked. Unless specified in such an amendment, adjustments to the retainer amount shall not increase the total compensation payable under this Agreement.

Consultant and VCTC acknowledge and agree that compensation paid by VCTC to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. VCTC therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once per month during the term of this Agreement, based on the monthly retainer amount for all services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain all the following information:
- Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice, etc.);
 - The beginning and ending dates of the billing period;
 - A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At VCTC's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the person's title and hourly rate, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total cumulative expenditures since the start of this Agreement, and the remaining unexpended balance based on the maximum compensation allowed hereunder.
 - The Consultant's signature.
- 2.2 Monthly Payment.** VCTC shall make monthly retainer payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. VCTC shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. Each invoice shall include all expenses and activities performed during the invoice period for which Consultant expects to receive payment.
- 2.3 Total Payment.** VCTC shall pay for the services to be rendered by Consultant pursuant to this Agreement. VCTC shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. VCTC shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.4 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor represents and warrants that Contractor is a resident of the State of California in accordance with California Revenue & Taxation Code Section 18662, as it may be amended, and is exempt from withholding. Contractor accepts sole responsibility for verifying the residency status of any subcontractors and withhold taxes from non-California subcontractors.

- 2.5 Payment upon Termination.** In the event that VCTC or Consultant terminates this Agreement pursuant to Section 8, VCTC shall compensate the Consultant for any prorated portion of a monthly retainer amount and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- 2.7 False Claims Act.** Presenting a false or fraudulent claim for payment, including a change order, is a violation of the California False Claims Act and may result in treble damages and a fine of five thousand (\$5,000) to ten thousand dollars (\$10,000) per violation.

Section 3. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, 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 bid. 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.

- 3.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, 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.
- 3.2 Commercial General, Automobile, and Professional Liability Insurance.**
- 3.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement for risks associated with the work contemplated by this Agreement. No endorsement shall be attached limiting the coverage.

3.2.2 Minimum scope of coverage.

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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

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.

Professional Liability (Errors and Omissions): Insurance appropriate to the Consultant’s profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

3.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a copies of endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. 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.

3.3 All Policies Requirements.

3.3.1 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.

3.3.2 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 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.

3.3.3 Notice of Reduction in or Cancellation of Coverage. A copy of endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to VCTC. In the event that any coverage required by this section is reduced, limited, canceled, or materially affected in any other manner, 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.

- 3.3.4 Additional insured; primary insurance.** VCTC and its officers, employees, agents, and volunteers shall be covered 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. The coverage shall contain no special limitations on the scope of protection afforded to VCTC or its officers, employees, agents, or volunteers.

A copy of endorsement must be attached to the commercial liability policy 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.

- 3.3.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City 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.

- 3.3.6 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.

- 3.3.7 Wasting Policy.** No insurance policy required by Section 3 shall include a "wasting" policy limit.

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

3.4 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:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. 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
- c. Terminate this Agreement.

Section 4. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, indemnify, defend with counsel selected by VCTC, and hold harmless VCTC and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance ("Claims"), caused, directly or indirectly, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of VCTC or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

4.1 Insurance Not in Place of Indemnity. Acceptance by VCTC of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

4.2 PERS Liability. 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.

- 4.3 **Third Party Claims.** With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Section 5. STATUS OF CONSULTANT.

- 5.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of VCTC. VCTC shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise VCTC shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other VCTC, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by VCTC, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of VCTC and entitlement to any contribution to be paid by VCTC for employer contributions and/or employee contributions for PERS benefits.
- 5.2 **Consultant Not an Agent.** Except as VCTC may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of VCTC in any capacity whatsoever as an agent to bind VCTC to any obligation whatsoever.

Section 6. LEGAL REQUIREMENTS.

- 6.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all federal, state and local laws and regulations applicable to the performance of the work hereunder. Consultant's failure to comply with such law(s) or regulation(s) shall constitute a breach of contract.
- 6.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which VCTC is bound by the terms of such fiscal assistance program. Pursuant to this obligation, Consultant shall comply with all applicable federal provisions included in Exhibit C, attached hereto and incorporated herein.
- 6.4 **Licenses and Permits.** Consultant represents and warrants to VCTC that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals, including from VCTC, of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to VCTC that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses,

permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from VCTC.

- 6.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 7. TERMINATION AND MODIFICATION.

- 7.1 Termination.** VCTC may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement for cause upon thirty (30) days' written notice to VCTC and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of notice of termination; VCTC, however, may condition payment of such compensation upon Consultant delivering to VCTC all materials described in Section 8.1.

- 7.2 Extension.** VCTC may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require Contractor to execute a written amendment to this Agreement, as provided for herein. Similarly, unless authorized by the Contract Administrator, VCTC shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 7.3 Amendments.** The Parties may amend this Agreement only in writing signed by all the Parties.

- 7.4 Assignment and Subcontracting.** VCTC and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to VCTC for entering into this

Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not assign or subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 7.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between VCTC and Consultant shall survive the termination of this Agreement.
- 7.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, VCTC's remedies shall include, but not be limited to, the following:
- 7.6.1 Immediately terminate the Agreement;
 - 7.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 7.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 7.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that VCTC would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 8. KEEPING AND STATUS OF RECORDS.

- 8.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of VCTC. Consultant hereby agrees to deliver those documents to VCTC upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for VCTC and are not necessarily suitable for any future or other use. VCTC and Consultant agree that, until final approval by VCTC, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties except as required by law.
- 8.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to VCTC under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

8.3 Inspection and Audit of Records. Any records or documents that Section 8.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of VCTC. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of VCTC or as part of any audit of VCTC, for a period of three (3) years after final payment under the Agreement.

8.4 Records Submitted in Response to an Invitation to Bid or Request for Proposals. All responses to a Request for Proposals (RFP) or invitation to bid issued by VCTC become the exclusive property of VCTC. At such time as VCTC selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret."

VCTC shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret," or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, VCTC may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless VCTC, its agents and employees, from any judgment, fines, penalties, and award of attorney's fees awarded against VCTC in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives VCTC's award of the contract. Consultant agrees that this indemnification survives as long as the trade secret information is in VCTC's possession, which includes a minimum retention period for such documents.

Section 9 MISCELLANEOUS PROVISIONS.

9.1 Attorneys' Fees. If a Party to this Agreement brings any action, including arbitration or an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

9.2 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 the County of Ventura or in the United States District Court for the Central District of California.

- 9.3 **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.
- 9.4 **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.
- 9.5 **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.
- 9.6 **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.
- 9.7 **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 twelve (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 (12) 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.

- 9.8 **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.
- 9.9 **Contract Administration.** This Agreement shall be administered by Martin R. Erickson, Executive Director ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

9.10 Notices. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Consultant

VCTC

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

9.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B and C represent the entire and integrated agreement between VCTC and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Consultant Proposal
<u>Exhibit C</u>	Federal Provisions
<u>Exhibit D</u>	Rate Schedule

9.13 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.

9.14 Construction. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

9.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties hereto with no intent to benefit any non-signatory third parties.

The Parties have executed this Agreement as of the Effective Date.

VCTC

CONSULTANT

Martin Erickson, Executive Director

CONSULTANT REPRESENTATIVE

Approved as to Form:

Steven T. Mattas, General Counsel

EXHIBIT A

SCOPE OF SERVICES

A. WORK PRODUCTS/ CONTRACTOR RESPONSIBILITIES

CONSULTANT shall assist VCTC in post-disaster FEMA Public Assistance cost-recovery management services for past, current, and future emergency declarations. This includes assisting VCTC recovery efforts under state and federal aid programs (FEMA and Cal OES specifically).

Provide technical assistance with state and federal recovery polices and grant programs, including but not limited to:

- Technical advisory services related to debris removal, permanent repairs, and recovery from disasters (i.e. DR-4683 and DR-4769).
- Develop and implement strategies and technical advice to secure funding and claiming opportunities through insurance, federal and state programs, and special legislation to continue government services during the recovery process.
- Provide QA/QC support and general eligibility guidance for all state and federal grant programs.
- Provide assistance and oversight to VCTC with claims or claiming process.
- Provide technical expertise and knowledge related to the Stafford Act and California Disaster Assistance Act.
- Provide support for strategic planning and coordination of all recovery efforts.
- Develop and implement strategies designated to maximize federal and State assistance. Provide expert programmatic and policy advice on State and federal disaster relief programs.
- Assist with documentation for state and federal grant programs to ensure maximum cost recovery, including but not limited to:
 - Develop and submit federal grant applications (Public Assistance, Hazard Mitigation and/or Community Development Block Grant Disaster Recovery, Emergency Watershed Protection Program), assist in identifying and capturing eligible costs, reconcile invoices.
 - Create and maintain critical contract lists and project tracking mechanisms to include timelines and deadlines.
- Assist with the management of FEMA and/or other federal grants and CalOES coordination along with VCTC, arranging for routine status/action plan meetings, establishing priorities, scope changes and updates at meetings.
- Represent VCTC and attend meetings with FEMA, Cal OES or other agencies as may be necessary on behalf of VCTC.
- Continued interaction and communication with VCTC (staff and contractors), State and federal damage assessment teams. Work with VCTC to resolve disputes with FEMA, Cal OES, or other agencies as may be necessary, including but not limited to the preparation of appeals.
- May assist VCTC during Applicant's Briefings with FEMA and the State, assisting with relationship development, requesting additional programmatic details and clarifications that will assist VCTC during the grant process.
- Manage deliverables for FEMA, and CAL OES and work with VCTC staff to develop a VCTC Grant Management System that efficiently and effectively monitors and tracks the progress of each grant and the progress VCTC Partners to ensure efficient cost recovery.

This task may include:

- Generate time extension requests to FEMA and/or other federal grants and CAL OES when necessary.
- Develop improved and/or alternate project requests for CAL OES and FEMA and/or other federal grants.
- Provide post-award grant administration to include intake of required property specific information

- and necessary forms including a voluntary participation notice, submission of environmental and historical compliance information, individual maps and photos.
- Assist VCTC with CAL OES/FEMA and/or other federal grant quarterly reporting.
 - Provide assistance to VCTC with procurement and financial management, such as interfacing with internal staff, to ensure procurement and fiscal processes adhere to FEMA federal grants criteria. This task may include:
 - Recommending procedures for ensuring all contracts are in compliance with federal requirements.
 - Determining needed records/ associated documents for equipment and developing procedures for ensuring all purchases are allowable and have all needed records, forms, etc.
 - Providing recommendations on how to efficiently ensure compliance and ensure all required contract provisions for federal grants are included in applicable documents.
 - Recommend workflows and policies for contracts and purchasing in alignment with VCTC policies and procedures as well as Federal and State Requirements.
 - Determine how to manage Expenditure Tracking in line with VCTC financial processes and which simplifies expenditure and reimbursement reporting.
 - Work with VCTC staff to develop management, administration, and financial processes and procedures in line with both VCTC policies and federal grant requirements.
 - Assist with demobilization and tracking of resources.
 - Identify potential improvements and maximize public assistance 404 and 406 Mitigation funding. Identify and prepare hazard mitigation Quotes, grant applications, and benefit cost analysis for interested residential property and non-residential owners.
 - Assist in identifying and evaluating opportunities for hazard mitigation programs under FEMA 404 and 406 Hazard Mitigation.
 - Develop Section 406 Hazard Mitigation Quotes where mitigation actions can minimize future disaster impacts.
 - Develop Section 404 Hazard Mitigation strategies providing staff experienced in the use of FEMA BCA tools and methodologies that can minimize future disaster impacts.
 - Prepare Section 404 and 406 grant HMP program Notices of Interest (NOIs) and assist in filing NOIs.
 - Prepare Section 404 and 406 grant program grant applications and assist in filing such applications.

EXHIBIT B

**CONSULTANT
PROPOSAL**

EXHIBIT C

FEDERAL & STATE
PROVISIONS

EXHIBIT C

FEDERAL/STATE PROVISIONS

In the performance of Services under this Agreement, Consultant shall comply with the federal provisions and state provisions outlined in this Exhibit C and any and all other applicable federal/state laws and regulations, as they may be amended from time, and for which compliance is required as a condition of receiving federal funding.

A. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

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

B. ANTI-LOBBYING AMENDMENT/ANTI-KICKBACK

- A. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- B. Consultant shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Consultants and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Pursuant to the Act, Consultant is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

C. 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 Agreement's, 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.
 - a. 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.

- I. Accepted rates will be as follows:
 - i. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - ii. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - iii. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
- b. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require 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.
- c. 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.
- d. 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.

D. BONDING

- A. Consultant shall obtain a performance bond from an admitted California surety for 100 percent of the contract price to secure fulfillment of all the Consultant's requirements under this Agreement.
- B. Consultant shall obtain a payment bond from an admitted California surety for 100 percent of the contract price to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in this Agreement.
- C. The surety for such securities shall be currently admitted to transact surety insurance by the California Department of Insurance and shall carry a Best's rating of no less than A+.

E. CERTIFICATION REGARDING LOBBYING

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

- A. No Federal 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- E. The Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.
 - a. In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - b. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - c. Meeting contract performance requirements;
 - d. or At a reasonable price.
 - e. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

F. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

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

- B. Federal Water Pollution Control Act. Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - a. Consultant agrees to report each violation to the VCTC and understands and agrees that VCTC will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - b. Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

G. COMPLIANCE WITH FEDERAL LAW, REGULATION, AND EXECUTIVE ORDERS

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

H. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE

- A. Overtime requirements. No Consultant or Subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Consultant and any Subconsultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and Subconsultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.
- C. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- D. Withholding for unpaid wages and liquidated damages. VCTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or Subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or Subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- E. Subcontracts. Consultant or Subconsultant shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the

Subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any Subconsultant or lower tier Subconsultant with the clauses set forth in paragraphs (b)(1) through (4) of this section.

- F. Safety. The requirements of 40 U.S.C. 3704 are applicable to the work under this Agreement. These requirements provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. Consultant shall ensure that the work is completed under sanitary and safe conditions.

I. COPYRIGHT AND DATA RIGHTS

The Consultant grants to VCTC, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, the Contractor will identify such data and grant to the VCTC or acquires on its behalf a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the Consultant will deliver to VCTC data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement in formats acceptable by VCTC.

J. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. 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.

K. DEBARMENT AND SUSPENSION

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

- B. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. Consultant's certification pursuant to this section is a material representation of fact relied upon by VCTC. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to VCTC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. Consultant certifies that Consultant has complied with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while its bid offer was valid and shall comply throughout the period of this Agreement. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

L. DHS SEAL, LOGO, AND FLAGS

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

M. EQUAL EMPLOYMENT OPPORTUNITY

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

- A. Consultant will not discriminate against any employee or applicant for employment because of race, color, ancestry, religion, creed, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military status, veteran status, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their status under the aforementioned categories. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, ancestry, religion, creed, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military status, veteran status, or national origin.
- C. Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with Consultant's legal duty to furnish information.

- D. Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. Consultant will include the portion of the sentence immediately preceding paragraph and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subconsultant or vendor. Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
 - a. *Provided*, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a Subconsultant or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
 - b. VCTC will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally or state assisted construction work: *Provided*, that if the applicant so participating is a State, Territorial, or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
 - c. VCTC will assist and cooperate actively with the administering federal agency and the Secretary of Labor in obtaining the compliance of Consultants and Subconsultants with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering

agency in the discharge of the agency's primary responsibility for securing compliance.

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

N. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. 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.
- B. Any equipment purchased with funds provided under the terms of this Agreement is subject to the following:
 - a. 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.
 - b. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

O. FALSE OR FRAUDULENT CLAIMS TO FEDERAL GOVERNMENT

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

P. NO OBLIGATION BY FEDERAL GOVERNMENT

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

Q. PROCUREMENT OF RECOVERED MATERIALS/DOMESTIC PREFERENCES FOR PROCUREMENTS.

- A. In the performance of this Agreement, Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. Consultant also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
- D. In the performance of this Agreement, as appropriate and to the extent consistent with law, the non-Consultant shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this Agreement.

R. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- A. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- B. Prohibitions.
 - a. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- b. Unless an exception in paragraph (c) of this clause applies, the Consultant and its Subconsultants may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

C. Exceptions.

- a. This clause does not prohibit Consultants from providing—
 - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28
 - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- b. By necessary implication and regulation, the prohibitions also do not apply to:
 - i. Covered telecommunications equipment or services that:
 - 1. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

D. Reporting requirement.

- a. In the event the Consultant identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Consultant is notified of such by a Subconsultant at any tier or by any other source, the Consultant shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- b. The Consultant shall report the following information pursuant to paragraph (d)(1) of this clause:
 - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier

Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Consultant shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. The Consultant shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments

S. RETENTION OF RECORD/AUDITS

A. 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, FEMA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the 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. Consultant agrees to permit any of the above-listed parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

T. STATE PREVAILING WAGE RATES/DAVIS BACON

A. No Consultant or Subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

B. The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional / District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be

applicable to all inspection work performed at VCTC construction sites, at VCTC facilities and at off-site locations that are set up by the construction Consultant or one of its Subconsultants solely and specifically to serve VCTC projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

D. Payroll Records

- a. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
- b. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by VCTC representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of VCTC, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to VCTC, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.
 - iii. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the VCTC Contract Administrator by both email and regular mail on the business day following receipt of the request.
- c. Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10)

calendar days after receipt of a written request.

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

or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.

- d. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:
 - i. The Agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - ii. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - iii. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - iv. Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
- G. Pursuant to Labor Code §1775, VCTC shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
- H. If VCTC determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if VCTC did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by VCTC.
- I. To the extent applicable, Consultant must ensure compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Consultant shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Consultant shall pay wages not less than once a week.

EXHIBIT D

**RATE
SCHEDULE**