



**REQUEST FOR QUALIFICATIONS
for
Construction Management and Inspection Services
For
El Rio Pedestrian Improvement Project**

RESPONSE DUE

by

4:00 p.m.

on

April 15th, 2024

at

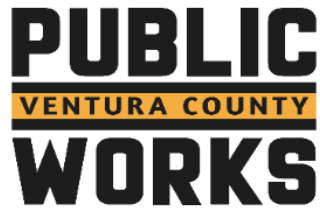
County of Ventura – Public Works Agency

Hall of Administration Main Plaza

Attention: Gianfranco Laurie,

800 S. Victoria Avenue, #1620

Ventura, CA 93009



FOR THE COUNTY OF VENTURA, PUBLIC WORKS AGENCY
TRANSPORTATION DEPARTMENT

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Attachments

- Exhibit D – State Provisions
- Professional Services Contract Boiler-Plate Template

I. SCHEDULE OF EVENTS

Issuance of RFQ.....	04-01-2024
Last Date to submit inquiries.....	04-10-2024
Closing Date for SOQ.....	04-15-2024
SOQ’s Evaluation Period	3 Days
Notification of Final Selections.....	04-18-2024

II. INTRODUCTION

Ventura County Public Works Agency (VCPWA) is seeking Statements of Qualifications (SOQ) from qualified and experienced professional engineering firms to provide construction management and inspection services for the El Rio Pedestrian Improvement Project (Project). The services required shall be to provide full-time resident engineer, contract inspector, office engineering support, and other services as outlined in this RFQ. These construction management and inspection services are vital for successful implementation of the Project. This project is mainly funded with a State Active Transportation Program grant (Cycle 5) and a portion using County local Road Funds. Therefore, the proposed contract shall comply with Chapter 10.2.1 of the Caltrans Local Assistance Procedure Manual and Exhibit D

III. PROJECT DESCRIPTION AND PURPOSE

The Project includes minor roadway widen and construct of curb and gutter, sidewalk, driveway approaches, driveway tie-ins, access ramps, curb extensions (bulb-outs), adjusting/relocating fences and gates, adjusting/relocating utilities, removing trees/brush, infiltration basins, storm drain system improvements, signing and striping enhancements and other appurtenant work as shown on the construction drawings. Project funding will be mainly provided by the Active Transportation Program (ATP) Cycle 5. The purpose of these improvements is to construct accessible pedestrian walkways and promote the use of active modes of transportation for the El Rio neighborhood area.

IV. SCOPE OF WORK

Construction Management services shall include but not limited to the following tasks:

- Construction management services, including resident engineer and full-time inspection.
- Coordination with County staff.
- Coordination with property owners.
- Prepare monthly Progress Pay Estimates and Statements of Working Days.
- Prepare Daily Inspection Reports with photographs.

- When necessary, prepare Daily Extra-Work Reports and track extra costs incurred by the contractor.
- Assist County with preparation and negotiation of contract change orders and maintain a change order log.
- Review and respond to Requests for Information (RFI's), shop drawings, submittals, contractor correspondence, and coordination with County staff.
- Review and verify Contractor is complying with State Prevailing Wage Labor Compliance. Manage and record payment withholdings.
- Coordinate with the utility companies. Collaborate with utility companies' independent contractors to adjust/relocate their impacted utility lines.
- Coordinate with United States Postal Service for temporary and permanent cluster mailbox locations.
- Provide Project Documentation including progress photos, documentation of existing conditions, and record drawings.
- Organizing and conducting a pre-construction meeting and weekly construction progress meetings.
- Conducting other meetings as necessary with the contractor and County staff.
- Review of contractor's construction schedule and updates.
- Maintain an on-going list of items for correction and final punch list.
- Review SWPPP and ensure Contractor compliance.
- Assistance in filing water quality reports to the RWQB for SWPPP.
- Assistance in filing termination of NOI (Notice of Termination) for SWPPP.
- Conduct final inspection and submit written recommendation for project acceptance.
- The County's surveyor or the contractor will provide surveying. Consultant need not perform surveying. Consultant will need to coordinate with surveyors as needed.

- Assist County staff with As-Built markups after construction completion.

Construction Inspection services shall include but not limited to the following tasks:

- Provide one full-time inspector for daily project coordination, inspect construction operations, inspection of traffic control, maintain public relations, and conduct contractor employee interviews.
- Become familiar with Plans & Specifications, construction schedule and construction sequences.
- Attend the Preconstruction Meeting and office meetings when requested.
- Prepare Daily Inspection Reports, and track materials, labor and equipment on the project.
- Maintain photographic records of the construction operations.
- Inspector shall ensure the wage rate information (Posters) is accessible to all employees on the jobsite.
- Perform field measurements and provide accurate records of all construction quantities for all pay items. Provide monthly calculations to administer progress payments.
- Ensure that Contractors do not install materials without approved material testing certifications. Report any failed tests and inform the contractor to take appropriate measures to achieve compliance.
- Monitor construction progress schedule on a regular basis and verify that schedules are on track with project milestones.
- Notify construction contractor about non-compliance items when discovered.
- Coordinate the preparation and submittal of as-builts plans to County upon project completion.
- Upon project completion, conduct a final inspection with punch list items.

V. SCHEDULE

Construction of the Project is expected to begin June 2024 and last approximately six (6) months.

VI. SUBMITTALS AND INQUIRIES

Statements of Qualifications (SOQ's) should be submitted no later than 4:00 P.M. on April 15, 2024, to the following address:

County of Ventura – Public Works Agency
Hall of Administration Main Plaza
Attention: Gianfranco Laurie
800 S. Victoria Avenue, #1620
Ventura, CA 93009

All Submittals should be sent by registered mail, certified mail, overnight mail, hand delivery, or by email. Incomplete submittals and/or submittals received after the deadline will not be accepted. Consultants may submit questions via email to Gianfranco.Laurie@ventura.org no later than then 2:00 p.m. on April 10, 2024. All inquiries shall be made only through this email address; telephone calls will not be accepted.

VII. SUBMISSIONS

The SOQ must not be more than 25 single sided pages and shall be in spiral bound 8.5"x11" format or may be submitted via email to Gianfranco.Laurie@ventura.org. The SOQ shall include the following:

1. A cover letter signed by an authorized representative of the prospective consulting firm. The cover letter shall include contact information: Name, address, telephone number, and e-mail address.
2. Statement of Understanding – Consulting firm shall include a statement describing their understanding of the work to be performed under this contract and a brief description of the firm including the types of services offered.
3. List of personnel to be made available for these services and a brief resume for each describing their education, experience, and qualifications.
4. Consultant shall list a minimum of three (3) projects of similar nature completed. Please include:
 - Project Description
 - Description of services provided and Key personnel
 - Client name, contact person, and current phone number.

VIII. SELECTION CRITERIA

The selection committee, comprised of VCPWA staff, will evaluate and score the SOQ's based on the selection criteria listed below:

Evaluation Criteria	Rating (1-10)	Rating Factor	Total Weighted # of Points	Max. Possible
Project Understanding and Approach		x 2.0		20
Quality, Clarity, Responsiveness, & Overall Impression		x 1.5		15
Project Team / Sub-Consultants Qualifications		x 1.0		10
Familiarity with State grant procedures		X 1.0		10
Relevant CM & Inspection Experiences		x 3.0		30
Past Experiences (list a rating value of 5 if none)		x 1.5		15

Project Understanding/Approach: Does the Consultant's understanding of the project requirements conform to the Scope of Services offered? Does the Consultant offer a sensible approach in response to the Scope of Services? Does the Consultant offer an expanded scope for the project (Additional Services) that is justified and reasonable?

Quality, Clarity, Responsiveness, & Overall Impression: The overall look of the SOQ is professional, well organized, and easy to follow. The SOQ meets the terms and format required in the RFQ and follows the breakdown of the scope of work in the SOQ.

Project Team / Sub-Consultant Qualifications: Is the proposed team composed of members/sub-consultants with expertise and background related to the proposed project? Are appropriate disciplines presented? How much of the work will be handled by Consultant's in-house staff and how long has that staff has been working for the firm? How many similar projects have the proposed subconsultants worked with the Consultant as a team?

Familiarity with State Grant Procedures: Does the Consultant have experience with Federal and/or State grant funded projects administered through Caltrans ATP? Summarize prior experience and identify any challenges or lessons learned as a result.

Relevant CM & Inspection Experiences: Has the Consultant completed similar projects in both scope and size for similar type for other public agencies? How can the Consultant provide "turnkey" construction management and inspection services. Give examples.

Past Experiences: What is the County's experience in working with the Consultant in the past? If they have no experience, please put a mid-point value of 5, and deviate accordingly if there are any negative or positive past experiences.

Upon completion of the SOQ evaluations, the final ranking of the of the firms will be established. The highest-scoring firm will be invited to submit a written fee proposal and if accepted, invited to enter in a contract with VCPWA.

IX. AGENCY PROVIDED DOCUMENTS

AGENCY will provide or accomplish the following upon request.

1. Final Bid Plans [RD24-05 PROJECT NO. 50616 PLANS.pdf](#)
2. Specifications [RD24-05 PROJECT NO. 50616 SPEC BOOK.pdf](#)

X. PAYMENT METHOD

The method of payment for this contract shall be “Specific Rate of Compensation”. Under this method of payment, the proposed Consultant is paid at an agreed upon and supported fixed hourly rate for each employee working directly on the contract work. These rates shall be negotiated and agreed upon between VCPWA and Consultant and included in the contract. The specific fixed rate includes the proposed indirect costs, such as overhead, fringe, and other administrative charges. Rates of Other Direct Costs shall be reimbursed using itemized unit costs, such as mileage, printing, postage, and other reimbursable expenses. A schedule of costs shall not be submitted with the SOQ. Once SOQ’s have been evaluated a cost proposal will be requested from the highest-ranking firm.

EXHIBIT D

STATE PROVISIONS

**EL RIO PEDESTRIAN IMPROVEMENTS
PROJECT NO. ATPSB1L-5952(208)**

- **SECTION ONE: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**
- **SECTION TWO: RETENTION OF RECORD/AUDITS**
- **SECTION THREE: AUDIT REVIEW PROCEDURES**
- **SECTION FOUR: STATE PREVAILING WAGE RATES**
- **SECTION FIVE: NON-DISCRIMINATION**

SECTION ONE: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 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 Part 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 Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

SECTION TWO: RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY 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. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

SECTION THREE: 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 LOCAL AGENCY'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 LOCAL AGENCY'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 LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 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, LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY 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 LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a) If the proposed rate is less than one hundred fifty percent (150%) -the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b) If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c) If the proposed rate is greater than two hundred percent (200%) -the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY 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 LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY 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 LOCAL AGENCY and the CONSULTANT, either as prime or subconsultant, with the same fiscal period ICR.

SECTION FOUR: STATE PREVAILING WAGE RATES

- 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 LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY 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
 1. 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:
 - a. The information contained in the payroll record is true and correct.
 - b. 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.
 2. 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 LOCAL AGENCY 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:
 - a. 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.
 - b. 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 LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. 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 LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. 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.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY 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.
 5. The CONSULTANT shall inform LOCAL AGENCY 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.
 6. 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 LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY Contract Administrator.
- F. Penalty
1. 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 LOCAL AGENCY 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.
 2. 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.
 3. 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.

4. 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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 5. Pursuant to Labor Code §1775, LOCAL AGENCY 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.
 6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY 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 LOCAL AGENCY.
- G. Hours of Labor Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.
- H. Employment of Apprentices
1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
 2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at

<https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

SECTION FIVE: NON-DISCRIMINATION

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code § 12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical ability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and Subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 et. seq.), the applicable regulations promulgated there under (2 CCR § 11000 et. seq.), the provisions of Gov. Code § 11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code § 12990 (a-f), set forth 2 CCR § 8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business accountants, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontractors to perform work under this agreement.

PROFESSIONAL SERVICES CONTRACT AEXX-XXX

with .

Project Title: -----

(Project No:

This contract is made and entered into this ___ day of __, ____, by and between the County of Ventura, hereinafter referred to as AGENCY, and **Consultant Name** hereinafter referred to as CONSULTANT, regarding CONSULTANT's performance of the work and services described in Exhibit A hereto (the "Work"). CONSULTANT, or a principal of the firm, is registered, licensed, or certified by the State of California as a **Registration, Number.**

In consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Work; Standard of Performance

AGENCY hereby retains CONSULTANT to perform the Work described in Exhibit A hereto. The Work shall be performed in accordance with the terms and conditions of this contract and the County of Ventura Public Works Agency Consultant's Guide to Ventura County Procedures ("Guide") as amended from time to time, which is on file in the office of the Public Works Agency, and which by reference is made a part hereof. This contract shall take precedence over the Guide in case of conflicting provisions; otherwise they shall be interpreted together. In performing the Work CONSULTANT shall exercise the degree of skill and care customarily exercised by professionals in the State of California when providing similar services with respect to similarly complex work and projects.

2. Time Schedule

All Work and any portion thereof separately identified shall be completed within the time provided in the "Time Schedule" attached hereto as Exhibit B. AGENCY will issue a suspension of the contract time if CONSULTANT is delayed by any public agency reviewing documents produced by CONSULTANT under this contract, or solely due to acts or omissions of AGENCY, provided that CONSULTANT promptly notifies AGENCY in writing of such delays.

3. Fees and Payments

Payment shall be made monthly, or as otherwise provided, on presentation of a completed AGENCY Consultant Services Invoice Form in accordance with the "Fees and Payment" provisions attached hereto as Exhibit C.

4. Termination

AGENCY retains the right to terminate this contract for any reason prior to completion of the Work upon five days written notice to CONSULTANT. Upon termination, AGENCY shall pay CONSULTANT for all Work performed prior to such termination, provided however, that such charges shall not exceed the maximum fee specified in Exhibit C for completion of any separately identified task/phase of the Work which, at the time of termination, has been started by request of AGENCY, plus the outstanding amount of contract retention withheld to date.

5. Right to Review

AGENCY shall have the right to review the Work at any time during AGENCY's usual working hours. Review, checking, approval or other action by the AGENCY shall not relieve CONSULTANT of CONSULTANT's responsibility for the accuracy and completeness of the Work.

6. Work Product

On completion or termination of the contract, AGENCY shall be entitled to immediate possession of, and CONSULTANT shall promptly furnish, on request, all reports, drawings, designs, computations, plans, specifications, correspondence, data and other work product prepared or gathered by CONSULTANT

arising out of or related to the Work (collectively, "Work Product"). AGENCY has a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and authorize others to use, Work Product for government purposes. CONSULTANT may retain copies of the Work Product for its files. Work Product prepared by CONSULTANT pursuant to this contract shall not be modified by AGENCY unless CONSULTANT's name, signatures and professional seals are completely deleted. CONSULTANT shall not be responsible for any liabilities to AGENCY for the use of such Work Product that is modified by persons other than CONSULTANT. CONSULTANT is authorized to place the following statement on the drawings, specifications and other Work Product prepared pursuant to this contract:

"This drawing [or These specifications], including the designs incorporated herein, is [are] an instrument of professional service prepared for use in connection with the project identified hereon under the conditions existing on [date]. Any use, in whole or in part, for any other project without written authorization of [CONSULTANT's name] shall be at the user's sole risk."

7. Errors and Omissions

Without limiting AGENCY's other available remedies, if a construction change order is required for the subject project as a proximate result of an error or omission of CONSULTANT in the preparation of the construction or survey documents pursuant to this contract, regardless of whether or not such error or omission was the result of negligence, the necessary amendment or supplement to the construction documents required for such change order shall be made by CONSULTANT at no additional charge to AGENCY.

8. Correction of Work

If any Work performed by CONSULTANT does not conform to the requirements and professional standards of this contract, AGENCY may require CONSULTANT to correct the Work until it conforms to said requirements and standards at no additional cost to AGENCY. AGENCY may withhold payment for disputed Work until CONSULTANT correctly performs the Work or the dispute is otherwise resolved in accordance with this contract. When the Work to be performed is of such a nature that CONSULTANT cannot correct its performance, AGENCY may reduce the CONSULTANT's compensation to reflect the reduced value of the Work received by AGENCY. If CONSULTANT fails to promptly correct non-conforming Work, AGENCY may have the Work performed by a third party in conformance with the requirements and professional standards of this contract and charge CONSULTANT, or withhold from payments due CONSULTANT, any costs AGENCY incurs that are directly related to the performance of the corrective work. AGENCY shall not unreasonably withhold or reduce payment for CONSULTANT's Work under this section.

9. Sub Consulting

With the prior written consent of AGENCY, CONSULTANT may engage the professional services of subconsultants for the performance of a portion of the Work ("Subconsultants"). CONSULTANT shall be fully responsible for all Work performed by Subconsultants which must be performed in accordance with all terms and conditions of this contract. All insurance requirements set forth in section 13 below, "Insurance Requirements," shall apply to each Subconsultant, except to the extent such requirements are modified or waived in writing by AGENCY. CONSULTANT shall ensure that each Subconsultant obtains and keeps in force and effect during the term of this contract the required insurance.

10. Independent Contractor

a. No Employment Relationship. CONSULTANT is an independent contractor, and no relationship of employer and employee is created by this contract. Neither CONSULTANT nor any of the persons performing services for CONSULTANT pursuant to this contract, whether said person be a principal, member, partner, officer, employee, agent, volunteer, associate, Subconsultant or otherwise of CONSULTANT, will have any claim under this contract or otherwise against AGENCY for any salary,

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wages, sick leave, vacation pay, retirement, social security, workers' compensation, disability, unemployment insurance, federal, state or local taxes, or other compensation, benefits or taxes of any kind. AGENCY is not required to make any deductions from the compensation payable to CONSULTANT under the provisions of this contract. CONSULTANT shall be solely responsible for self-employment Social Security taxes, income taxes and any other taxes levied against self-employed persons. CONSULTANT does not assign such obligation to AGENCY for collection or administration except as may be required by federal and state law.

b. No AGENCY Control of Means and Methods of Performance. Except as otherwise provided in this contract, AGENCY will have no control over the means or methods by which CONSULTANT will perform services under this contract, provided, however, that CONSULTANT will perform services hereunder and function at all times in accordance with approved methods of practice in the professional specialty of CONSULTANT.

c. Third Parties Employed by CONSULTANT. If, in the performance of this contract, any third parties (including, without limitation, Subconsultants) are employed by CONSULTANT, such third parties will be entirely and exclusively under the direction, supervision and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, and other applicable requirements of law will be the responsibility of and determined by CONSULTANT, and AGENCY will have no right or authority over such third parties or the terms of such employment, except as provided in this contract.

d. Compliance with Workers' Compensation Laws. CONSULTANT will comply with all applicable provisions of the Workers Compensation Insurance and Safety Act of the State of California (codified as amended commencing at Labor Code section 3200), including, without limitation, divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all applicable similar state and federal acts or laws, and will indemnify and hold harmless AGENCY from and against all Third Party Claims (defined elsewhere herein) presented, brought or recovered against AGENCY, for or on account of any liability under any of said laws which may be incurred by reason of any services to be performed under this contract.

e. Indemnity for Claims of Employer-Employee Relationship. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and its boards, agencies, departments, officers, employees, agents and volunteers from and against any and all Third-Party Claims (defined elsewhere herein) made against AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this contract. CONSULTANT further agrees to hold AGENCY harmless from and to compensate AGENCY for any Third-Party Claims against AGENCY for payment of state or federal income or other tax obligations relating to CONSULTANT's compensation under the terms of this contract. CONSULTANT will not settle or otherwise compromise a Third-Party Claim covered by this subsection without AGENCY's advance written approval. This subsection does not apply to any penalty imposed by any governmental agency that is not caused by or the fault of CONSULTANT.

11. Duty of Loyalty; Conflicts of Interest

- a. CONSULTANT owes AGENCY a duty of undivided loyalty in performing the Work under this contract, including the obligation to refrain from having economic interests and participating in activities that conflict with AGENCY's interests with respect to the Work and subject project. CONSULTANT shall take reasonable measures to ensure that CONSULTANT and its principals, officers, employees, agents and Subconsultants do not possess a financial conflict of interest with respect to the Work and subject project. CONSULTANT shall promptly inform AGENCY of any matter that could reasonably be interpreted as creating a conflict of interest for CONSULTANT with respect to the Work and subject project. This section is not intended to modify the standard of performance as set forth in Section 1.

- b. CONSULTANT acknowledges that the California Political Reform Act (“Act”), Government Code section 81000 et seq., provides that principals, officers, employees and agents of consultants retained by a public agency may be deemed “public officials” subject to the Act if they make or advise AGENCY on decisions or actions to be taken by AGENCY. To the extent AGENCY determines that the Act applies to CONSULTANT or its principals, officers, employees or agents, each designated person shall abide by the Act, including the requirement for public officials to prepare and file statements disclosing specified economic interests, as directed by AGENCY. In addition, CONSULTANT acknowledges and shall abide by the contractual conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.
- c. During the term of this contract CONSULTANT shall not employ or compensate AGENCY’s current employees.

12. Defense and Indemnification

If this contract is a contract “for design professional services” within the meaning of Civil Code section 2782.8, then subsection b. applies, and subsection a. does not apply and is not part of this contract, notwithstanding its inclusion below. Otherwise, subsection a. applies, and subsection b. does not apply and is not part of this contract, notwithstanding its inclusion below.

- a. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and the County of Ventura (if not defined as AGENCY) and their boards, agencies, departments, officers, employees, agents and volunteers (collectively, “Indemnatee”) from and against any and all claims, lawsuits, judgments, debts, demands, and liability (including attorney fees and costs) (collectively, “Third Party Claims”), including, without limitation, those arising from injuries or death of persons and/or damage to property, whether against CONSULTANT, AGENCY or others, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by CONSULTANT, save and except third party claims arising through the sole gross negligence or sole willful misconduct of Indemnatee. CONSULTANT shall not settle or otherwise compromise a Third-Party Claim covered by this section without AGENCY’s advance written approval.
- b. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and the County of Ventura (if not defined as AGENCY) and their boards, agencies, departments, officers, employees, agents and volunteers (collectively, “Indemnatee”) from and against any and all claims, lawsuits, judgments, debts, demands and liability (including attorney fees and costs) (collectively, “Third Party Claims”), including, without limitation, those arising from injuries or death of persons and/or damage to property, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT or its principals, officers, employees, agents or Subconsultants in the performance of this contract. This indemnity provision does not apply to Third Party Claims arising from the sole negligence or willful misconduct of Indemnatee, or to the extent caused by the active negligence of Indemnatee. The cost to defend charged to CONSULTANT or an Indemnatee shall not exceed its proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, CONSULTANT shall meet and confer with Indemnatee and any other defendants regarding unpaid defense costs. In the event AGENCY or Third-Party tenders, a Third-Party Claim to CONSULTANT for defense under this subsection 12.b., AGENCY and CONSULTANT shall meet and confer in good faith and make best efforts to agree to an equitable sharing of the costs of defense between them prior to any determination and apportionment of fault (or if no such determination and apportionment is made) based on the allegations of the claim. CONSULTANT shall not settle or otherwise compromise a Third-Party Claim covered by this section without AGENCY’s advance written approval.

13. Insurance Requirements

- a. Without limiting CONSULTANT's duty to defend and indemnify AGENCY as required herein, CONSULTANT shall, at CONSULTANT's sole cost and expense and throughout the term of this contract and any extensions hereof, carry one or more insurance policies that provide at least the following minimum coverage:
 - i. Commercial general liability insurance shall provide a minimum of \$1,000,000.00 coverage for each occurrence and \$2,000,000.00 in general aggregate coverage.
 - ii. Automobile liability insurance shall provide a minimum of either a combined single limit (CSL) of \$1,000,000.00 for each accident or all of the following: \$250,000.00 bodily injury (BI) per person, and \$500,000.00 bodily injury per accident, and \$100,000.00 property damage (PD). Automobile liability insurance is not required if CONSULTANT does no traveling in performing the Work.
 - iii. Workers' compensation insurance in full compliance with California statutory requirements for all employees of CONSULTANT in the minimum amount of \$1,000,000.00. This workers' compensation insurance requirement may only be waived by AGENCY in writing if CONSULTANT is a sole proprietor with no employees and CONSULTANT provides AGENCY with evidence of such before commencing any work under the contract.
 - iv. Professional liability (errors and omissions) insurance shall provide a minimum of \$1,000,000.00 coverage per claim and \$2,000,000.00 in annual aggregate coverage.

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

- b. With respect to any coverage written on a "claims made" basis, CONSULTANT shall, for three years after the date when this contract is terminated or completed, maintain such policy with a retroactive date that is on or before the start date of contract services or purchase an extended reporting period endorsement (tail coverage). AGENCY may withhold final payments due until satisfactory evidence of the continued maintenance of such policy or the tail coverage is provided by CONSULTANT to AGENCY. Such policy shall allow for reporting of circumstances or incidents that may give rise to future claims.
- c. CONSULTANT shall notify AGENCY immediately if CONSULTANT's general aggregate of insurance is exceeded by valid litigated claims in which case additional levels of insurance must be obtained to maintain the above-stated requirements. All required insurance shall be written by a financially responsible company or companies authorized to do business in the State of California. CONSULTANT shall notify AGENCY of any and all policy cancellations within three working days of the cancellation.
- d. The commercial general liability policy shall name AGENCY and the County of Ventura (if not defined as AGENCY) and their respective officials, employees, and agents as additional insureds ("Additional Insureds"). All required insurance shall be primary coverage as respects the Additional Insureds, and any insurance or self-insurance maintained by Additional Insureds shall be in excess of CONSULTANT's insurance coverage and shall not contribute to it. Coverage shall apply separately to each insured, except with respect to the limits of liability, and an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds. Additional Insured coverage shall include both ongoing and completed operations. In

the case of policy cancellation, AGENCY shall be notified by the insurance company or companies as provided for in the policy.

- e. CONSULTANT hereby waives all rights of subrogation against AGENCY, the County of Ventura, all special districts governed by the Board of Supervisors, and each of their boards, directors, employees and agents for losses arising directly or indirectly from the activities or Work under this contract. The commercial general liability, automobile liability and workers' compensation policies shall contain a provision or endorsement needed to implement CONSULTANT's waiver of these rights of subrogation.
- f. Prior to commencement of the Work, CONSULTANT shall furnish AGENCY with certificates of insurance and endorsements effecting all coverage required hereunder. Copies of renewal certificates and endorsements shall be furnished to AGENCY within 30 days of the expiration of the term of any required policy. CONSULTANT shall permit AGENCY at all reasonable times to inspect any policies of insurance required hereunder.
- g. Each insurance policy required above shall state that coverage shall not be canceled except with notice to AGENCY.

12. Claims and Disputes

- a. Administrative Review. Prior to filing a complaint in arbitration against AGENCY seeking payment of money or damages regarding the Work, an extension of contract time, or an interpretation or adjustment of the terms of this contract, including "pass-through" claims asserted by CONSULTANT on behalf of a Subconsultant (collectively referred to hereinafter as "claim"), CONSULTANT shall first exhaust its administrative remedies by attempting to resolve the claim with AGENCY's staff in the following sequence: 1) Project Manager, 2) Deputy Director of Public Works ("Department Director") and 3) Director of Public Works Agency ("Agency Director"). CONSULTANT shall initiate the administrative review process no later than 30 days after the claim has arisen by submitting to the Project Manager a written statement describing each claim and explaining why CONSULTANT believes AGENCY is at fault, as well as all correspondence and evidence regarding each claim. CONSULTANT may appeal the decision made by the Project Manager to the Deputy Director and may appeal the decision made by the Deputy Director to the Agency Director, provided that AGENCY receives such appeal in writing no later than seven days after the date of the decision being appealed. If CONSULTANT does not appeal a decision to the next level of administrative review within this seven-day period, the decision shall become final and binding and not subject to appeal or challenge.
- b. Arbitration. All CONSULTANT claims not resolved through the administrative review process stated above shall be resolved by arbitration unless AGENCY and CONSULTANT agree in writing, after the claim has arisen, to waive arbitration and to have the dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to article 7.1 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code and the regulations promulgated thereto, chapter 4 (commencing with section 1300) of division 2 of title 1 of the California Code of Regulations (collectively, "Rules for Public Works Contract Arbitrations"). Arbitration shall be initiated by a complaint in arbitration prepared, filed and served in full compliance with all requirements of the Rules for Public Works Contract Arbitrations. CONSULTANT consents and agrees that AGENCY may join it as a party to any arbitration involving third party claims asserted against AGENCY arising from or relating to any Work performed by CONSULTANT hereunder.

13. Compliance with Laws and Regulations; Permits and Licenses

CONSULTANT shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws and regulations. CONSULTANT certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to AGENCY, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its principals, officers, employees, agents

and Subconsultants to comply with all applicable statutes, ordinances, and regulations, or other laws, that apply to performance of the Work. AGENCY is entitled to review and copy all such applications, permits, and licenses which CONSULTANT shall promptly make available upon AGENCY's request.

14. Prevailing Wage Requirements

Certain work to be performed under this contract may be considered "public works" subject to prevailing wage, apprenticeship and other labor requirements of Labor Code division 2, part 7, chapter 1, section 1720 et seq. Such public works may include work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT is solely responsible for determining whether the Work, or any portion thereof, is subject to said requirements, and for complying with all such requirements that apply. All such public works projects are subject to compliance monitoring by the California Department of Industrial Relations (DIR). AGENCY has obtained from the DIR general prevailing wage determinations for the locality in which the Work is to be performed that are on file with AGENCY's Public Works Agency and are available upon request. CONSULTANT is responsible for posting job site notices as prescribed by regulation pursuant to Labor Code section 1771.4(a)(2). CONSULTANT acknowledges that it is aware of state and federal prevailing wage and related requirements and shall comply with these requirements to the extent applicable to the Work, including, without limitation, Labor Code sections 1771 (payment of prevailing wage), 1771.1 (registration with DIR) and 1771.4 (submission of certified payrolls to Labor Commissioner).

15. Miscellaneous

- a. Entire Understanding. This contract is an integrated agreement and constitutes the final expression, and the complete and exclusive statement of the terms of, the parties' agreement with respect to the subject matter hereof. This contract supersedes all contemporaneous oral and prior oral and written agreements, understandings, representations, inducements, promises, communications or warranties of any nature whatsoever, by either party or any agent, principal, officer, partner, employee or representative of either party, with respect to the subject matter hereof. Without limiting the foregoing, CONSULTANT acknowledges that no representation, inducement, promise or warranty not contained in this contract will be valid or binding against AGENCY.
- b. No modification, waiver, amendment or discharge of this contract shall be valid unless the same is in writing and signed by duly authorized representatives of both parties.
- c. Non-assignability. CONSULTANT will not assign this contract or any portion thereof to a third party without the prior written consent of AGENCY, and any attempted assignment without such prior written consent will be null and void and will be cause, at AGENCY's sole and absolute discretion, for immediate termination of this contract. AGENCY may withhold its consent to assignment at its discretion. In the event AGENCY consents to assignment, the obligations of CONSULTANT hereunder shall be binding on CONSULTANT's assigns.
- d. Third Party Beneficiaries. Except for indemnitees under sections 10.e and 12 above, this contract does not, and the parties to this contract do not intend to, confer a third party beneficiary right of action on any third party whatsoever, and nothing set forth in this contract will be construed so as to confer on any third party a right of action under this contract or in any manner whatsoever.
- e. Time limits stated herein are of the essence.
- f. Governing Law; Venue. This contract is made and entered into in the State of California and shall, in all respects, be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein. The venue for any action, suit, arbitration, judicial reference or other proceeding concerning this contract shall be in Ventura County, California.
- g. All notices, requests, claims, and other official communications under the contract shall be in writing and transmitted by one of the following methods:

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- (1) Personal delivery.
- (2) Courier where receipt is confirmed.
- (3) Registered or certified mail, postage prepaid, return receipt requested.

Such notices and communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. All notices and communications shall be sent to CONSULTANT at the current address on file with AGENCY for contract payment purposes, and shall be sent to AGENCY as follows:

Public Works Agency
County of Ventura L#1670
800 South Victoria Avenue
Ventura, CA 93009-1670

Either party may change its contact information by providing written notice of the change to the other party in accordance herewith.

- h. Further Actions. The parties hereto agree that they will execute any and all documents and take any and all other actions as may be reasonably necessary to carry out the terms and conditions of this contract.
- i. Legal Representation. Each party warrants and represents that in executing this contract, the party has relied upon legal advice from attorneys of the party's choice (or had a reasonable opportunity to do so); that the party has read the terms of this contract and had their consequences (including risks, complications and costs) completely explained to the party by the party's attorneys (or had a reasonable opportunity to do so); and that the party fully understands the terms of this contract. Each party further acknowledges and represents that the party has executed this contract freely and voluntarily without the undue influence of any person, and the party has not relied on any inducements, promises or representations made by any person not expressly set forth in this contract.
- j. No Waiver. Failure by a party to insist upon strict performance of each and every term, condition and covenant of this contract shall not be deemed a waiver or relinquishment of the party's rights to enforce any term, condition or covenant.
- k. Partial Invalidity. If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties intend, and it shall be so deemed, that the remaining provisions of this contract shall continue in full force without being impaired or invalidated in any way. If such provision is held to be invalid, void or unenforceable due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- l. Interpretation of Contract. For purposes of interpretation, this contract shall be deemed to have been drafted by both parties, and no ambiguity shall be resolved against any party by virtue of the party's participation in the drafting of the contract. Accordingly, Civil Code section 1654 shall not apply to the interpretation of this contract. Where appropriate in the context of this contract, the use of the singular shall be deemed to include the plural, and the use of the masculine shall be deemed to include the feminine and/or neuter.
- m. Counterparts. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract.

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CONSULTANT:
NV5 West, Inc.

AGENCY:
County of Ventura

Signature

Public Works Director or
Deputy Purchasing Agent

Print Name and Title

Signature

Print Name and Title

27-1979620

Vendor Number