

**VENTURA COUNTY TRANSPORTATION COMMISSION
REQUEST FOR PROPOSAL (RFP)
FOR
CONSULTANT SERVICES FOR AN ORIGIN/DESTINATION, TRANSFER AND
CUSTOMER SATISFACTION SURVEYS**

INTRODUCTION

The Ventura County Transportation Commission (VCTC) is seeking proposals from qualified consultants to complete an origin/destination survey, a transfer survey and a customer satisfaction survey described in this Request for Proposals (RFP). The origin/destination surveys will cover a total of 18 routes on five different operators throughout Ventura County. The transfer surveys will include 12 different transfer locations. The customer satisfaction surveys will be conducted on the VCTC Intercity service to gauge how well the service is meeting customer needs. Also included is an option for validation of Automatic Passenger Counters through ride check sampling.

VCTC and the county operators seek to better understand where passengers are starting and ending their journeys and which routes they transfer from and to. This information will help better inform route and service planning and will help transit staff to best serve passengers in Ventura County.

VCTC aims to better understand passengers' satisfaction with the Intercity service, including how well the transit routes meet their needs, customer service and overall operations.

BACKGROUND

Ventura County lies on California's coast roughly sixty-five miles north of downtown Los Angeles. VCTC is the Regional Transportation Planning Agency (RTPA) for Ventura County and is the lead for this project. It operates the VCTC Intercity regional bus service that provides routes that travel throughout the county as well as service into Santa Barbara and Los Angeles County. It has a total of 9 routes and many of them have multiple route paths. Most routes will be surveyed.

Gold Coast Transit District (GCTD) is the largest operator in the county. It provides service to the areas of Oxnard, Ventura, Port Hueneme, Ojai and the unincorporated areas of western Ventura County. It has twenty routes, four of which will be surveyed.

Thousand Oaks Transit (TOT) provides service in the city of Thousand Oaks and has four routes, two of which will be surveyed.

Simi Valley Transit (SVT) provides service in the city of Simi Valley and has four routes, two of which will be surveyed.

Moorpark City Transit (MCT) provides service in the city of Moorpark and has two routes, one of which will be surveyed.

The Valley Express provides both fixed-route and general purpose dial-a-ride service in the communities of Santa Paula, Fillmore and Piru. One fixed-route will be surveyed.

Goals

VCTC is undertaking the surveys to meet the following objectives:

- Compile statistically accurate information about transit passengers in Ventura County and how they use the transit system.
- Understand where transit passengers are traveling to and from through reliable origin/destination data.
- Understand which buses passengers are transferring to and from through reliable transfer data.
- Understand how often passengers use multiple transit systems to make their journey.
- Understand passengers' satisfaction of the VCTC Intercity transit services.

SCOPE OF WORK

To achieve the aforementioned goals, the Consultant shall construct an origin/destination survey on VCTC, GCTD, TOT, SVT, MCT and Valley Express routes as well as a transfer survey at important transfer locations. The Consultant shall, at a minimum, include the following work elements:

1. Origin Destination Survey

Please find route hours in the appendix. VCTC expects to receive the raw data from tasks 1.1-1.6 in Excel format.

1.1. Survey VCTC Routes

This task will include conducting an origin/destination survey for all of VCTC's routes. VCTC's routes are:

- Coastal Express – provides service mainly from Ventura to Santa Barbara but has many different route variations that also serve Camarillo, Oxnard, Carpinteria and Goleta. Three of the route paths will be surveyed.
- Highway 101 – provides service between Ventura and Thousand Oaks and makes stops in Oxnard and Camarillo. It serves major destinations such as the Ventura Transit Center (VTC), Ventura College, the Government Center, the Esplanade, Camarillo Outlets, Camarillo City Hall, Camarillo Metrolink, Oaks Mall and the Thousand Oaks Transportation Center (TOTC), with commuter trips to other Thousand Oaks locations.
- Conejo Connection – the Conejo Connection follows the path of the Highway 101, though with less stops, and provides commuter service to the Warner Center in Woodland Hills
- East County – provides service between Thousand Oaks, Moorpark and Simi Valley. It serves major destinations such as, the Oaks Mall, TOTC, Moorpark Metrolink, Moorpark College and the Simi Town Center.
- Oxnard/Camarillo/CSUCI – travels from the C St. Transfer Center (CTC) to California State University Channel Islands (CSUCI).
- CSUCI – Oxnard – provides service to CSUCI from the CTC, stopping at Oxnard College along the way.
- Highway 126 – provides service between Ventura, Santa Paula and Fillmore.
- East West Connector – provides service between Ventura, Oxnard, Camarillo, Moorpark and Simi Valley. It stops at major destinations such as the VTC, Ventura College, Esplanade, Camarillo Metrolink, Moorpark Metrolink, Moorpark College, Simi Town Center, Simi Civic Center and Simi Metrolink.

The routes and schedules can be found here <https://www.goventura.org/vctc-transit/routes-schedules/>. An interactive map can be found on the same page.

1.2. Survey GCTD Routes

The GCTD Routes that will be sampled are:

- Route 5 – this route provides service from the OTC to the Seabridge Shopping Center via Wooley Rd., Patterson Rd., and Hemlock St.
- Routes 15/17 (interlined) – Route 15 provides service from the Esplanade to the St. John’s Hospital, serving El Rio and the Auto Center along the route. Route 17 provides service from the Esplanade to Oxnard College, serving El Rio and St. John’s Hospital with service primarily along Rose Ave.
- Routes 19/20 – these routes provide service in a loop around North Oxnard, beginning and ending at the OTC, serving Oxnard High School and St. John’s Hospital as well as the industrial area. The routes provide service mainly along Gonzales Rd. and 5th St. Route 19 provides service in a clockwise loop and Route 20 provides service in a counterclockwise loop.

Schedule information can be found here <http://www.goldcoasttransit.org/schedules/current-schedules> and the system map can be found here <http://www.goldcoasttransit.org/schedules/service-area>.

1.3. Survey TOT Routes

The TOT routes that will be sampled are:

- Route 3 (red) – this route provides service mainly in a counterclockwise loop along Hillcrest St. and Thousand Oaks Blvd., serving the TOTC and Oaks Mall. It provides service from Westlake Blvd in the East to Rancho Conejo Blvd. in the west.
- Route 4 (blue) – this route follows a similar path, also providing service along Hillcrest St. and Thousand Oaks Blvd., though it does not travel as far west as Newbury Park and provides service in a clockwise loop.

Schedule and map information can be found here <https://www.toaks.org/departments/public-works/transit/bus-routes-and-schedules>.

1.4. Survey SVT Routes

The SVT routes that will be sampled are:

- Route A – this route provides service in a clockwise loop around Simi Valley in an east/west orientation, reaching Yosemite Ave. in the east and Madera Rd. in the west. The route primarily travels along Cochran St. and Los Angeles Ave., serving the hospital, Simi Valley Metrolink and the Civic Center.
- Route C – this route provides service from Tapo Canyon in the west to the Chatsworth Metrolink station in the east, serving Simi Valley Metrolink along the way, with service primarily along Los Angeles Ave.

Schedule and map information can be found here <https://www.simivalley.org/home/showdocument?id=17535>.

1.5. Survey MCT Routes

The MCT route that will be sampled is:

- Route 1 – provides bidirectional service between Moorpark Metrolink and Moorpark College and counterclockwise service in a loop in the southern portion of the city, with Los Angeles Ave. in the north, Tierra Rejada Rd. in the west and south and Miller Parkway in the east.

Major destinations along the route are: Moorpark High School, Civic Center, Arroyo Vista Community Park, downtown and numerous schools.

Schedule and map information can be found here <http://moorparkca.gov/227/2604/Bus-Ride-Guide>.

1.6. Survey Valley Express Routes

The Valley Express routes that will be sampled is:

- Santa Paula Routes A and B – these routes provide service throughout the majority of the Santa Paula. The A route provides service in a clockwise direction and the B route provides service in a counter clockwise direction. They provide service from Peck Road and the K Mart shopping center in the west and Harvard and Main in the east. Service is mainly provided along Harvard Blvd. and Santa Barbara St.

Schedule and map information can be found here <http://www.valleyexpressbus.org/routes-and-service-hours-english/>

1.7. Data Analysis

The consultant is to analyze the raw data collected in tasks 1.1-1.6. The results are to be provided in an easy to read and easy to use format.

This work element shall at a minimum include the following tasks and specific deliverables:

Origin/Destination Surveys	Deliverables
A Origin/destination data	Raw data in Excel format
B Origin/destination data	Analyzed results in easy to read format

2. Transfer Survey

2.1. Transfer

The transfer survey will provide reliable data to VCTC that shows what buses passengers are getting off on and what routes they transfer to. Passengers should be counted if they are using one of the below listed operators. If passengers are transferring between buses on the same operator or between buses of two different operators, they are to be counted.

Passengers using the following services are to be counted:

- VCTC
- GCTD
- TOT
- SVT
- MCT
- Valley Express
- Camarillo Area Transit

To the extent feasible, surveyors should count passengers transferring from Metrolink or Amtrak services at the Camarillo Metrolink, Moorpark Metrolink and the OTC. Please note that the OTC is large and has a number of operators and routes that service it and require additional resources. The intersection of Telephone and Victoria, where the Government Center is located, is also large and may require additional resources as well.

Conduct a survey from 7 am to 5:30 pm at these locations:

- Oxnard Transit Center (OTC)
- Ventura Transit Center (VTC)
- C St. Transfer Center (CTC)
- Esplanade
- Government Center (intersection of Telephone and Victoria)
- Moorpark Metrolink Station
- Camarillo Metrolink Station

Conduct a survey from 6:30-8:30 am and from 4-6 pm at these locations:

- Thousand Oaks Transit Center (TOTC)
- Santa Barbara MTD Transit Center
- Simi Valley Town Center
- Fillmore terminal
- Santa Paula City Hall

Raw data is to be provided in Excel format.

2.2. Data Analysis

The consultant is to analyze the raw data and provide the results in an easy to read and easy to use format.

This work element shall at a minimum include the following tasks and specific deliverables:

Transfer Survey	Deliverables
A Transfer survey data	Raw data in Excel format
B Transfer survey data	Analyzed results in easy to read format

3. Customer Satisfaction Survey

3.1. Customer Satisfaction Survey

The customer satisfaction survey will be implemented on all VCTC routes. VCTC will develop the questions for the survey. The consultant will put together the survey and print it. VCTC will assist with the distribution of the surveys.

3.2. Compile Results

The consultant is to compile the raw data and provide the results in an easy to read and easy to use format.

This work element shall at a minimum include the following tasks and specific deliverables:

Customer Satisfaction Survey	Deliverables
A Customer satisfaction data	Raw data
B Customer satisfaction data	Analyzed results in easy to read format

4. Option – APC Sample Validation

4.1. Ride Checks

Conduct ride checks on selected VCTC and Valley Express trips. 20 VCTC trips will be sampled, including at least one trip on each route. 10 Valley Express trips will be sampled. Provide the data to VCTC.

This work element shall at a minimum include the following tasks and specific deliverables:

Ride Check Data	Deliverables
A Ride check data	Raw data in Excel format

Project Schedule

Due to the end of the college school year, the Consultant shall complete the origin/destination and transfer surveys by no later than May 10. Customer satisfaction surveys shall be completed by June 15. All data, raw and analyzed, is due to VCTC by July 15.

PROPOSAL REQUIREMENTS

Proposal Deadline

Three (3) hardcopies and one (1) electronic copy in PDF format on a CD/DVD/USB flash drive of the Consultant’s proposal shall be submitted by **Friday, March 1, 2019** no later than **4:00 P.M.** (electronic submissions will not be accepted). **Proposals delivered after the stated date and time will not be considered and returned to the proposing firm unopened.** Proposals shall be delivered to the VCTC offices at:

Ventura County Transportation Commission
Origin Destination, Transfer and Customer Satisfaction Surveys
950 County Square Drive, Suite 207
Ventura, CA 93003

There is no expressed or implied obligation for the VCTC to reimburse responding firms for any expenses incurred in the preparation or delivery of proposals in response to this RFP. All proposals and material submitted will become the property of VCTC and will not be deemed confidential or proprietary. The VCTC reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected. All submissions are considered a matter of public record.

This RFP does not commit VCTC to award a contract, to pay any costs incurred in the preparation of a proposal for this RFP, or to procure or contract for any services. VCTC reserves the right to waive any irregularities or informalities contained with the RFP, and/or reject any or all proposals received for this request; negotiate with any qualified source or to cancel the RFP in part or whole.

VCTC Contact Information

All questions, comments and proposals should be directed to:

Claire Grasty, Program Manager
Ventura County Transportation Commission

950 County Square Drive, Suite 207
Ventura, CA 93003
Phone: (805) 642-1591 (ext. 115)
Email: cgrasty@goventura.org

Required Proposal Content

Proposals shall include the following required elements. Any proposal not containing the required elements will be deemed to be nonresponsive and incomplete, and removed from any further consideration.

1. **Title Page** - Indicate RFP subject and number, name of proposer's firm, address, telephone number, name of contact person, and date of proposal.
2. **Table of Contents** - Identify the material in the proposal by section and page number.
3. **Letter of Transmittal** - Briefly state the proposer's understanding of the work to be done and commit to perform the work within the specified time period and budget. The letter should be signed by someone authorized to bind the consultant team. Include the names and contact information of all subcontractors. Provide the names and titles of individuals authorized to represent the proposer. Letter should include acknowledgement of all addenda and proposed exceptions to the draft contract. Letter should be no longer than three pages.
4. **Profile of the Proposer** – Describe the firm's resources and provide evidence that it has the ability to complete the work solicited by this RFP in the time frame proposed.
5. **Summary of Proposer's Qualifications** - Describe similar projects performed. Provide a list of references for which similar work has been performed, as well as references for any proposed subcontractors. Include sample reports or sample materials produced. Sample reports can be summarized here and submitted in an Appendix digitally.
6. **Proposed Staffing** – Provide a list of proposed staff, their qualifications and backgrounds identifying the proposed project manager and staff positions for the study. Indicate what proportion of their time key personnel will devote to this project and include statements that each of those key people have time to meet those obligations.
7. **Technical Approach** – Describe how the study is proposed to be conducted, including data collection, compilation and analysis. Describe project management techniques and strategies to insure quality and deliver project on time and within budget. A statement of intent for quality assurance/quality control should be submitted along with the proposal.
8. **Preliminary Schedule** - Provide a draft schedule for study completion.
9. **Cost Structure** - Provide a detailed cost breakdown, including estimated time by task, hourly rates, estimated travel time and travel expenses and materials cost.

Proposal Evaluation

Proposals will be reviewed by a Consultant Selection Panel comprised of study stakeholders selected by the VCTC. Interviews, if required by VCTC at its sole discretion, will be held at VCTC office in Ventura on March 12, 2019. If interviews are conducted, Proposers may be asked to submit additional documentation at or after the interview stage. Each proposal will be scored according to the criteria below

and the proposal receiving the highest score will be invited to negotiate an agreement for consultant services. If an agreement for consultant services cannot be reached, VCTC reserves the right to enter into negotiations with the next highest scoring proposer. In addition, VCTC reserves the right to select a proposal without conducting interviews or abandon this RFP. Final selection of a consultant and authority awarding the contract to proceed with these services shall be at the sole discretion of the VCTC Board.

VCTC reserves the right to award in whole or in part, by item or group of items, when such action serves the best interest of VCTC.

Proposals will be evaluated according to the following criteria:

<u>SCORE</u>	<u>CRITERIA</u>
5%	Demonstrated financial resources to perform work specific to this RFP and the ability to meet the schedule.
20%	Experience with similar projects/portfolio.
30%	Technical approach and scope of services, how the firm proposes to conduct the surveys, including data collection and compilation, analysis and deliverables.
25%	Evidence of full understanding of the work to be performed and project objectives as well as assigned personnel qualifications and availability.
20%	Cost

The Consultant will be selected based on qualifications and demonstrated competence and the contract may not be awarded to the lowest responsible proposer. When selecting the Consultant, the skill and ability of the project team performing the services is a key component of the selection criteria.

Request for Proposal Schedule

Proposal schedule is subject to change. Firms considering responding to the RFP should monitor VCTC's website for changes. Firms that submit a proposal will be notified by email of any change in dates or times.

- Request for Proposal released: February 5, 2019
- Pre-proposal meeting: February 20, 2019 at 1:30 p.m. – conference call will be available
- Question submission period ends: February 21, 2019
- Questions answered: February 25, 2019
- Deadline for Proposal Submission – March 1, 2019
- Proposal review and evaluation: March 1 – March 15, 2019
- Oral interviews: March 13, 2019
- Contract negotiations with first ranked consultant: March 13 – March 19, 2019
- Approximate Contract Award and Notice to Proceed: April 5, 2019

Additional Information

The complete Request for Proposal, questions and responses and the proposal results will be posted on VCTC's website at: <https://www.goventura.org/work-with-vctc/contracts/>

Form Consulting Services Agreement

A form Consulting Services Agreement is attached hereto and incorporated herein. Firms interested in responding to this RFP should be prepared to enter into the agreement under the standard terms and should be able to provide the required insurance. If VCTC is unable to negotiate a satisfactory agreement with the top-ranked proposer, with terms and conditions VCTC determines, in its sole judgment, to be fair and reasonable, then VCTC may commence negotiations with the next most qualified proposer in sequence, until an agreement is reached or determination is made to reject all submittals. VCTC and Consultant may agree to add additional work to the Project work scope by a later agreement. VCTC may elect to stop work at any time in the contract and will pay for work completed to that point on a time and material basis.

Relationship to Final Agreement

This Request for Proposal shall be included in its entirety in any agreement between VCTC and the firm selected by the Consultant Selection Panel.

Attachments:

A. Form Consulting Services Agreement

RESOLUTION 91-05

A RESOLUTION OF THE VENTURA COUNTY TRANSPORTATION COMMISSION ADOPTING CONTRACT PROTEST PROCEDURES

SECTION I.

THE VENTURA COUNTY TRANSPORTATION COMMISSION DOES HEREBY DETERMINE AND FIND AS FOLLOWS:

- A. The Ventura County Transportation Commission (hereinafter, "VCTC") does from time to time solicit bids from contractors for work and/or proposals for professional services; and
- B. There is a potential that an Interested Party (as defined in Section II.A, below), may at some time wish to protest the determinations hereinafter set forth as protestable; and
- C. It is in the interest of the health, safety and general welfare of the residents of Ventura County and potential Interested Parties that the Commission establish procedures for protests to contracts awarded by, and bids or proposals on contracts received by VCTC, as hereinafter set forth:

SECTION II.

NOW, THEREFORE, THE VENTURA COUNTY TRANSPORTATION COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

A. GENERAL.

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

that the material contains proprietary material which should be withheld, a statement advising of this fact shall be affixed to the front page of the material submitted and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

B. FILING A PROTEST

1. Protests may be filed only by "Interested Parties". "Interested Parties" are defined as (a) bidders who have responded, and prospective bidders who may respond, to a request for bids, (b) prospective professional services contractors who may respond, and professional service contractors who have responded, to a request for proposals on a VCTC contract and/or a generally funded contract, and (c) subcontractors or suppliers at any tier who have a substantial economic interest in an award, a provision of the specifications, or a bid or proposal submitted to VCTC by a prime contractor, or in the interpretation of the provisions of such documents.
2. Protests to a contract requirement must be filed at least ten (10) working days prior to bid opening or the deadline for receiving proposals. Protests to VCTC staff actions must be filed within five (5) working days of receipt by the bidder or proposer from the Executive Director, or a person authorized to act on behalf of the Executive Director, or written notice of the VCTC staff action.
3. Protests shall be addressed to Ventura County Transportation Commission, 950 County Square Drive, Suite 207, Ventura, California, 93003, or such other address as may appear on the request for proposal for bid solicitation.
4. Protests shall be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest shall be submitted by the protestor in the time and manner specified in this section.
5. The Executive Director, or an authorized person acting on behalf of the Executive Director, shall provide notice, by telephone, telephone facsimile (FAX) or by letter, to all bidders and/or persons who have submitted proposals on the contract which is subject to the protest known to VCTC. Such notice shall state that a protest has been filed with VCTC and identify the name of the protestor. The notice shall be given not more than five (5) working days after receipt of a properly filed protest. The notice shall state that bidders will receive further information relative to the protest only by submitting a written request for further information to the Executive Director.

C. VCTC PRELIMINARY RESPONSE TO A PROTEST: MEETING WITH STAFF TO ATTEMPT EARLY RESOLUTION OF THE PROTEST

1. Not more than ten (10) working days after receipt of a properly filed protest, the Executive Director, or a person authorized to act on his or her behalf, shall prepare and distribute to the protestor and to all persons specified in Section B.5, above:
 - (a) A written preliminary response to the protest. This response shall include a brief explanation of the reasons why the protested VCTC staff action is justified; and
 - (b) The time, date and place of the meeting described in Section C.2, below.
2. The Executive Director and/or appropriate VCTC staff shall meet with the protestor to discuss and attempt to resolve the protest within thirty (30) days of the response required by section C.1(a) above.

3. After the meeting required by Section C.2, above the protestor shall within five (5) working days give the Executive Director written notice that either the protest is withdrawn or, alternately, that the protestor requests further consideration of the protest. In the event that the protestor fails to file the notice required by this Section C.3 at the office of the Executive Director within five (5) working days after the meeting, the protest shall be deemed withdrawn.

D. FURTHER INVESTIGATION

1. If a protest is not withdrawn pursuant to Section C.3, above, the Executive Director shall, within thirty (30) days of receipt of the notice from the protestor described in Section C.3, above, further investigate the protest with the assistance of the VCTC staff.
2. The Executive Director may contract for third-party consulting services when necessary to investigate a protest. The Executive Director may negotiate with the protestor and other interested parties the sharing of the cost of such consulting services.
3. As part of the investigation, the Executive Director shall establish a reasonable time within which VCTC, the protestor, and other interested parties shall exchange all documents and arguments relevant to the protest; provided, however, that such time shall not exceed thirty (30) days without the concurrence of the protestor and the Executive Director.

E. INTENDED DECISION: COMMENTS BY PROTESTOR AND OTHER PARTIES

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

F. VCTC CONSIDERATION

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

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

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 _____, 20__ (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 and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect VCTC's right to terminate the Agreement, as provided for in Section 8.
- 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 A, regarding the amount of compensation, the Agreement shall prevail. VCTC shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. 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 bill VCTC for duplicate services performed by more than one person.

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 cost 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 hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by each employee, agent, and subcontractor of Consultant performing services hereunder;
- Consultant shall give separate notice to VCTC when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds eight hundred (800) hours within a twelve (12)-month period under this Agreement and any other agreement between Consultant and VCTC. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and VCTC, if applicable.
- The amount and purpose of actual expenditures for which reimbursement is sought;
- The Consultant's signature.

2.2 Monthly Payment. VCTC shall make monthly 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 **Final Payment.** VCTC shall pay the five percent (5%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to VCTC of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **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.
- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto and incorporated herein as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses, as specified in Exhibit C, attached hereto and incorporated herein, shall not exceed ____ (\$). Expenses not listed below are not chargeable to VCTC. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **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 responsible for verifying the residency status of any subcontractors and withhold taxes from non-California subcontractors.
- 2.8 **Payment upon Termination.** In the event that VCTC or Consultant terminates this Agreement pursuant to Section 8, VCTC shall compensate the Consultant for all outstanding costs 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.
- 2.9 **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.
- 2.10 **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. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. VCTC shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

VCTC shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with VCTC employees and reviewing records and the information in possession of VCTC. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of VCTC. In no event shall VCTC be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. 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.

4.1 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.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial general liability. 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 **\$1,000,000** 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.

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

4.2.3 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability Insurance and Services Office form number GL 0404 covering Broad Form Comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition). No endorsement shall be attached limiting the coverage.

4.2.4 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified 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.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than **\$2,000,000** covering the licensed professionals’ errors and omissions. Any deductible or self-insured retention shall not exceed one hundred fifty thousand dollars (\$150,000) per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement or the work. VCTC shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to VCTC for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy

4.4 All Policies Requirements.

4.4.1 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.

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

4.4.3 Notice of Reduction in or Cancellation of Coverage. A certified 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 by certified mail, return receipt requested, has been given to VCTC. In the event that any coverage required by this section is reduced, limited, cancelled, 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.

4.4.4 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; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to VCTC or its officers, employees, agents, or volunteers.

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

- 4.4.5 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.

- 4.4.6 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.

Vendor will act as an independent contractor and is not an employee, officer, agent, partner or joint venture of VCTC by virtue of this Agreement. Vendor agrees that its workers performing services under this Agreement shall be either (1) employees of Vendor, or (2) shall meet all of the following three requirements to qualify as independent contractors: (a) be free from control and direction of Vendor; (b) perform work that is outside the usual course of Vendor's business; and (c) be customarily engaged in an independently established trade, occupation

or business of the same nature as the work the individual performs for the Vendor. Vendor will defend, indemnify, and hold VCTC harmless from any claims, demands, liabilities, costs, and expenses arising from Vendor's misclassification of workers providing services as independent contractors under this Agreement.

4.4.7 Wasting Policy. No insurance policy required by Section 4 shall include a "wasting" policy limit.

4.4.8 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.

4.5 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 5. 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"), to the extent 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.

5.1 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.

- 5.2 **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.
- 5.3 **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 6. STATUS OF CONSULTANT.

- 6.1 **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.
- 6.2 **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 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **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.

- 7.3 **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.
- 7.4 **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.
- 7.5 **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.

- 7.6 **Contractor's Residency and Tax Withholding** Contractor declares that Contractor is a resident of the State of _____ in accordance with the California Franchise Tax Board form 590 ("Form 590"), as may be amended, attached hereto and incorporated herein as Exhibit _____. Unless provided with valid, written evidence of an exemption or waiver from withholding, VCTC may withhold California taxes from payments to Contractor as required by law. Contractor shall obtain, and maintain on file for three (3) years after the termination of the Contract, Form 590s from all subcontractors. Contractor accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Contractor's withholding duty to VCTC.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **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 9.1.

- 8.2 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. Consultant understands and agrees that, if VCTC grants such an extension, VCTC shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. 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.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 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.
- 8.5 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.
- 8.6 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:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.4 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 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **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.
- 9.2 **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.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 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.
- 9.4 **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 attorneys 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 10 **MISCELLANEOUS PROVISIONS.**

- 10.1 **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.
- 10.2 **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.
- 10.3 **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.
- 10.4 **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.
- 10.5 **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.

- 10.6 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.
- 10.7 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.

- 10.8 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.

- 10.9 Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

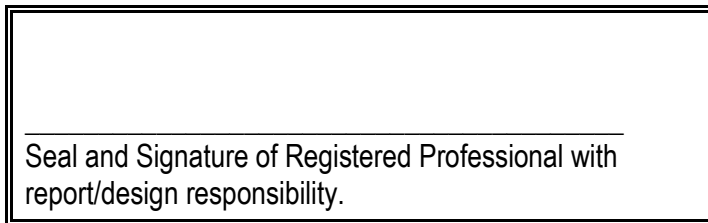
- 10.10 Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business 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

Claire Grasty
Program Manager
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

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



- 10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C], and D]] represents 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>	Compensation Schedule
<u>Exhibit C</u>	Reimbursable Expenses

- 10.13 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.
- 10.14 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.
- 10.15 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

Darren Kettle, General Manager

[NAME, TITLE]

Approved as to Form:

Steven T. Mattas, General Counsel

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

EXHIBIT C
REIMBURSABLE EXPENSES

EXHIBIT D

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS

I. HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight (8) hours during any one (1) calendar day, and forty (40) hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week at not less than one-and-one-half (1.5) times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to VCTC twenty five dollars (\$25) for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day, or more than forty (40) hours in any one (1) calendar week, in violation of the provisions of California Labor Code Section 1810, *et seq.*.

II. WAGES:

- A. In accordance with California Labor Code Section 1773.2, the Contractor and any subcontractors shall pay not less than the general prevailing wages for each craft or type of work needed for completion of the services described in Exhibit A, as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research. A copy of this publication is on file in VCTC Public Works Office and shall be made available on request.
- B. Pursuant to Labor Code Section 1775, Contractor may be subject to a penalty of up to two hundred dollars (\$200) per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The Consultant or subcontractor shall also pay 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.
- C. Consultant shall comply with all of the following requirements:
 - 1. contracts between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- D. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, 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 in performance of the services described in Exhibit A. 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:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by VCTC and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- E. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

FTA Contract Clauses

No Obligation by the Federal Government

The VCTC and the Contractor acknowledge and agree that, notwithstanding any occurrence by the Federal Government in or approval of this solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to VCTC, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False Or Fraudulent Statements And Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. And U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

The Contractor agrees to provide VCTC, the FTA Administrator, the Comptroller General of the United States or of any of their authorized representatives access to any books, documents,

papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making and conducting audits, inspections, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 CFR 633.1.7, to provide the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described in 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain such books, records, account and reports until the VCTC, the FTA Administrator, the Comptroller general, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

Federal Changes

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the Ventura County Transportation Commission (VCTC) and FTA, as they may be amended or promulgated from time to time during the term of this contract. Failure by the Contractor to so comply shall constitute a material breach of this contract. In the event any such changes significantly affect the cost or the schedule to perform the work, the Contractor shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this contract.

Termination

Termination for Convenience - The VCTC, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default [Breach or Cause] - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the VCTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the VCTC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the

control of the Contractor, the VCTC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision) - The VCTC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to VCTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from VCTC setting forth the nature of said breach or default, VCTC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude VCTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach - In the event that VCTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by VCTC shall not limit VCTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Title VI Of The Civil Rights Act Of 1964

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), and subcontractors agree as follows:

- A. Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination.** In accordance with Title VI of the Civil Rights act, as amended, 42 U.S.C. 200d section 3 03 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
 - 1. Race, Color, Creed, National Origin, Sex** – In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which

implement Executive Order No. 11246 Relating to Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project for which this Contract work is being performed. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment of recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
3. **Disabilities** – In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “ Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Immigration and Naturalization Act of 1986** – In connection with the execution of this Contract, the Contractor must comply with all aspects of the federal Immigration and Naturalization Act of 1986.

- D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- E. Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to City or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- F. Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with nondiscrimination provisions of this contract, City shall impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 2. cancellation, termination, or suspension of the contract, in whole or in part.
- G. Subcontracts.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprises

The Ventura County Transportation Commission (VCTC) has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of VCTC's DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out VCTC's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or such other appropriate administrative remedy. Each party to this Agreement shall ensure that compliance with VCTC's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.

CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE Program shall be considered a material breach of this AGREEMENT and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

No later than Thirty (30) working days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 1.1 below.

No later than Thirty (30) days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall also make full payment to its subcontractors of all retentions withheld by it pursuant to the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 5.1 below.

There shall be no substitution of any DBE subcontractors subsequent to award of this Contract without the written approval of the City's DBE Officer.

Incorporation of Federal Transit Administration (FTA) Terms

The Contractor shall take such action with respect to any subcontract or procurement as VCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request VCTC, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Debarment and Suspension

- A. The Contractor shall include in each subcontract exceeding \$25,000, regardless of tier, a clause requiring each lower tiered subcontractor to provide the certification set forth in paragraph B of this section. Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall knowingly enter into any lower tier subcontract exceeding \$25,000 with a person who is disbarred, suspended or declared ineligible from obtaining federal assistance funds. If a proposed subcontractor is unable to certify to the statements in the following certification, the Contractor shall promptly notify VCTC and provide all applicable documentation.

- B. Each subcontractor with a subcontract exceeding \$25,000 shall certify as follows:

<p>CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS</p>
<p>The Primary Participant (applicant for an FTA grant or cooperative agreement, or Potential Contractor for a major third party contract), certifies to the best of its knowledge and belief, that it and its principals:</p> <ul style="list-style-type: none">1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,-2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction,- violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. <p>(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)</p> <p>THE PRIMARY PARTICIPANT (APPLICATION FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 <u>ET. SEQ.</u> ARE APPLICABLE THERETO.</p>

Signature of Contractor's Authorized Official

Date

Typed Name and Title of Contractor's Authorized Official

Breach of Contract

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Clean Air

The contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 1 1017 of the California Government Code. All Contractors and suppliers shall be required to submit evidence, if requested, to City that the governing air pollution control criteria will be met.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 under this Contract.

Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Lobbying Certification

As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, I certify to the best of my knowledge and belief that for each application for federal assistance exceeding \$100,000: (1) No Federal appropriated funds have been or will be paid, by or on behalf of _____, 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 pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and (2) If any funds other than Federal appropriated funds have been 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 any application to FTA for Federal assistance, I assure that Standard Form-LLL, "Disclosure Form to Report Lobbying," would be submitted and would include all information required by the form's instructions.

I understand that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. I also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Signature & Title of Authorized Official

Date

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Federal Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

National Intelligent Transportation Systems Architecture and Standards

The Recipient agrees to: (1) Conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), as amended by MAP-21, unless it obtains an exemption from those requirements, and (2) Except as the Federal Government determines otherwise in writing, follow: (a) FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455, January 8, 2001, and (b) Other applicable Federal guidance.

Access Requirements For Persons With Disabilities (ADA)

The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

State and Local Government Laws/Regulations

To the extent required under Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. The State will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. The State will provide the information required under this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.