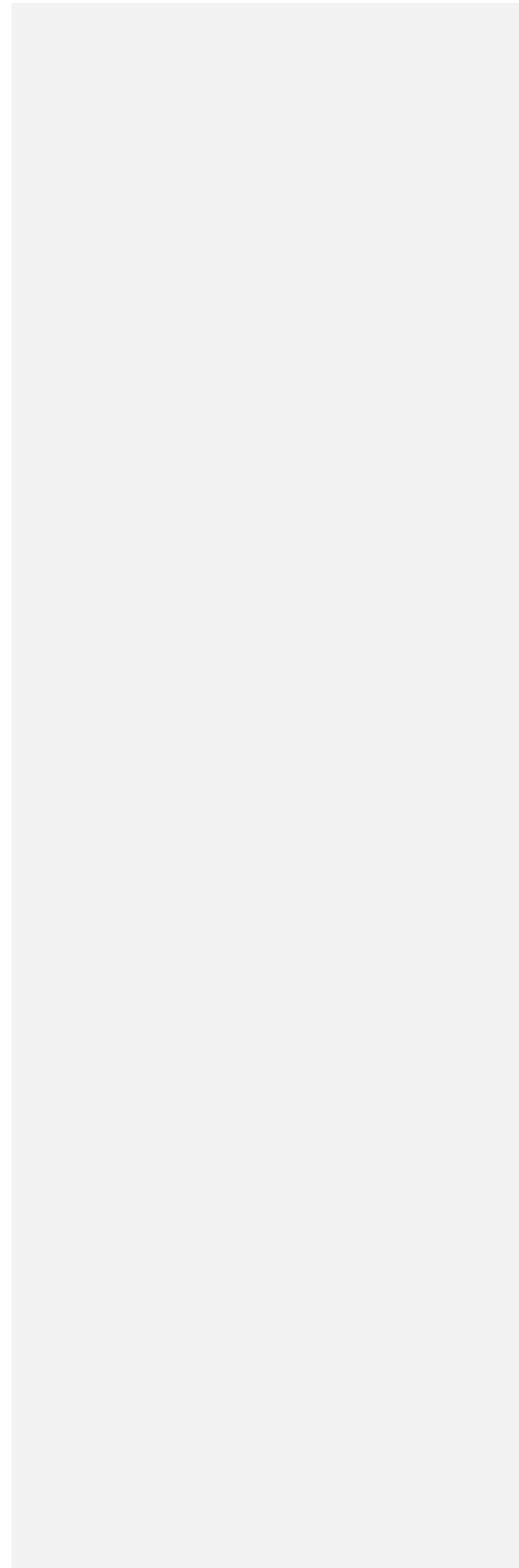




**Request for Proposals**  
**Ventura County Transportation Model**  
**Update**



## Summary

The Ventura County Transportation Model (VCTM) is an analytical tool for studying travel patterns and traffic forecasting. Results of the VCTM are based on known and predicted land uses and associated vehicle trip rates. The current version of the VCTM was deployed in 2016 and based on pre-Census 2020 demographic data as well as pre-COVID assumptions, making the base year and forecast year scenario unreliable. Historically VCTC updates the VCTM every five to seven years to keep results valid and the model is once again in need of updating.

The Ventura County Transportation Commission (VCTC) is seeking proposals from qualified contractors to update the VCTM base year and baseline forecast year scenarios. In addition to the model update, VCTC is seeking a contractor to provide ongoing model support.

## Key Dates

Release Date: September 6<sup>th</sup>, 2024

Questions Due to VCTC: September 20<sup>th</sup>, 2024, no later than 4:00 p.m. Pacific

Proposals Due: November 1<sup>st</sup>, 2024, no later than 4:00 p.m. Pacific

VCTC reserves the right to modify these dates at any time.

## RFP Official Contact

Andrew Kent  
Program Manager – Transportation Data & Services  
[akent@coventura.org](mailto:akent@coventura.org)

All communication with VCTC related to this RFP must be directed to the contact listed above.

## 1 The Opportunity

### 1.1 Project Summary

Since the last comprehensive update of the Ventura County Transportation Model in 2016, the travel demand context has undergone significant changes in the wake of the COVID-19 pandemic and the breaking of long-run demographic assumptions revealed by the 2020 Census. Within the past few years, big-data resources have become increasingly accessible, providing new opportunities to improve our understanding and modeling of the transportation system. Changes to the California Environmental Quality Act (CEQA) and environmental policy have also reprioritized the data needs of model stakeholders, creating a greater need for granular and accurate estimation of Vehicle Miles Traveled (VMT).

VCTC is seeking a qualified contractor with traffic model development expertise to perform a comprehensive update of the VCTM base-year and baseline forecast model scenarios. In addition to updating the model inputs and parameters, the ideal consultant will be able to refine VCTM by synthesizing local Ventura County knowledge and macro trends. A consultant partner capable of leveraging VCTM to derive informative insights

for decision making is also important to support VCTC's model program.

Flexibility and creative problem-solving are also desirable qualities. Through engagement with model stakeholders, the Consultant may be prompted with requests for additional functionality, such as new metrics, automated mapping of outputs or custom post-processing capabilities.

VCTM is largely based on the Southern California Association of Governments (SCAG) 2016 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) travel demand model. As part of the previous VCTM update completed in 2016, additional enhancements were added to the model which will need to be reviewed and updated as well:

- Land Use to Socioeconomic Data Conversion
- Inclusion of Special Generators in Trip Generation
- Enhancement of Active Transportation in Mode Choice
- Enhanced and Focused Assignment Output Capabilities
  - Reporting of turn movements at designated nodes
  - Automated exporting of model outputs for link and load attributes
- Specialized and Standardized Performance Measure Outputs
  - Automated spreadsheet for VMT, VHT, and VHD by link and by zone
  - Automated air quality conformity analysis spreadsheet (VMT by speed bin)

VCTM is a TransCAD custom Add-in (TransCAD Version 6.0 r2 Build 9215 compatible). The VCTM program and scenarios files are stored and run on a dedicated VCTC model server. For more information on VCTM installation and running the model see the Users Guide on the VCTC model webpage: [VCTM User's Guide \(goventura.org\)](http://goventura.org)

The project requires updating the VCTM Development and Validation documentation. The existing VCTM Model Development and Validation report is also available for review on the VCTC website: [VCTM Model Development and Validation \(goventura.org\)](http://goventura.org)

Lastly, the opportunity includes providing consultant services for ongoing model support. Model support includes maintaining VCTM on the VCTC model server, resolving model errors, training VCTC Staff, remote troubleshooting, performing ad hoc project scenario runs, and special projects as directed by VCTC staff.

## 1.2 Goals

This RFP has several main goals:

- Update VCTM Base Year
- Update VCTM Forecast Year
- Engage VCTM Stakeholders & Develop Solutions to Serve VCTC Partner Needs
- Support Countywide Implementation of VMT Analysis per SB743
- Leverage VCTM to Support County Transportation Planning and Policy Insights
- Ongoing Model Technical Support

## 1.3 Award Term

This contract will be for a period of three years with the option to renew for two

additional one-year periods. The total contract term will not exceed five years.

## 2 SCOPE OF WORK

### 2.1 Description of Services

#### Task 1: Data Collection

Consultant shall review and evaluate the existing model, including all inputs, sub-model outputs, network files and model parameters. The Consultant shall coordinate with VCTC partner agencies to collect land use, demographic and transportation project data. Consultant shall gather and update model with data from a variety of sources, including the 2020 Census, travel surveys, and transportation big-data products provided by VCTC.

Consultant shall contact SCAG to gather all available data for the VCTM update and ensure reasonable consistency with the current SCAG regional model. Maintaining consistency with the SCAG regional model is a key consideration.

It should be noted that previous updates to the VCTM were assisted by SCAG's Sub-Regional Model Development Tool (SMDT), which SCAG no longer supports.

#### Task 2: Land Use Assumptions

The VCTM utilizes a pre-processing model (LUtoSED\_Conversion.xlsx) to allow input of land use-based scenarios, as opposed to the original SCAG model which relies solely on socio-economic inputs. Land use assumptions are provided to SCAG by local jurisdictions and may be available for use to update the VCTM. Consultant in consultation with VCTC shall validate the land use assumptions with local jurisdictions where necessary. The Consultant may propose additional updates or modifications to the land use pre-processing model and land use data structure.

#### Task 3: Model Variables, Parameters & Modules

Model variables including but not limited to trip generation rates, splitting factors, and special generators have not been reviewed since the previous update. Consultant shall review and analyze these model variables in consultation with VCTC.

Consultant shall review and update parameters as needed to bring fixed model assumptions up to date, such as opportunity cost of travel delay, fuel cost, telework assumptions, etc. Model parameters will be updated in consultation with SCAG to ensure consistency with the regional model program.

The Consultant shall update the transit module, including updating the transit network files with new route information. The transit module will be calibrated using transit surveys, passenger trip data and origin-destination survey data collected from Ventura County transit agencies.

VCTM must be able to reasonably estimate commercial truck trip generation, distribution and network impacts. The Consultant shall leverage VCTC big data resources and other sources of data to update the VCTM commercial trucking module.

**Commented [RW1]:** Amanda: I didn't see a task for Ongoing Model Support. Is that anticipated to be separate task or embedded within one of the other tasks?

**Commented [AF2R1]:** Added Task 11 to capture ongoing model support.

#### **Task 4: 2020 Base Year Model**

Consultant shall update and validate the model base year to 2020, including AM peak, PM Peak and off-peak capabilities. The 2020 base year model network shall be developed in consultation with VCTC staff, SCAG staff and VCTC's Transportation Technical Advisory Committee (TTAC). Consultant's validation shall utilize observed count data from recent city/county count program, digital count data such as Caltrans Performance Measurement System (PeMS) or other acceptable sources. Model validation must meet all state and Federal guidelines, conform to industry best practices and is expected to largely reflect the current model validation and calibration methodology.

VCTC will also provide the Consultant access to data from SCAG's regional Streetlight license and VCTC's ClearGuide license to supplement development and validation data. Access to big data sources provides the opportunity to validate the model in extra dimensions, such as speeds, trip distribution, non-motorized travel, etc. Consultant shall meet and confer with SCAG to ensure consistency with the regional model.

#### **Task 5: 2050 Forecast Year Model**

Consultant shall develop a 2050 Forecast Model, including AM peak, PM Peak and off-peak capabilities, with up to three growth scenarios. The variations in the 2050 growth scenarios are intended to give VCTC the option to test alternate land use patterns and project scenarios.

Consultant shall update the future scenario network, incorporating the most recent list of RTP/FTIP projects programmed in Ventura County. The Consultant shall work with local jurisdictions to develop a 2050 land use scenario consistent with adopted city and County general plans. The forecast model shall incorporate the most recent demographic and socio-economic projections from SCAG. The Consultant shall consult SCAG and the technical literature to make defensible parameter assumptions for the future model scenario.

**Commented [AK3]:** Update to 2050

#### **Task 6: Post-Processing Models**

Consultant shall review all VCTM post-processing models and automated output macro embedded spreadsheets. Consultant shall update the post-processing models where necessary and make suggestions to VCTC for improvements. The Consultant may propose alternative modules for data post-processing or modifications to better serve stakeholder needs.

Outputs from the VCTM post-processing models are the most common stakeholder data request. A key consideration for the project is providing accessibly data and metrics in an interpretable format which supports VCTC partner agency workflows.

**Task 7: Installation**

Consultant shall install and configure the base year and forecast year model on the VCTC model server using the existing TransCAD license (Version 6.0 r2 Build 9215). Consultant shall run the updated model on VCTC's server to test performance, verify functionality of all post-processing models, and ensure the update runs error free.

**Task 8: Stakeholder Engagement & Meetings**

The Consultant in consultation with VCTC shall develop a plan to inform stakeholders about the project, gather stakeholder comments, and collect data from local jurisdictions.

The Consultant shall conduct meetings as needed with VCTC staff and at a minimum, two (2) with SCAG staff, four (4) with VCTC's Transportation Technical Advisory Committee (TTAC), and one (1) meeting with VCTC Board to present final product and findings.

**Task 9: Update Documentation**

The Consultant shall provide full model documentation including but not limited to, a description of model structure, TAZs, inputs, variables, trip generation rates, validation methodology and results. Consultant will provide two hard bound copies of all documentation, as well as one electronic copy.

The consultant shall prepare user manuals specific to the VCTM and in addition to standard software application documentation. Consultant will provide two hard bound copies of all documentation as well as one electronic copy.

**Task 10: Training**

The Consultant shall provide forty (40) hours of staff training for two (2) VCTC staff members to ensure familiarity with the model operation to test at minimum:

- Changes in network
- Changes in land use
- Perform select link/zone analysis
- Changes in transit operations
- Impacts of active transportation projects

**Task 11: Ongoing Model Support**

The Consultant shall provide ongoing model support to VCTC throughout the award term, a three (3) year period with two (2) one-year options, for a period of up to five (5) years. Model support includes maintaining VCTM on the VCTC model server, resolving model errors, training VCTC Staff, remote troubleshooting, performing ad hoc project scenario

runs, and special projects as directed by VCTC staff. An estimated **ten (10)** of hours per month may be used for estimating purposes.

Commented [AF4]: @Drew, please insert an estimated # of hours of model support anticipated.

Commented [AK5]: Ten hours per month estimate

### 3. PROPOSAL CONTENT

#### 3.1 Narrative Proposal & Cost Proposal

Each proposal must include the following information:

##### 1. Cover Letter

Provide a cover letter describing the consultant's interest and commitment to the proposed project. The cover letter must include the name, title, address, phone number, and email address of the individual to whom correspondence and other contacts should be directed during the selection process.

##### 2. Executive Summary

Provide a summary of the qualifications and benefits of selecting the proposing company to perform the requested services.

##### 3. Understanding of Scope of Work/Approach

The proposal shall demonstrate an understanding of the project objectives and the approach taken to implement all the major elements of the scope of work. The approach shall include potential strategies and considerations specific to the project. Include any additional task(s) that may add value to the project. Identify key assumptions for clarification. The proposal shall include a detailed scope of work document based on the contents of this RFP.

##### 4. Schedule

Provide a detailed project schedule, including project milestones, meetings and deliverables.

##### 5. Cost Proposal

Provide a cost proposal (sealed separately from written RFP response). The cost estimate shall include how the pricing is calculated based on items such as personnel names, classifications, hourly rates, overhead rates, services, or subscriptions, as applicable, and any other cost items necessary to perform the tasks listed in the scope of work. One signed copy of the cost proposal is required to be submitted.

##### 6. Experience

Identify any experience and history the firm has had performing this type of work (city, county and state levels) or service. Provide detailed information on projects with similar work. The referenced projects should be of comparable size, scope and magnitude where the above proposed approach/methodology was successfully implemented within the past five (5) years.

Complete submittals will also include the following items. Proposers are encouraged to use this table as a checklist to ensure all components are included in their proposal.

#### 3.2 Proposal Appendices

Proposal Appendices	
Financial Stability	Proposers should include one or more of the following financial statements to provide VCTC with enough information to determine financial stability of the Proposer and subcontractor. <ul style="list-style-type: none"> <li>• Financial Statement or Annual Report</li> <li>• Business tax return</li> <li>• Statement of income and related earnings</li> </ul>
Other Addenda (if applicable)	Colored displays, promotional materials, or other collateral are not necessary or desired. However, if a complete response cannot be provided without referencing supporting documentation, it may be provided as an addendum clearly cited in the Narrative or Cost Proposal.
Mandatory Attachments	
Insurance	As a condition precedent to the execution of an Agreement, Contractor shall procure and maintain at Contractor's expense for the duration of the Agreement (from an insurance company that is authorized to write insurance in the State of California or that has a rating of or equivalent to an A:VII by A.M. Best and Company) insurance coverage that meets the requirements defined in Appendix A, Section 4. of this RFP.
Non-Mandatory Attachments	The following are required for awarded Contractors prior to contract execution. If possible, Proposers are encouraged to include this information as part of their proposal to expedite processing.
W-9	
Proof of Registration with Secretary of State	

Provide a firm profile describing history and the number of years the organization has been in business. The company profile information should be detailed and complete, and include the following information:

### 3.3 Organizational Profile

Proposer Contact Info		
Organization	Company Name	
	Company Address	
	Website	
	Federal Tax ID Number	
Authorized Representative	Name	
	Title	
	Email Address	
	Phone Number	
Other Point of Contact (if required)	Name	
	Title	
	Email Address	
	Phone Number	



Identify the functional and technical qualifications of staff assigned to perform the work. Brief resumes of key staff should be included. The submittal shall designate a project manager who will provide a single point of contact for the management and coordination of all aspects of the work. The project manager shall be responsible for coordinating and tracking all deliverables, communication with the VCTC program manager, communications with fellow licensees, and reporting of results and recommendations to VCTC and city and county partner jurisdictions. Identify the task leads, backup individuals, and individuals assigned to work with certain jurisdictions. All staff shall be clearly identified with their roles defined as well as their proposed work location during the program.

### 3.4 References

Provide contact and contract information for three past or current clients for which your firm / team has provided services similar to those included in this RFP. Include Company (client), Project Manager, Phone Number, Brief Project Description, and Start and End Dates for the project for each reference.

**Commented [RW6]:** Duplicative of the above language. Recommend including instructions here for provision of references.

Reference 1	Company	
	Project Manager	
	Phone Number	
	Project Description	
	Project Start and End Dates	
Reference 2	Company	
	Project Manager	
	Phone Number	
	Project Description	
	Project Start and End Dates	
Reference 3	Company	
	Project Manager	
	Phone Number	
	Project Description	
	Project Start and End Dates	

## 4 SELECTION CRITERIA & PROCESS

### 4.1 Evaluation

Proposals shall be evaluated based on the following criteria:

EVALUATION CRITERIA (Points out of 100 possible)
1. TECHNICAL APPROACH (Up to 25 points) <ul style="list-style-type: none"> <li>• Demonstrates a clear understanding of project objectives</li> <li>• Tasks &amp; approach clearly described</li> </ul>

**Commented [RW7]:** Typically, we include points totals for the criteria. If you do not intend to use points, recommend providing some explanation how the evaluation criteria will be implemented.

**Commented [AF8R7]:** Added point values

<ul style="list-style-type: none"> <li>• Creative/innovative approach</li> <li>• Proposed methodology is reasonable</li> </ul>
<p>2. KNOWLEDGE &amp; EXPERIENCE (Up to 25 points)</p> <ul style="list-style-type: none"> <li>• Knowledge/experience working with multiple stakeholders and agencies</li> <li>• Experience with traffic model development and support</li> <li>• Capability to reallocate resources as needed to meet project deliverables</li> </ul>
<p>3. PROJECT MANAGEMENT (Up to 25 points)</p> <ul style="list-style-type: none"> <li>• Knowledge/experience of the project manager</li> <li>• Effective quality control measures/program</li> <li>• Capability to track and maintain the budget/schedule</li> <li>• Capability to work with multiple firms in case of consortium to provide quality services and schedule</li> </ul>
<p>4. PROJECT COST (Up to 20 points)</p> <ul style="list-style-type: none"> <li>• Reasonableness of costs of services to be performed</li> <li>• Allocation of cost to tasks &amp; services</li> <li>• Reasonable project cost distribution among participating firms in case of consortium</li> </ul>
<p>5. REFERENCES (Up to 5 points)</p> <ul style="list-style-type: none"> <li>• Similar projects completed on time and within budget</li> </ul>

#### 4.2 Selection Process & Timelines

MILESTONE	TIME (PACIFIC) & DATE	LOCATION/ADDITIONAL INFORMATION
Release date	Friday, September 6, 2024	Request for Proposals will be posted to: <a href="https://www.goventura.org/work-with-vctc/contracts/">https://www.goventura.org/work-with-vctc/contracts/</a>
Questions due to VCTC	Friday, September 20, 2024, No later than 4:00 p.m. Pacific Standard Time (PST)	Submit all inquiries via email to: Andrew Kent, Program Manager – Transportation Data & Services <a href="mailto:akent@goventura.org">akent@goventura.org</a>
Posting of the Q&A	Friday, September 27, 2024	Responses to the questions will be available on VCTC's website at: <a href="https://www.goventura.org/work-with-vctc/contracts">https://www.goventura.org/work-with-vctc/contracts</a>
Proposals due	Friday, November 1, 2024, No later than 4:00 p.m. PST	<ul style="list-style-type: none"> <li>• Proposals shall be submitted with one (1) original signed hard copy, two (2) hard copies, along with one (1) electronic copy to:</li> </ul>

		<p>Ventura County Transportation Commission  Attn: Andrew Kent  751 E. Daily Dr., Ste 420  Camarillo, CA 93010</p> <ul style="list-style-type: none"> <li>• Late proposals will not be accepted.</li> <li>• Proposers are responsible for submitting their proposals completely and on time.</li> </ul>
Evaluation		<p>An Evaluation Committee will review proposals to select the submission that best meet the needs of VCTC. Evaluations will be conducted using a methodology derived from the evaluation criteria listed in Section 4.</p>
Interviews/Demonstrations (At VCTC's discretion)	Week of November 11, 2024 (if/as needed)	<p>VCTC may elect to interview one, some, or all proposers. Interviews may include a demonstration of proposers data/analytics dashboard.</p>
Selection & Award	Friday, December 6, 2024	<p>Selected Contractor(s) will be notified in writing.  Any award is contingent upon the successful negotiation of final contract terms. If contract negotiations cannot be concluded successfully, VCTC reserves the right to negotiate with another Contractor or cancel the RFP.  Negotiations shall be confidential and not subject to disclosure to competing Contractors unless and until an agreement is reached.</p>
Execution	Dec. 9, 2024	

**5 TERMS & CONDITIONS**

**5.1 Acronyms/Definitions**

1. Awarded Contractor: The organization/individual that is awarded a contract with the Ventura County Transportation Commission for the services identified in this RFP.
2. Commission: The Ventura County Transportation Commission and any department identified herein.
3. Contractor / Proposer: Organization/individual submitting a proposal in response to this RFP.

5. Evaluation Committee: An independent committee comprised solely of representatives of VCTC established to review proposals submitted in response to the RFP, evaluate the proposals, and recommend selection of a proposal(s) to Commission.

6. May: Indicates something that is not mandatory but permissible.

7. RFP: Request for Proposals

8. Shall / Must: Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.

9. Should: Indicates something that is recommended but not mandatory. If the Proposer fails to provide recommended information, VCTC may, at its sole option, ask the Proposer to provide the information or evaluate the proposal without the information.

10. Subcontractor: Third party not directly employed by the Proposer who will provide services identified in this RFP.

## 5.2 Solicitation Terms & Conditions

1. VCTC reserves the right to alter, amend, or modify any provisions of this RFP, including modification of the RFP deadlines and schedule, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of VCTC to do so.

2. VCTC reserves the right to request clarification of any proposal term from Proposers.

3. VCTC may contact the references provided; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process.

4. The type of documentation required from the Proposer to satisfy VCTC will be commensurate with the size and complexity of the contract and Proposers should submit accordingly. If the information submitted by the Proposer, or available from other sources, is insufficient to satisfy VCTC as to the Proposer's qualifications, experience and/or contractual responsibility, VCTC may request additional information from the Proposer or may deem the proposal non-responsive.

5. VCTC reserves the right to waive informalities and minor irregularities in proposals received and/or the RFP process.

6. VCTC reserves the right to reject any or all proposals received prior to contract award; to negotiate with any, all, or none of the Proposers; and to award a contract to one or more Proposers. 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. If necessary, VCTC may repeat this process until a final contract has been negotiated or VCTC may make a determination to reject all submittals and not enter into an agreement with any Proposer.

7. VCTC's determination of the Proposer's responsibility, for the purposes of this RFP, shall be final.

8. Unless otherwise specified, VCTC reserves the right to award contracts to multiple contractors.

9. VCTC shall not be obligated to accept the lowest priced proposal but will make an award based on the best interests of the Commission after all factors have been evaluated.

10. Any irregularities or lack of clarity in the RFP should be brought to the VCTC Staff designee's attention as soon as possible so that corrective addenda may be furnished to Proposers.

11. Any final contract will include VCTC's standard insurance and indemnification requirements, substantially in the form outlined in Appendix A, Sections 4 & 5 respectively. Proposals must include any exception to VCTC's standard insurance and/or indemnification requirements and shall include any and all of Proposer's proposed terms and conditions, including the Proposer's standard contract language. The omission of these documents may render a proposal non-responsive.

12. Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.

13. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

14. Proposals may be withdrawn by written notice received prior to the proposal opening time.

15. The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement, or disclosure with or to any other Contractor or prospective Contractor.

16. No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.

17. Prices offered by Proposers in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded Contractor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded Contractor for implementation of their proposal.

18. VCTC is not liable for any costs incurred by Proposers prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by VCTC.

19. Proposal will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label applicable parts of a proposal as "CONFIDENTIAL." By submitting a proposal, Proposer thereby agrees to indemnify, defend, and hold harmless VCTC for any costs associated with withholding such information marked confidential and/or otherwise honoring such a designation by Proposer. The failure to label information as confidential prior to submission of a Proposal shall constitute a complete waiver of any and all claims for damages caused by any release of the information by VCTC.

20. A proposal submitted in response to this RFP must identify any subcontractors and outline the contractual relationship between the Proposer and each subcontractor. An official of each proposed subcontractor must sign and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the Proposer's obligations. VCTC may approve or disapprove the use of particular subcontractors.

21. If the Contractor elects to use subcontractors, VCTC requires that the awarded Contractor provide proof of payment of any subcontractors used for this project. Proposals shall include a plan by which VCTC will be notified of such payments.

22. Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. VCTC reserves the right to disqualify any Proposer on the grounds of actual or apparent conflict of interest.

23. Each Proposer must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or in which the Proposer has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. VCTC reserves the right to reject any proposal based upon the Proposer's prior history with VCTC or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

24. VCTC reserves the right to negotiate final contract terms with any Proposers selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Contractor's proposal, together with any modifications and clarifications thereto that are submitted at the request of VCTC during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Contractor's proposal, and the awarded Contractor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

25. VCTC will not be responsible for or bound by any oral communication or any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the VCTC Contact.

26. Any contract resulting from this RFP shall not be effective unless and until approved by the Commission or Executive Director, as applicable.

27. VCTC will not be liable for Federal, State, or Local excise taxes.

28. Submission of a proposal for this RFP shall constitute an agreement to all terms and conditions specified in the RFP, except such terms and conditions that the Proposer expressly excludes.

29. Proposer understands and acknowledges that the representations above are material and important and will be relied on by VCTC in evaluation of the proposal. Any Proposer misrepresentation shall be treated as fraudulent concealment from VCTC of the true facts relating to the proposal.

30. Proposals shall be kept confidential until a contract is awarded.

31. No announcement concerning the award of a contract as a result of this RFP may be made without the prior written approval of VCTC.

### 5.3 Contract Terms & Conditions

See Appendix A for Consulting Services Template Agreement

1. The awarded Contractor will be the sole point of contract responsibility. VCTC will look solely to the awarded Contractor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Contractor shall not be relieved for the non-performance of any or all subcontractors.

2. The awarded Contractor must maintain, for the duration of its contract, insurance coverages as required by VCTC. Work on the contract shall not begin until after the awarded Contractor has submitted acceptable evidence of the required insurance coverages.

3. All work performed in connection with this RFP shall be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 et seq. of the California Labor Code), and all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction.

4. Contractor shall comply with the indemnification provisions outlined in Section 4 of the Template Agreement.,

7. If the Contractor elects to use subcontractors, Contractor agrees to require its subcontractors to indemnify Indemnified Parties and to provide insurance coverage to the same extent as Contractor. If the Contractor elects to use subcontractors, the Contractor shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.

### 5.4 Protest Procedures

See Appendix B for Protest Procedures.

**Appendix A. CONSULTING SERVICES TEMPLATE AGREEMENT**

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

CONTRACT NO. \_\_\_\_\_

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 \_\_\_\_\_, 2024

**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 accordance with that degree of care, skill and diligence ordinarily exercised by professionals providing similar services in the same or similar locale and under circumstances to that of Consultant under this Agreement.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that VCTC, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from VCTC of such desire of VCTC, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant’s obligations hereunder.

**Section 2. COMPENSATION.**

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

**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 written 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 C.
- 2.6 **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 subcontractors and withhold taxes from non-California subcontractors.
- 2.7 **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.
- 2.8 **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.
- 2.9 **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 by Consultant 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 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general, automobile, and professional liability insurance for the term of this Agreement for risks associated with the work contemplated by this Agreement. No endorsement shall be attached limiting the coverage.

4.2.2 Minimum scope of coverage.

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and professional and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- b. 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 **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 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:

**Commented [RW9]:** Add Cyber liability policy requirement per Seth's email

**Commented [AF10R9]:** Seth recommended requiring Cyber Liability insurance "if the vendor will have access to VCTC's network and or your sensitive data." Drew, please confirm with Steve Efner whether consultant will require access to VCTC network or sensitive data for the VCTM update and ongoing support. If yes, then request cyber liability language from Seth.

- 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.

#### 4.4 **Cyber Risk and Privacy Insurance.**

**4.4.1 Cyber Liability Insurance**, with limits not less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

#### 4.5 **All Policies Requirements.**

**4.5.1 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.

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

**4.5.3 Notice of Reduction in or Cancellation of Coverage.** An 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 US 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.

- 4.5.4 Additional insured; primary insurance.** VCTC and its officers, employees, agents, and volunteers, and Southern California Association of Governments (SCAG), its officials, employees, and volunteers, shall be covered as additional insureds as to Consultant's Commercial General and Automobile Liability Insurance with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including that under 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.

An 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 SCAG 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.

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

- 4.5.6 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.

**4.5.7 Wasting Policy.** No insurance policy required by Section 4 shall include a “wasting” policy limit, with the exception of Consultant’s Professional Liability Insurance Policy.

**4.5.8 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.

**4.6 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 reasonably selected by VCTC, and hold harmless VCTC and its respective officials, officers, and employees 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”), arising, in whole or in part, out of Consultant’s performance pursuant to this Agreement, including claims arising out of the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents. The foregoing obligation of Consultant shall not apply to the extent the injury, loss of life, damage to property, or violation of law is or was caused by the negligence or willful misconduct of VCTC or its officers, employees, agents, or volunteers.

**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 agrees 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, contractual obligations, 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.

**Commented [RW11]:** I don't believe VCTC typically requires arbitration. Was this language borrowed from another VCTC contract? If not, is there a reason that arbitration is desired for this contract?

**Commented [AF12R11]:** Deleted disputes section from draft Template.

- 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, gender expression, sexual orientation or any other protected class under local, state, or federal law, 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** Consultant declares that Consultant is a resident of the State of California in accordance with the California Franchise Tax Board form 590 ("Form 590"). 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 Agreement, Form 590s from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non- California resident subcontractor 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 without cause, Consultant shall be entitled to compensation for services satisfactorily performed up 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 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 ("Work Product") 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 Work Product prepared specifically for VCTC is not necessarily suitable for any future or other use. VCTC and Consultant agree that, until final approval by VCTC, all such Work Product is confidential and will not be released to third parties without prior written consent of both Parties except as required by law. However, notwithstanding the foregoing, and any provision to the contrary herein, intellectual property owned or created by any third party other than Consultant, its subconsultants, or VCTC ("Third-Party Content"), and inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, compiled or produced by Consultant or its subconsultants prior to or independently of their performance of this Agreement ("Background IP"), including such Third-Party Content or Background IP that Consultant or its subconsultants may employ in its performance of this Agreement, or may incorporate

into any part of the Work Product, shall not be the property of VCTC. Consultant, or its subconsultants as applicable, shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all such Background IP.

Consultant, and its subconsultants as applicable, grant VCTC an irrevocable, non-exclusive, non-transferable, royalty-free license in perpetuity to use, reproduce, prepare derivative works based upon, distribute, disclose, derive from, perform, and display, such Background IP, but only as an inseparable part of, and only for the purpose intended by creation of, the Work Product. In the event the Work Product contains, or incorporates, any Third-Party Content, or derivative work based on such Third-Party Content, or any compilation that includes such Third-Party Content, Consultant shall secure all licenses to any such Third-Party Content, but only as an inseparable part of the Work Product, where such licenses are necessary for VCTC to utilize and enjoy Consultant's services and the Work Product for their intended purposes."

- 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 Subject to CPRA.** All responses to a Request for Proposals (RFP), invitation to bid issued by VCTC, or submitted to VCTC as part of the performance of this Agreement become the exclusive property of VCTC. At such time as VCTC selects a bid or proposal, all proposals received become a matter of public record, and shall be regarded as public records. Records that are submitted to VCTC that are plainly marked as "Confidential," "Business Secret" or "Trade Secret" may be withheld from disclosure. VCTC shall not be liable or in any way responsible for the disclosure of any such records, proposals 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 or Consultant submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless VCTC, its agents and employees, from any judgment, fines, penalties, and award of attorney's fees awarded against VCTC in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives VCTC's award of the Agreement. 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 VCTC Executive Director Martin Erickson ("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

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

- 10.11 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. In the event of a conflict between this Agreement and any of the Exhibits, this Agreement shall control. In the event of a conflict between Exhibit A and the subsequent Exhibits, Exhibit A shall control.
- Exhibit A – Scope of Services
  - Exhibit B – Consultant's Proposal
  - Exhibit C -- Cost Proposal
- 10.12 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.
- 10.13 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.

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

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

VCTC

CONSULTANT

\_\_\_\_\_  
Martin R. Erickson, Executive Director

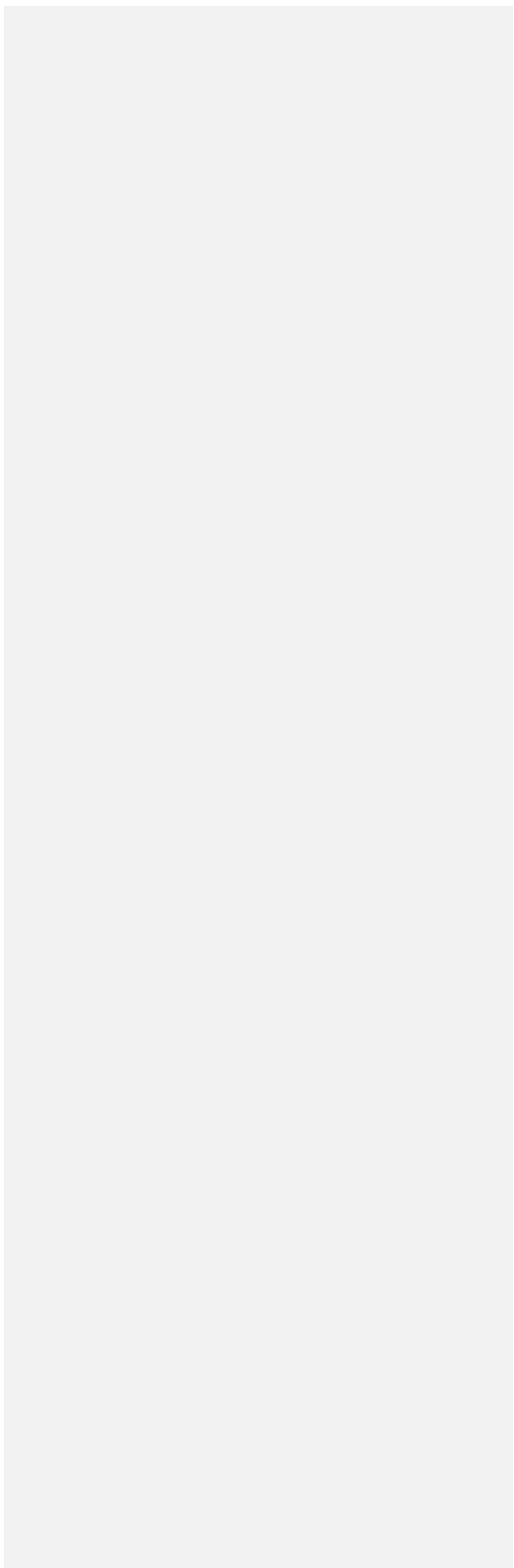
Approved as to Form:

\_\_\_\_\_  
Steve Mattas, General Counsel

**EXHIBIT A  
SCOPE OF WORK**

**EXHIBIT B  
CONSULTANT'S PROPOSAL**

**Exhibit C  
COST PROPOSAL**



**Appendix B. Protest Procedures**

**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

A. 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

A. 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

a. 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

a. A written recommendation by, or on behalf of, the Executive Director that VCTC award a contract to a particular bidder or proposer.

1. This policy does not govern any VCTC staff decision not listed in this Section II.A.

1. 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.

1. 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.

#### **A. FILING A PROTEST**

1. Protests maybe 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.

1. 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.

1. 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.

1. 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.



1. 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.

**A. 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

a. The time, date and place of the meeting described in Section C.2, below.

1. 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

1. 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.

**A. 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.

1. 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.

1. 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.

**A. 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.

a. 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;

a. Given written notice to all Interested Parties of the time, date and place of the VCTC meeting at which the protest will be considered.

1. 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.

a. All written comments received within the submittal period described in Section E.1 (b), above.

a. 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.

**A. 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.

1. 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

a. Make findings and adopt a decision different from the findings and intended decision of the Executive Director; or

a. Elect to defer its decision and direct VCTC staff to:

i. Further investigate the protest; or

i. 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 F.