

**VENTURA COUNTY TRANSPORTATION COMMISSION
REQUEST FOR PROPOSAL (RFP)
FOR
TRIENNIAL PERFORMANCE AUDITS OF THE VENTURA COUNTY
TRANSPORTATION COMMISSION (VCTC) AND VENTURA COUNTY TDA
CLAIMANTS**

INTRODUCTION

The Ventura County Transportation Commission (VCTC), which serves as the Regional Transportation Planning Agency (RTPA) for Ventura County, is required by Section 99246 of the California Public Utilities Code (the "Transportation Development Act", hereinafter "TDA") to triennially designate an entity other than itself to conduct a performance audit of its activities. Operators that receive funding under Article 4 of the TDA are required to have a performance audit. Between fiscal years (FY) 2017 and 2019, this includes:

- Gold Coast Transit District (GCTD)
- Thousand Oaks Transit
- Simi Valley Transit

The following agencies are sub recipients to GCTD and will need to be audited through GCTD.

- County of Ventura
- City of Ojai
- City of Oxnard
- City of San Buenaventura
- City of Port Hueneme

Claimants that receive funding under Article 4.5, Article 8, or STA funds are not statutorily required to have a performance audit; however, to enable a comprehensive and objective review that serves the benefit of both the RTPA and the transit provider, performance audits should be conducted of all operators that are allocated funding under the TDA. These claimants include:

- VCTC Intercity Service
- Camarillo Area Transit
- Moorpark City Transit
- City of Fillmore
- City of Santa Paula
- County of Ventura
- Ojai Trolley

Currently there are no Article 4.5 claimants in Ventura County for this audit period.

VCTC is therefore seeking proposals to conduct performance audits of itself, as the RTPA, and its TDA claimants. The final products of this RFP will be completion of performance audits for VCTC and its claimants covering Fiscal Years 16/17, 17/18 and 18/19. The audits must be conducted in compliance with relevant sections of the Transportation Development Act and shall evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited. They shall be conducted in accordance with the efficiency, economy, and program results portions of the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

TDA legislation specific to Ventura County

Effective July 1, 2014, special TDA legislation went into effect specific to Ventura County. Senate Bill 203 (SB 203) amended SB 716 to allow cities under 100,000 population and not a part of the Gold Coast Transit District (i.e. Camarillo, Fillmore, Moorpark and Santa Paula) to continue to claim TDA funds for local streets as long as the entity's reasonable transit needs are met. Senate Bill 644 created the Gold Coast Transit District (GCTD) consisting of the County of Ventura and the cities of Ojai, Oxnard, Port Hueneme and San Buenaventura. Effective July 1, 2019, Senate Bill 848 allowed the City of Thousand Oaks (even though it is over 100,000 population), to claim TDA funds for local streets as long as their reasonable transit needs are met.

VCTC, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, notifies all proposers that it will affirmatively insure that, in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, religion, color, sex or national origin in consideration for award.

SCOPE OF WORK

Public Utilities Code Section 99246 states that the performance audit shall evaluate the efficiency, effectiveness and economy of the operation being audited. In addition, the audits must be conducted in conformance with the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." The Consultant shall, at a minimum, include the following work elements:

1. Performance Audit of VCTC

1.1. Determine Compliance with Legal and Regulatory Requirements

The consultant will be required to review and determine all TDA claimants' compliance with the Transportation Development Act and related sections of the California Code of Regulations. The specific Code Sections for which compliance is to be verified are those specified within the Transportation Development Act. Should the consultant identify instances of non-compliance, a finding regarding the non-compliance should be made in the audit report.

1.2. Follow-up on Prior Year Performance Audit Recommendations

The consultant will review the most recent prior performance audits for VCTC and assess the implementation of audit recommendations. The auditor will need to make determinations as to whether recommendations, which have not been implemented, are:

- a) no longer applicable,
- b) infeasible, or
- c) should still be implemented.

If a prior audit recommendation has not been implemented but still has merit, the consultant should include the prior audit recommendation in the current audit report. The consultant will evaluate recommendations, which have been implemented or are being implemented. For these recommendations, the consultant should assess the benefits provided (or likely to be provided) by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

1.3. Review VCTC Functions

The consultant will review each VCTC TDA-related function consistent with the efficiency, economy, and program results portions of the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." The functional review is expected to include interviews with VCTC management and staff.

Such concerns of inefficient or ineffective performance should lead to further investigation. The detailed investigation of functional concerns, problems, and potential improvements should make up the basis of most findings in the audit report.

2. Performance Audit of Transit Operators

2.1. Determine Compliance with Statutory and Regulatory Requirements

The consultant will be required to review and determine the operator's compliance with the Transportation Development Act and related sections of the California Code of Regulations. At a minimum, the Code Sections for which compliance is to be verified are those specified within the Transportation Development Act. Should the consultant identify instances of non-compliance, a finding regarding the non-compliance should be made in the audit report.

2.2. Follow-up Prior Performance Audit Recommendations

The consultant will review the most recent prior performance audits for the operator and assess the operators' implementation of audit recommendations. The auditor will need to make determinations as to whether recommendations, which have not been implemented, are

- a) no longer applicable,
- b) infeasible, or

c) should still be implemented.

If a prior audit recommendation has not been implemented but still has merit, the consultant should include the prior audit recommendation in the current audit report. The consultant will evaluate recommendations, which have been implemented or are being implemented. For these recommendations, the consultant should assess the benefits provided (or likely to be provided) by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

2.3. Verify Performance Indicators

As part of the performance audit, Section 99246 of the Public Utilities Code requires verification of five performance indicators: operating cost per passenger; operating cost per vehicle service hour; passengers per vehicle service hour; passengers per vehicle service mile; and vehicle service hours per employee. The consultant will review and validate the operator's collection of basic data needed to calculate these indicators for each fiscal year in the triennium. The consultant will be expected to analyze performance indicators with the intent of identifying potential issues or concerns that may need further examination during the functional review.

The performance audit may include performance evaluations both for the entire system and for the system excluding special, new or expanded services instituted to test public transportation service growth potential. As part of the functional review described below, the consultant will be expected to select, calculate and analyze additional performance indicators, which are appropriate to identify, quantify and/or resolve performance problems and potential areas for improvement.

2.4. Review Operator Functions

The consultant will review each operator function, consistent with the Transportation Development Act. The functional review is expected to include interviews with the operator's management and staff.

Such concerns of inefficient or ineffective performance should lead to further investigation, which may include the verification and calculation of additional performance indicators. This detailed investigation of functional concerns, problems, and potential improvements should make up the basis of most findings in the audit report.

3. Presentations

3.1. Present to Transcom

The consultant will be required to present both the draft audit reports and the final audit report to Transcom, the Transit Operators Committee. A verbal presentation supplemented by copies of the reports is sufficient.

3.2. Present to the Ventura County Transportation Commission

The consultant will be required to present the final audit report to the VCTC. A verbal and PowerPoint presentation shall accompany the report.

3.3. Present to the Gold Coast Transit District

The consultant will be required to present the final audit report to the GCTD Board. A verbal and PowerPoint presentation shall accompany the report.

Deliverables

This project shall, at a minimum, include the following tasks and specific deliverables:

Task	Deliverables
1 Performance Audit of VCTC	Draft audit report, final audit reports
2 Performance Audit of Transit Operators	Draft audit report, final audit reports
3 Presentations	Present to Transcom, VCTC and GCTD

The draft audits can be submitted electronically. Please provide an electronic copy and seven (7) hard copies of the final audits.

TDA Performance Audit Schedule

The likely schedule for the TDA Performance Audit is as follows:

- Present draft Audit to Transcom - March 12, 2020
- Present final Audit to Transcom - April 9, 2020
- Present to Commission - May 1, 2020
- Present to GCTD Board - May 6, 2020

- Submit – June 15, 2020

The Consultant shall include a draft study schedule in their proposal and a final schedule within thirty (30) days of Notice to Proceed.

PROPOSAL REQUIREMENTS

Proposal Deadline

Five (5) hardcopies and one (1) electronic copy in PDF format on a CD/DVD/USB flash drive of the Consultant's proposal shall be submitted **Monday, November 4, 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
TDA Triennial Performance Audit
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 request. All proposals and material submitted will become the property of the 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.

VCTC Contact Information

All questions, comments and proposals should be directed to:

Martin R. Erickson, Transit Director
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003
Phone: (805) 642-1591 (ext. 110)
Email: merickson@goventura.org

Required Proposal Content

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

1. **Title Page** - Indicate RFP subject, 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 public outreach, data collection and compilation, analysis, consensus building and stakeholder approvals. Describe project management techniques and strategies to insure quality and deliver project on time and within budget.
8. **Preliminary Schedule** - Provide a draft schedule for study completion.
9. **Cost Structure** - Provide a detailed cost breakdown, including estimated time by task, person, hourly rates, estimated travel time and travel expenses and materials cost.

Proposal Evaluation

Proposals will be reviewed by a consultant selection committee comprised of study stakeholders selected by VCTC. Interviews, if required by VCTC at its sole discretion, will be held at VCTC office in Ventura on November 18, 2019. 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>
30%	Qualifications – experience in performing work of a closely similar nature and size.
20%	Qualifications of Staffing - qualifications of project staff, logic of project organization, references.
30%	Work Plan – understanding of the purpose and requirements of the audit; approach to be followed and tasks to be performed; relative allocation of resources to key tasks; and proposed project schedule and ability to meet deadlines.
10%	Cost - Reasonableness of the total cost based on anticipated requirements; adequacy of data in support of figures quoted; basis on which prices are quoted.
10%	Completeness of Response - Completeness of response in accordance with RFP instructions; exceptions to or deviations from the RFP requirements that the Commission cannot or will not accommodate; other relevant factors not considered elsewhere.

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: October 7, 2019
- Question submission period ends: October 16, 2019
- Questions answered: October 23, 2019
- Deadline for Proposal Submission – November 4, 2019
- Proposal review and evaluation: November 5 – November 15, 2019
- Oral interviews (if required): November 18, 2019
- Approximate Contract Award and Notice to Proceed: December 6, 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 provided as a separate attachment 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 the VCTC is unable to negotiate a satisfactory agreement with the top-ranked proposer, with terms and conditions the VCTC determines, in its sole judgment, to be fair and reasonable, then the 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. The VCTC and Consultant may agree to add additional work to the Project work scope by a later agreement. The 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

ATTACHMENT A – FORM CONSULTING SERVICES AGREEMENT

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 _____ 2019 (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. Changes in personnel desired by the consultant must be submitted in writing and approved by VCTC.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. VCTC hereby agrees to pay Consultant a sum not to exceed _____ (\$_____) notwithstanding any contrary indications that may be contained in Consultant’s proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. VCTC shall pay Consultant 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.

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 subconsultants 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 and position 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 subconsultant of Consultant performing services hereunder;
 - 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 properly formatted, with back up and approved invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. VCTC shall have thirty (30) days from the receipt of an approved 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. Any modifications to the Agreement or change orders must be approved by VCTC.
- 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 B, 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. Invoices for reimbursable expenses must have backup receipts.
- 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. Consultant represents and warrants that Consultant 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. Consultant accepts sole responsible for verifying the residency status of any subconsultants and withhold taxes from non-California subconsultants.
- 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 VCTC's 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 subconsultants. 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 subconsultant to commence work on any subcontract until Consultant has obtained all insurance required herein for the subconsultant(s). Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Commercial General and Automobile Liability Insurance.

- 4.1.1 **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.
- 4.1.2 **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.
- 4.1.3 **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.
- 4.1.4 **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.

4.2 Professional Liability Insurance.

- 4.2.1 **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.
- 4.2.2 **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.
- 4.2.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy

4.3 All Policies Requirements.

- 4.3.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.3.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish VCTC with complete copies of all policies and proof of insurance 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.
- 4.3.3 **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.

- 4.3.4 Additional insured; primary insurance.** VCTC and its officers, employees, agents, and volunteers shall be named 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.

- 4.3.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to VCTC, its officers, employees, agents, and volunteers. VCTC's 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.

- 4.3.6 Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

Consultant will act as an independent consultant and is not an employee, officer, agent, partner or joint venture of VCTC by virtue of this Agreement. Consultant agrees that its workers performing services under this Agreement shall be either (1) employees of Consultant, or (2) shall meet all of the following three requirements to qualify as independent consultants: (a) be free from control and direction of Consultant; (b) perform work that is outside the usual course of Consultant'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 Consultant. Consultant will defend, indemnify, and hold VCTC harmless from any claims, demands, liabilities, costs, and expenses arising from Consultant's misclassification of workers providing services as independent consultants under this Agreement.

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

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

4.4 Remedies. In addition to any other remedies VCTC may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, VCTC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies VCTC may have and are not the exclusive remedy for Consultant's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

Section 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, subconsultants, 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, subconsultant, 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 subconsultant 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 subconsultants, 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 Consultant. At all times during the term of this Agreement, Consultant shall be an independent consultant 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 subconsultants 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 subconsultants 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 subconsultants 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 subconsultants 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 subconsultants 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. Any permits required to perform the work required in the contract must be obtained by the Consultant. In addition to the foregoing, Consultant and any subconsultants 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, subconsultant, 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 VCTC's contract administrator or this Agreement.
- 7.6** **Consultant's Residency and Tax Withholding** Consultant declares that Consultant is a resident of the State of California in accordance with the California Franchise Tax Board form 590 ("Form 590"), as may be amended. Unless provided with valid, written evidence of an exemption or waiver from withholding, VCTC may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of the Contract, Form 590s from all subconsultants. Consultant accepts sole responsibility for withholding taxes from any non-California resident subconsultant and shall submit written documentation of compliance with Consultant'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 Consultant 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 VCTC's 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 and approved by VCTC.

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 VCTC's contract administrator. Consultant shall not assign or subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of VCTC's 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 Work Product and Related Documents 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 the VCTC Executive Director ("Contract Administrator"). All correspondence shall be directed to or through VCTC's 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

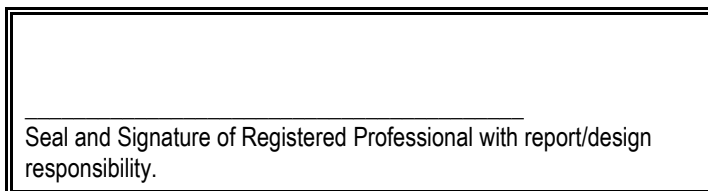
a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Consultant

VCTC

Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

- 10.11 Professional Seal.** Where applicable in the determination of VCTC's 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 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.

Exhibit A Scope of Services
Exhibit B Compensation Schedule
Exhibit C Schedule

- 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

Manuel Minjares, VCTC Chair

_____, CEO/President

Approved as to Form:

Steven T. Mattas, General Counsel

**EXHIBIT A -- SCOPE OF SERVICES
EXHIBIT B -- COMPENSATION SCHEDULE
EXHIBIT C -- SCHEDULE**

