



**San Gabriel Valley Council of Governments  
AGENDA AND NOTICE OF THE REGULAR MEETING  
OF THE CAPITAL PROJECTS AND CONSTRUCTION COMMITTEE**

**Monday, November 16, 2020 – 12:00PM**

**Teleconference Meeting: Livestream is available at:**

**<https://youtu.be/ud6eXTMf-Y4>**

The SGVCOG's Capital Project and Construction Committee consists of five (5) regional districts; Northeast, Southeast, Central, Southwest, Northwest, the County of Los Angeles and the San Gabriel Valley Council of Governments. Members of the former Alameda Corridor-East Construction Authority (ACE) Board shall maintain a seat on the Committee unless or until completion of all ACE Project(s) in their respective cities. Each member or alternate shall have one vote. A quorum is 50% of its membership. Action taken by the Committee shall be by simple majority of the members present. All disclosable public records related to this meeting are available at [www.theaceproject.org](http://www.theaceproject.org) and viewing at the Rivergrade Road office during normal business hours.

**MEETINGS:** *Regular Meetings of the Capital Projects Construction Committee are held the fourth Monday of every month at 12:00 PM at the West Covina City Hall, 1444 West Garvey Avenue, MRC Room 314, West Covina, CA 91791.* The Capital Projects Construction Committee agenda packet is available at the ACE Project office, 4900 Rivergrade Road, Suite A120, Irwindale, CA 91706 and on the website, [www.theaceproject.org](http://www.theaceproject.org). Copies are available via email upon request ([ahanson@sgvco.org](mailto:ahanson@sgvco.org)). Documents distributed to a majority of the Board after the posting will be available for review in the ACE Project office and on the ACE Project website. Your attendance at this public meeting may result in the recording of your voice.

**PUBLIC PARTICIPATION:** Members of the public may comment on any item on the agenda at the time it is taken up by the Committee. We ask that members of the public come forward to be recognized by the Chair and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a three-minute time limit on individual remarks at the beginning of the discussion. Persons addressing the Committee are to refrain from making personal, slanderous, profane or disruptive remarks.

**TO ADDRESS THE COMMITTEE:** At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Committee may not discuss or vote on items not on the agenda.**

**AGENDA ITEMS:** The Agenda contains the regular order of business of the Committee. Items on the Agenda have generally been reviewed and investigated by staff in advance of the meeting so that the Committee can be fully informed about a matter before making its decision.

**MEETING MODIFICATIONS DUE TO THE STATE AND LOCAL STATE OF EMERGENCY RESULTING FROM THE THREAT OF COVID-19:** On March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 authorizing a local legislative body to hold public meetings via teleconferencing and allows for members of the public to observe and address the meeting telephonically or electronically to promote social distancing due to the state and local State of Emergency resulting from the threat of the Novel Coronavirus (COVID-19).

To follow the new Order issued by the Governor and ensure the safety of Committee Members and staff for the purpose of limiting the risk of COVID-19, in-person public participation at the Capital Projects Construction



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



Committee meeting scheduled for November 16, 2020 at 12:00 p.m. will not be allowed. Members of the public may view the meeting live at <https://youtu.be/ud6eXTMf-Y4>

**SUBMISSION OF PUBLIC COMMENTS:** For those wishing to make public comments on agenda and non-agenda items you may submit comments via email or by phone.

- **Email:** Please submit via email your public comment to Deanna Stanley [dstanley@sgvcog.org](mailto:dstanley@sgvcog.org) at least 1 hour prior to the scheduled meeting time. Please indicate in the Subject Line of the email “FOR PUBLIC COMMENT.” Emailed public comments will be part of the recorded meeting minutes but will not be read aloud. A copy of all public comments will be forwarded to the Committee.
- **Phone:** Please email your name and phone number to Deanna Stanley [dstanley@sgvcog.org](mailto:dstanley@sgvcog.org) at least 1 hour prior to the scheduled meeting time for the specific agenda item you wish to provide public comment on. Please indicate in the Subject Line of the email “FOR PUBLIC COMMENT.” You will be called on the phone number provided at the appropriate time, either during general public comment or specific agenda item. Wait to be called upon by staff, and then you may provide verbal comments for up to 3 minutes.

Any member of the public requiring a reasonable accommodation to participate in this meeting should contact Deanna Stanley at least 48 hours prior to the meeting at [dstanley@sgvcog.org](mailto:dstanley@sgvcog.org) or Amy Gilbert at (626) 214-8869.

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- I. Pledge of Allegiance
  - II. Roll Call and Instructions
  - III. Public Comment
  - IV. Approval of Capital Projects and Construction Committee Meeting Minutes of September 28, 2020 (*action: [pages 1 – 3](#)*)
  - V. Chairman’s Remarks
  - VI. Member Comments
  - VII. Chief Engineers Monthly Report (*information: [pages 4 – 15](#)*)
  - VIII. Project Progress Reports
  - IX. Election of Officers (*action: [page 16](#)*)
  - X. Approval of Revision to Task Order No. 4 with Moffatt & Nichol for Phase III, Final Design of the Montebello Boulevard Grade Separation Project (*action: [pages 17 – 20](#)*)
  - XI. Approval of Construction Management Contract Amendment with WSP for the Fairway Drive Grade Separation Project (*action: [pages 21 – 24](#)*)
  - XII. Approval of a Design Services Contract with KPFF Consulting Engineers and Task Order 1 for the Gold Line Transit Oriented Development Pedestrian Bridge Project in the City of La Verne (*action: [pages 25 – 61](#)*)
  - XIII. Approval of Award of Construction Management Services Contract with Anser Advisory LLC and Approval of Task Order No. 1 for the Diamond Bar Golf Course Project (*action: [pages 62 - 97](#)*)
  - XIV. Approval to Reject all Bids Received for the Construction of the Fullerton Road Grade Separation Project (*action: [pages 98 - 99](#)*)
  - XV. Adjournment (*action*)



If you would like to receive the Capital Projects and Construction Committee agenda electronically, please email Amy Gilbert at [ahanson@sgvcog.org](mailto:ahanson@sgvcog.org)



## SGVCOG Capital Projects & Construction Committee Unapproved Minutes September 28, 2020

**Call to Order:** Chairman Sandoval called the meeting of the San Gabriel Valley Capital Projects and Construction Committee to order remotely via Zoom and livestreamed via YouTube on September 28, 2020 at 12:00p.m.

**1. Pledge of Allegiance** – T. Hepburn led the pledge of allegiance.

**2. Roll Call**

Present:

Tim Sandoval, Chair, Pomona  
Nancy Lyons, Vice Chair, Diamond Bar  
Tim Hepburn, LaVerne  
Diana Mahmud, South Pasadena  
Cory Moss, Industry  
Cynthia Sternquist, Temple City  
Hilda Solis, LA County

Absent:

Jerry Velasco, El Monte  
Jack Hadjinian, Montebello  
Becky Shevlin, Monrovia

Staff:

M. Christoffels, Chief Engineer  
David DeBerry, legal counsel  
Deanna Stanley  
Amy Gilbert

**3. Public Comment** – There were no public comments.

**4. Approval of Capital Projects and Construction Committee Meeting Minutes of July 27, 2020** – A motion was made by C. Moss and seconded by C. Sternquist to approve the minutes.

Ayes: T. Sandoval, T. Hepburn, D. Mahmud, C. Moss, H. Solis, C. Sternquist  
Nays: None      Abstain: None

**5. Chairman Remarks** – Chairman Sandoval thanked C. Sternquist for serving as President of the SGVCOG, reminding the Committee that the new President will begin her term October 1.

**6. Member Comments** – Members also thanked C. Sternquist for her leadership as President.

**7. Chief Engineer's Monthly Report** – M. Christoffels reported that the Metro Board approved \$1.5 funding for a San Gabriel Valley Transit Feasibility study and thanked County Board Supervisors Barger and Solis and Director John Fasana for their support.

**8. Project Progress Reports** – Mr. Christoffels reviewed progress photos of the forming of retaining walls and drilling for placement for bridge abutments for the Durfee Avenue grade separation project. He reviewed bridge girder delivery and placement at the Fairway Drive grade separation project.

**9. Approval of Sole Source Contract to OHL North America Inc. for Emergency Interim Site Maintenance on the Fullerton Road Grade Separation Project.** – Mr. Christoffels summarized the need for emergency site maintenance on the Fullerton Road project. He indicated the termination agreement between the agency and the now former construction contractor was signed on August 26<sup>th</sup> and that during procurement for a new construction team, the site needs to be maintained. He indicated OHL was working on the nearby Fairway Drive project and was readily available to perform the work necessary for this project. Discussion ensued regarding acceleration mobilization of the new contractor, traffic mitigation and public outreach.

A motion was made by H. Solis and seconded by D. Mahmud to approve a Statement of Determinations and Findings for the non-competitive procurement of emergency interim site maintenance services on the Fullerton Road grade separation project and authorize the Chief Engineer to execute a contract with OHL North America Inc. for an amount not to exceed \$314,000.

Ayes: T. Sandoval, T. Hepburn, C. Moss, D. Mahmud, C. Moss, H. Solis, C. Sternquist, N. Lyons

Nays: None      Abstain: None

**10. Approval of Task Order 2 with AECOM for Construction Management Services for the Montebello Blvd. Grade Separation Project** – M. Christoffels indicated the Committee selected AECOM to provide construction management services for the Montebello Blvd. grade separation project in April 2020 and thereafter staff was directed to re-negotiate the price for these services. M. Christoffels reported re-negotiations resulted in a \$168,000 reduction.

A motion was made by H. Solis and seconded by C. Moss to authorize the Chief Engineer to execute a construction management services contract with AECOM for the Montebello Blvd grade separation and Maple Avenue pedestrian bridge project and approve task order 2 in an amount not to exceed \$8,433,687.

Ayes: T. Sandoval, T. Hepburn, C. Moss, D. Mahmud, C. Moss, H. Solis, C. Sternquist, N. Lyons

Nays: None      Abstain: None

**11. Closed Session** – Legal Counsel announced that in accordance Government Code Section 54956.9 to discuss existing litigation – Fairway Auto Spa adv. Alameda Corridor East Construction Authority, Los Angeles Superior Court Case No. 070454 and pursuant to Government Code Section 54956.9(d)(2), significant exposure to litigation.

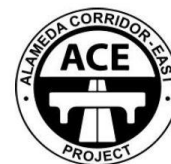
The Committee returned to open session and legal counsel announced there was no reportable action taken by the Committee.

**12. Adjournment** - The meeting was adjourned at 1:08 p.m. The next meeting will be held remotely via Zoom on YouTube live on October 26, 2020.

X

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Deanna Stanley  
Clerk of the Committee



MEMO TO: Capital Projects and Construction Committee Members & Alternates

FROM: Mark Christoffels, Chief Engineer

DATE: November 16, 2020

SUBJECT: Chief Engineer's Monthly Report

The following are items of note since the last meeting:

**Montebello Project Funding** – Staff has submitted a request seeking a time extension for the allocation of state funds for construction of the Montebello Boulevard project. With the extension, staff anticipates the construction contract award milestone will be reached by summer 2021. The additional time is needed for Union Pacific to review and approve track designs for the project. The pandemic, coupled with workforce layoffs at UPRR, have resulted in significant delay in plan reviews. The request will be considered by the California Transportation Commission (CTC) at their meeting on December 2.

**La Verne Pedestrian Bridge** – Staff submitted an application seeking \$6.8 million in state Active Transportation Program funding for the construction phase of an \$8.5 million pedestrian bridge project that will provide a safe route for those getting to and from the future La Verne station of the Foothill Gold Line and the Fairplex. Recommended funding awards are scheduled to be adopted by the CTC in summer 2021.

**SR 57/60 Support** – Letters supporting the award of state grant funding for the SR 57/60 project have been received from Senators Connie Leyva, Ling Ling Chang, Anthony Portantino and Susan Rubio and Assembly-members Ed Chau and Phillip Chen (see attached letters). Legislative outreach was prompted by Committee member Lyons in support of the application seeking \$218 million in SB 1 funds for the \$420 million confluence project. CTC staff award recommendations will be released in mid-November and program adoption will be at the December 2 CTC meeting.

**Bike Share** – Committee member Hepburn was a featured speaker at the ribbon-cutting event in October for the GoSGV bike share program in Baldwin Park, the second San Gabriel Valley city to implement the SGVCOG-sponsored program. When fully rolled out next year, 840 electric-assist bikes will be stationed in half of the 30 cities and unincorporated communities in the Valley. Covina is next in line to roll out the program in December.

**Contracting** – The SGVCOG has delegated the Chief Engineer the authority to approve new contracts or change orders for previously approved contracts within certain limits, with a requirement that staff formally report such contract action. The following has been approved since the last Committee meeting:

CONSULTANT/VENDOR	REASON FOR CHANGE	CHANGE AMOUNT	REVISED TOTAL CONTRACT VALUE <sup>1</sup>	CUMULATIVE AUTHORIZED CHANGE (%)
<b>Moffatt &amp; Nichol Agreement 15-02, Final Design for Montebello Blvd. Grade Separation Project</b>				
Task Order No. 4, Rev. 5 and Rev. 6	Budget re-allocation, change in Scope of Work, compensation and list of proposed subcontractors.	\$28,000	\$8,196,100.00	9.02%
<b>WSP – Agreement 12-07A Construction Management Services for Fairway Drive Grade Separation</b>				
Amendment No. 1	Authorization to increase its hourly rates if rates were lower than prevailing wages	\$0	\$12,442,198.00	0%
<b>WSP – Agreement 12-07A Construction Management Services for Fairway Drive Grade Separation</b>				
Task Order No. 2, Rev. 8	Addition to list Key Personnel	\$0	\$12,442,198.00	0%
<b>AECOM – Agreement 19-08 Construction Management Services for Montebello Blvd. Grade Separation and Maple Ave Pedestrian Bridge</b>				
Task Order No. 1, Rev. 2	Budget re-allocation for continual payment of subcontractor	\$0	\$388,112.04	0%

**Community Outreach Update** – The following project outreach activities were conducted:

- Districted construction alert notices regarding a temporary road closure on Stephens Street for street rehabilitation for the Durfee Avenue project;
- Distributed school outreach safety kits to 590 students at North Park Academy of the Arts in Pico Rivera for the Durfee Avenue project; and,
- Conducted ongoing community outreach and support activities for the Fairway Drive, Fullerton Road, Durfee Avenue, Turnbull Canyon Road and Montebello Corridor grade separation projects.

<sup>1</sup> For construction, design, and construction management contracts, this amount reflects the contract award made by the CP&C Committee along with any approved amendments. For annual support contracts such as legal services, right of way, auditing, public outreach etc., this amount reflects the current fiscal year authorization as approved by the CP&C Committee.



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SAN BERNARDINO, CA 92401  
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FAX (909) 591-7096

# California State Senate

SENATOR  
**CONNIE M. LEYVA**

TWENTIETH SENATE DISTRICT



CHAIR  
EDUCATION  
DEMOCRATIC CAUCUS  
CALIFORNIA LEGISLATIVE  
WOMEN'S CAUCUS  
SELECT COMMITTEE ON  
MANUFACTURED HOME  
COMMUNITIES  
MEMBER  
BUDGET & FISCAL REVIEW  
SUBCOMMITTEE NO. 1  
ON EDUCATION  
BUSINESS, PROFESSIONS  
& ECONOMIC DEVELOPMENT  
ELECTIONS & CAMPAIGN  
FINANCE REFORM  
HEALTH

October 19, 2020

*Via email to Mitchell.Weiss@catc.ca.gov*

Mr. Mitch Weiss, Executive Director  
California Transportation Commission  
1120 N Street, MS-52  
P.O. Box 942873  
Sacramento, CA 95814

**RE: California State Route 57/60 Confluence Chokepoint Relief Program  
Application for the 2020 Trade Corridor Enhancement Program**

Dear Mr. Weiss:

As the State Senator representing the 20<sup>th</sup> State Senate District, I offer this letter in support of the application seeking \$217.9 million from the 2020 Senate Bill 1 Trade Corridor Enhancement Program for the regionally and nationally significant \$420.2 million State Route 57/60 Confluence Chokepoint Relief Project. I understand that the applications submitted in August are under evaluation with staff recommendations expected to be released next month for adoption by the California Transportation Commission (CTC) at its early December meeting.

By constructing highway mainline improvements and bypass connectors, the chokepoint relief project will improve a truck bottleneck vital to the safe and efficient movement of people and goods regionally and across the country. State Route 57 and State Route 60 are among the most heavily traveled freight highway corridors in the country, and the 2.5-mile confluence of the two highways ranks as the worst truck bottleneck in California and the ninth worst in the nation. Due to existing hazardous weaving conditions between trucks and passenger vehicles, the confluence area is the second-highest truck accident location in Southern California where truck-related accidents are 50 percent higher than the state average.



This California Transportation Commission award of the SB 1 funds will fill a budget gap and enable the project to start construction in 2022, two years earlier than currently scheduled. The confluence project results from a partnership among the Los Angeles County Metropolitan Transportation Authority (which is providing local match funds), the San Gabriel Valley Council of Governments (which will oversee property acquisition and construction), and Caltrans (which will be responsible for the improvements when completed). The highway mainline and bypass connector improvements will reduce collisions, improve a regionally and nationally significant truck bottleneck and help reduce vehicular emissions, consistent with the goals of the SB 1 trade corridor program.

I encourage the CTC to review the SR 57/60 chokepoint relief project favorably. Thank you in advance for your positive consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Connie M. Leyva". The signature is fluid and cursive, with a long horizontal stroke at the end.

CONNIE M. LEYVA  
State Senator, 20<sup>th</sup> District

cc: Paul Hubler, San Gabriel Valley Council of Governments  
via email to [phubler@sgvcog.org](mailto:p hubler@sgvcog.org)

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AND THE ECONOMY  
UTILITIES AND ENERGY

October 7, 2020

Mr. Mitch Weiss, Executive Director  
California Transportation Commission  
1120 N Street, MS-52  
P.O. Box 942873  
Sacramento, CA 95814

RE: California State Route 57/60 Confluence Chokepoint Relief Program  
Application for the 2020 SB 1 Trade Corridor Enhancement Program

Dear Mr. Weiss:

I am writing in strong support of the application seeking \$217.9 million from the 2020 Senate Bill 1 Trade Corridor Enhancement Program for the State Route 57/60 Confluence Chokepoint Relief Project. I understand the applications submitted in August are under evaluation with staff recommendations anticipated to be released next month.

By constructing highway mainline improvements and bypass connectors, the chokepoint relief project will alleviate a truck bottleneck critical to the safe and efficient movement of people and goods regionally and across the country. State Route 57 and State Route 60 are among the most heavily traveled freight highway corridors in the country, and the 2.5-mile confluence of the two highways ranks as the worst truck bottleneck in California and the ninth worst in the nation. Due to existing hazardous weaving conditions between trucks and passenger vehicles, the confluence area is the second-highest truck accident location in Southern California where truck-related accidents are 50 percent higher than the state average.

This CTC award of the SB 1 funds will help fill a budget gap and enable the project to begin construction in 2022, two years earlier than currently scheduled. The confluence project results from a partnership among the Los Angeles County Metropolitan Transportation Authority, which is providing local match funds, the San Gabriel Valley Council of Governments, which will oversee property acquisition and construction, and Caltrans, which will be responsible for the improvements when completed. The highway mainline and bypass connector improvements will reduce collisions, improve a regionally and nationally significant truck bottleneck, and help reduce vehicular emissions consistent with the goals of the SB 1 trade corridor program.

I appreciate the California Transportation Commission’s full consideration of the significant merits of the SR 57/60 chokepoint relief project. If you have any questions or concerns, please contact my district office.

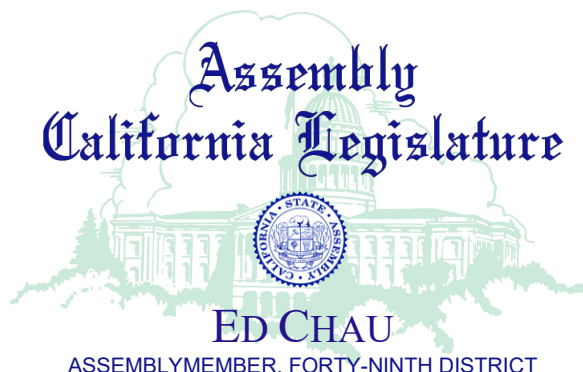
Sincerely,

Phillip Chen, Ed.D.  
Assemblymember, 55<sup>th</sup> District

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[Assemblymember.Chau@assembly.ca.gov](mailto:Assemblymember.Chau@assembly.ca.gov)



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CHAIR: SELECT COMMITTEE ON  
EMERGING TECHNOLOGIES AND  
INNOVATION

October 12, 2020

*Via email to [Mitchell.Weiss@catc.ca.gov](mailto:Mitchell.Weiss@catc.ca.gov)*

Mr. Mitch Weiss, Executive Director  
California Transportation Commission  
1120 N Street, MS-52  
P.O. Box 942873  
Sacramento, CA 95814

RE: **California State Route 57/60 Confluence Chokepoint Relief Program  
Application for the 2020 Trade Corridor Enhancement Program**

Dear Mr. Weiss:

I am writing in strong support of the application seeking \$217.9 million from the 2020 Senate Bill 1 Trade Corridor Enhancement Program for the regionally and nationally significant \$420.2 million State Route 57/60 Confluence Chokepoint Relief Project. I understand the applications submitted in August are under evaluation with staff recommendations anticipated to be released next month for adoption by the California Transportation Commission (CTC) at their meeting in early December.

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property acquisition and construction, and Caltrans, which will be responsible for the improvements when completed. The highway mainline and bypass connector improvements will reduce collisions, improve a regionally and nationally significant truck bottleneck and help reduce vehicular emissions, consistent with the goals of the SB 1 trade corridor program.

I appreciate the California Transportation Commission's full consideration of the significant merits of the SR 57/60 chokepoint relief project. If you have any questions regarding this letter, please do not hesitate call my district office at (323) 264-4949.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Chau', enclosed in a thin black rectangular border.

**ED CHAU**  
Assemblymember, District 49

EC:dm

cc: Paul Hubler, San Gabriel Valley Council of Governments  
via email to [phubler@sgvcog.org](mailto:p hubler@sgvcog.org)

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SENATOR.PORTANTINO@SENATE.CA.GOV

## California State Senate

ANTHONY J. PORTANTINO  
SENATOR  
TWENTY-FIFTH SENATE DISTRICT



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CHAIR

October 16, 2020

Mr. Mitch Weiss, Executive Director  
California Transportation Commission  
1120 N Street, MS-52  
P.O. Box 942873  
Sacramento, CA 95814

**RE: California State Route 57/60 Confluence Chokepoint Relief Program Application for the 2020 Trade Corridor Enhancement Program**

Dear Mr. Weiss:

I am writing in strong support of the application seeking \$217.9 million from the 2020 Senate Bill 1 Trade Corridor Enhancement Program for the regionally and nationally significant \$420.2 million State Route 57/60 Confluence Chokepoint Relief Project. I understand the applications submitted in August are under evaluation with staff recommendations anticipated to be released next month for adoption by the California Transportation Commission (CTC) at their meeting in early December.

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I thank you for your consideration of this application.

Respectfully,

**Hon. Anthony J. Portantino**  
State Senator, 25<sup>th</sup> District

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# California State Senate

SENATOR  
SUSAN RUBIO

TWENTY-SECOND SENATE DISTRICT



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CALIFORNIA-MEXICO COOPERATION

October 16, 2020

Mr. Mitch Weiss, Executive Director  
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1120 N Street, MS-52  
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I am writing in strong support of the application seeking \$217.9 million from the 2020 Senate Bill 1 Trade Corridor Enhancement Program for the regionally and nationally significant \$420.2 million State Route 57/60 Confluence Chokepoint Relief Project. I understand the applications submitted in August are under evaluation with staff recommendations anticipated to be released next month for adoption by the California Transportation Commission (CTC) at their meeting in early December.

By constructing highway mainline improvements and bypass connectors, the chokepoint relief project will alleviate a truck bottleneck critical to the safe and efficient movement of people and goods regionally and across the country. State Route 57 and State Route 60 are among the most heavily traveled freight highway corridors in the country, and the 2.5-mile confluence of the two highways ranks as the worst truck bottleneck in California and the ninth worst in the nation. Due to existing hazardous weaving conditions between trucks and passenger vehicles, the confluence area is the second-highest truck accident location in Southern California where truck-related accidents are 50 percent higher than the state average.

CTC award of the SB 1 funds will fill a budget gap and enable the project to start construction in 2022, two years earlier than currently scheduled. The confluence project results from a partnership among the Los Angeles County Metropolitan Transportation Authority, which is providing local match funds, the San Gabriel Valley Council of Governments, which will oversee property acquisition and construction, and Caltrans, which will be responsible for the improvements when completed. The highway mainline and bypass connector improvements will reduce collisions,

improve a regionally and nationally significant truck bottleneck and help reduce vehicular emissions, consistent with the goals of the SB 1 trade corridor program.

I appreciate the California Transportation Commission's full consideration of the significant merits of the SR 57/60 chokepoint relief project. Questions regarding this letter may be directed to my policy consultant Alex Hirsch via email to [alex.hirsch@sen.ca.gov](mailto:alex.hirsch@sen.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Susan Rubio". The signature is written in a cursive, flowing style.

Susan Rubio  
Senator, 22<sup>nd</sup> District

cc: Paul Hubler, San Gabriel Valley Council of Governments  
via email to [phubler@sgvcog.org](mailto:phubler@sgvcog.org)



# California State Senate

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SENATOR  
LING LING CHANG

TWENTY-NINTH SENATE DISTRICT



COMMITTEES  
BANKING AND  
FINANCIAL INSTITUTIONS  
VICE CHAIR  
BUSINESS, PROFESSIONS AND  
ECONOMIC DEVELOPMENT  
VICE CHAIR  
EDUCATION  
ENERGY, UTILITIES  
AND COMMUNICATIONS  
GOVERNMENTAL  
ORGANIZATION

November 2, 2020

Mr. Mitch Weiss, Executive Director  
California Transportation Commission  
1120 N Street, MS-52  
P.O. Box 942873  
Sacramento, CA 95814

**RE: California State Route 57/60 Confluence Chokepoint Relief Program  
Application for the 2020 Trade Corridor Enhancement Program**

Dear Mr. Weiss:

I am writing in strong support of the application seeking \$217.9 million from the 2020 Trade Corridor Enhancement Program for the regionally and nationally significant \$420.2 million State Route 57/60 Confluence Chokepoint Relief Project. I understand the applications submitted in August are under evaluation with staff recommendations anticipated to be released next month for adoption by the California Transportation Commission (CTC) at their meeting in early December.

By constructing highway mainline improvements and bypass connectors, the chokepoint relief project will alleviate a truck bottleneck critical to the safe and efficient movement of people and goods regionally and across the country. State Route 57 and State Route 60 are among the most heavily traveled freight highway corridors in the country, and the 2.5-mile confluence of the two highways ranks as the worst truck bottleneck in California and the ninth worst in the nation. Due to existing hazardous weaving conditions between trucks and passenger vehicles, the confluence area is the second-highest truck accident location in Southern California where truck-related accidents are 50 percent higher than the state average.

CTC award of the funds will fill a budget gap and enable the project to start construction in 2022, two years earlier than currently scheduled. The confluence project results from a partnership among the Los Angeles County Metropolitan Transportation Authority, which is providing local match funds, the San Gabriel Valley Council of Governments, which will oversee property acquisition and construction, and Caltrans, which will be responsible for the improvements when completed. The highway mainline and bypass connector improvements will reduce collisions, improve a regionally and nationally significant truck bottleneck and help reduce vehicular emissions, consistent with the goals of the trade corridor program.

I appreciate the California Transportation Commission's full consideration of the significant merits of the SR 57/60 chokepoint relief project. Questions regarding this letter may be directed to my district office.

Sincerely,

A handwritten signature in black ink, reading "Ling Ling Chang". The signature is written in a cursive, flowing style with a long horizontal stroke at the end of the name.

SENATOR LING LING CHANG  
29<sup>th</sup> Senate District

cc: Paul Hubler, San Gabriel Valley Council of Governments



4900 Rivergrade Rd. Ste. A120 Irwindale, CA 91706 (626) 962-9292 fax (626) 962-3552 www.theaceproject.org



**MEMO TO:** Capital Projects and Construction Committee Members & Alternates

**FROM:** Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

**DATE:** November 16, 2020

**SUBJECT: ELECTION OF OFFICERS**

In accordance with the Bylaws of the San Gabriel Valley Council of Governments (SGVCOG), there shall be a Capital Projects and Construction Committee, whose members will be appointed by the Governing Board. One Governing Board Member shall be appointed from the Members of each of the five districts in the Council. The cities in each district shall nominate their respective district representative for the Committee and an Alternate and the Governing Board shall ratify the appointments. The President of the Council shall be a Member of this Committee. A Los Angeles County Supervisor who represents a part of the San Gabriel Valley shall also serve as a Committee Member. Members may be re-appointed for up to three terms.

The election was to coincide with the Governing Board elections with terms to be effective at the beginning of the fiscal year. The elections were delayed due to the pandemic. Unfortunately, this delay results in the term of the positions to be reduced from one year to six months. With that in mind, an option for this Committee's consideration is to allow the current Chair and Vice Chair to continue their seats until the end of the fiscal year and the Committee hold the annual election of officers no later than June, 2021 to put the schedule back on track.



MEMO TO: Capital Projects and Construction Committee Members & Alternates

FROM: Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

DATE: November 16, 2020

SUBJECT: **APPROVAL OF REVISION TO TASK ORDER NO. 4 WITH MOFFATT & NICHOL FOR PHASE III FINAL DESIGN OF THE MONTEBELLO BOULEVARD GRADE SEPARATION PROJECT**

### **RECOMMENDATION**

Authorize the Executive Director, or designee, to execute an amendment to the Design and Engineering Services contract with Moffatt & Nichol (M&N) and issue a revision to Task Order No. 4 for a not-to-exceed amount of \$186,000 for a new Task Order No. 4 contract value of \$8,382,100 to complete Phase III – Final Design: Montebello Boulevard Grade Separation Project for the Montebello Corridor Grade Separation Project.

### **BACKGROUND**

At the June 2018 Committee meeting, the Committee approved to execute Task Order No. 4 in the amount of \$7,518,100 for final design for the Montebello Blvd. Grade Separation Project. Based on previous authorized contract amendments the current contract authorization is \$8,196,100

In the process of preparing final plans for the project, an existing storm drain box culvert was encountered that may affect the proposed roadway underpass under the Union Pacific Railroad tracks. Rather than create a situation for a contractor to claim a changed condition, staff is recommending a more proactive approach by modifying the current plans to show the potential replacement of this storm drain and creating a bid alternate for the contractor to provide a competitive price at the time the project is put out to bid.

Based upon plan review comments made by the Los Angeles County Flood Control District and a constructability review by our construction management firm, AECOM, plan revisions are being recommended on this modification that could potentially save between \$800,000 to \$950,000 of construction cost due to the significant reduction in number of piles to be driven.

Staff requested our design firm on this project, Moffat and Nichol, to provide a cost proposal to make the plan modifications. Staff reviewed the cost proposal submitted by M&N. After some negotiations, the parties have agreed to a design cost increase of \$186,000 for the additional plans and specifications.

This authorization would also allow a 10% contingency allowance to this Task Order in accordance with normal agency procedures. Any contract amount changes from the above figure due to contract change orders during final design that exceed the Executive Directors authorization will be brought back to the Committee for further consideration and approval.

**BUDGET IMPACT**

Funding for design is available from Measure R funds. The current project fund balance is sufficient to fund this contract authorization.

Prepared by: Mark Christoffels, Chief Engineer

Approved by: Marisa Creter, Executive Director

**ATTACHMENTS**

Attachment A – Task Order No. 4, revision 7 of Agreement 15-02 for Preliminary Engineering and Final Design Services

## SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

## TASK ORDER 4

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES  
FOR  
MONTEBELLO CORRIDOR GRADE SEPARATION PROJECT**

<b>CONSULTANT:</b> Moffatt & Nichol	<b>AGREEMENT NO.:</b> 15-02	<b>TASK ORDER NO.:</b> 4
		<b>REVISION NO.:</b> 7

<b>TASK ORDER TITLE:</b>	PHASE 3 – FINAL DESIGN: MONTEBELLO BOULEVARD GRADE SEPARATION PROJECT
<b>EFFECTIVE DATE OF THIS TASK ORDER:</b> November 16, 2020	<b>TASK ORDER VALUE:</b> \$8,382,100.00

<b>CONTACT:</b> Keith Gillfillan, PE	<b>TELEPHONE:</b> (562) 426-9551
<b>FACSIMILE:</b> (562) 424-7489	<b>EMAIL:</b> <a href="mailto:kgillfillan@moffattnichol.com">kgillfillan@moffattnichol.com</a>
<b>ADDRESS:</b> 3780 Kilroy Airport Way, Suite 600, Long Beach, CA 90806	

**1. SCOPE OF WORK: CHANGED BY THIS REVISION NO. 7**

The CONSULTANT agrees to perform the services identified Attachment “A”, Scope of Work, which is attached hereto and made a part hereof this **TASK ORDER NO. 4, REVISION NO. 7.**

**2. COMPENSATION: CHANGED BY THIS REVISION NO. 7**

The total amount payable to CONSULTANT under this **TASK ORDER NO. 4 and this REVISION NO. 7** shall not exceed: **Eight million three hundred eighty two thousand one hundred dollars and 00/100s** (\$8,382,100.00), as per Attachment “B” Consultant’s Cost Proposal, and as defined in further detail in SECTION 7 (COMPENSATION AND METHOD OF PAYMENT) of the AGREEMENT. CONSULTANT’s Cost Proposal is attached hereto and made a part hereof this **TASK ORDER NO. 4, REVISION NO. 7.**

<b>CURRENT TASK ORDER 4 AMOUNT</b>	<b>\$7,518,100.00</b>
TASK ORDER 4, REV. 1	\$60,000.00
TASK ORDER 4, REV. 2	\$85,000.00
TASK ORDER 4, REV. 3	\$505,000.00
TASK ORDER 4, REV. 4	\$0.00
TASK ORDER 4, REV. 5	\$28,000.00
TASK ORDER 4, REV. 6	\$0.00
<b>THIS REQUEST: TASK ORDER 4, REV. 7</b>	<b>\$186,000.00</b>
<b>TOTAL TASK ORDER NO. 4 AMOUNT</b>	<b>\$8,382,100.00</b>

3. **SUBCONTRACTORS: UNCHANGED BY THIS REVISION NO. 7**

4. **KEY PERSONNEL: UNCHANGED BY THIS REVISION NO. 7**

5. **SBE GOAL: UNCHANGED BY THIS REVISION NO. 7**

The SBE goal for this **TASK ORDER NO 4** remains unchanged.

6. **PERIOD OF PERFORMANCE: UNCHANGED BY THIS REVISION NO. 7**

Work under **TASK ORDER NO. 4**, shall be completed by February 28, 2021.

All other terms and conditions of this AGREEMENT NO. 15-02 remains unchanged.

In witness whereof, this **TASK ORDER NO. 4, REVISION NO. 7** has been executed under the provisions of AGREEMENT NO. 15-02 between SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and the above named CONSULTANT. By signature below, the parties hereto agree that all terms and conditions of this **TASK ORDER NO. 4, REVISION NO. 7** and AGREEMENT NO. 15-02 shall be in full force and effect.

---

**CONSULTANT:**

**SAN GABRIEL VALLEY  
COUNCIL OF GOVERNMENTS**

Authorized  
Signature: \_\_\_\_\_

Authorized  
Signature: \_\_\_\_\_

Print Name: Michael J. McCarthy

Print Name: Mark Christoffels

Print Title: Vice President

Print Title: Chief Engineer





MEMO TO: Capital Projects and Construction Committee Members & Alternates

FROM: Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

DATE: November 16, 2020

SUBJECT: **APPROVAL OF CONSTRUCTION MANAGEMENT CONTRACT AMENDMENT WITH WSP FOR THE FAIRWAY DRIVE GRADE SEPARATION PROJECT**

### **RECOMMENDATION**

Authorize the Executive Director, or designee, to amend the contract with WSP (formerly Parsons Brinckerhoff) to add a not-to-exceed amount of \$4,209,152 to Task Order No. 2 of the contract for construction management (CM) services associated with the Fairway Drive grade separation Project. The new task order No. 2 value will be the not-to-exceed amount of \$15,220,444.

### **BACKGROUND**

At the October 28, 2019 meeting, the committee approved the Second Amendment to the Construction Contract with OHL, USA Inc. (OHL) for construction of the Fairway Drive (Los Angeles Subdivision) grade separation project with a revised construction completion date of June 2023. At the time it was mentioned by staff that concurrently with the amendment to the construction contract, an amendment to our contract with WSP for construction management services would be needed, that funds had been included in the project budget in anticipation of these additional consulting services, and that staff would bring back to the Committee this amendment for formal approval after completion of cost negotiations.

Based on the current progress made on the project, staff is optimistic that the contractor can complete the construction on or before March of 2023. In order to provide the required construction oversight for the remaining work on this project, WSP's construction management contract will need to be extended for 30 months to match the current construction schedule, as presented to the committee during the October 28, 2019 meeting. WSP's current contract will expire in 2021.

WSP reviewed the staffing that would be required to oversee the remainder of the contract work for the next 30 months and developed a cost proposal. Proposed costs by WSP for the additional CM services were compared with estimates independently prepared by staff and any discrepancies have now been resolved. Staff is now recommending approval of a contract amendment of \$4,209,152 to provide the construction management services needed for the remainder of the project. This contract extension is not a lump sum payment, but instead states that payments will be made on actual incurred costs subject to final audits by SGVCOG/ACE staff.

This authorization includes a 10% contingency allowance to the Executive Director, or designee, in accordance with normal agency procedures. Any contract amount changes due to contract changes that exceed the Executive Directors authorization will be brought back to the Committee for further consideration and approval.

**BUDGET IMPACT**

Funds for this contract amendment are available in the current project budget and will come from State and Metro funds allocated to this project.

Prepared by: Mark Christoffels, Chief Engineer

Approved by: Marisa Creter, Executive Director

**ATTACHMENTS**

Attachment A – Revision No. 9 to Task Order No. 2 of Agreement 12-07A with WSP for CM Services on the Fairway Drive Grade Separation Project

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**TASK ORDER**

**CONSTRUCTION MANAGEMENT SERVICES FOR  
FAIRWAY DRIVE GRADE SEPARATION PROJECT**

<b>CONSULTANT:</b> WSP	<b>AGREEMENT NO.:</b> 12-07A	<b>TASK ORDER NO.:</b> 2 <b>REVISION NO.:</b> 9
<b>TASK ORDER TITLE:</b>	Construction Management Services for Fairway Drive Grade Separation Project	
<b>EFFECTIVE DATE OF THIS TASK ORDER:</b> November 17, 2020	<b>TASK ORDER VALUE:</b> \$15,220,444.00	
<b>CONTACT:</b> Allan Tanjuaquio	<b>TELEPHONE:</b> (909) 994-5516	
<b>FACSIMILE:</b> (714) 973-0358	<b>EMAIL:</b> <a href="mailto:allan.tanjaquio@wsp.com">allan.tanjaquio@wsp.com</a>	
<b>ADDRESS:</b> 711 Fairway Drive, City of Industry, CA 91789		

**1. SCOPE OF SERVICES: UNCHANGED BY THIS REVISION NO. 9**

**2. COMPENSATION: CHANGED BY THIS REVISION NO. 9**

The total amount payable to CONSULTANT under this **TASK ORDER NO. 2, REVISION NO. 9**, shall not exceed: **Fifteen million two hundred twenty thousand four hundred forty four dollars and 00/100s** (\$15,220,444.00) as per Attachment "B", and as defined in further detail in Section 7 (COMPENSATION AND METHOD OF PAYMENT) of the Agreement.

**3. SUBCONTRACTORS: UNCHANGED BY THIS REVISION NO. 9**

**4. KEY PERSONNEL: UNCHANGED BY THIS REVISION NO. 9**

**5. SBE GOAL: UNCHANGED BY THIS REVISION NO. 9**

**6. PERIOD OF PERFORMANCE: CHANGED BY THIS REVISION NO. 9**

Work under this **TASK ORDER NO. 2, REVISION NO. 9** shall terminate on March 21, 2023.

All other terms and conditions of this AGREEMENT NO. 12-07A remains unchanged.

In witness whereof, this **TASK ORDER NO. 2, REVISION NO. 9** has been executed under the provisions of AGREEMENT NO. 12-07A between SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and the above named CONSULTANT. By signature below, the parties hereto agree that all terms and conditions of this **TASK ORDER NO. 2, REVISION NO. 9** and AGREEMENT NO. 12-07A shall be in full force and effect.

---

**CONSULTANT: WSP**

**AGENCY: SAN GABRIEL VALLEY  
COUNCIL OF GOVERNMENTS**

Authorized  
Signature: \_\_\_\_\_

Authorized  
Signature: \_\_\_\_\_

Print Name:     Allan P. Tanjuaquio    

Print Name:     Mark Christoffels    

Print Title:     Senior Vice President    

Print Title:     Chief Engineer



MEMO TO: Capital Projects and Construction Committee Members and Alternates

FROM: Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

DATE: November 16, 2020

SUBJECT: **APPROVAL OF A DESIGN SERVICES CONTRACT WITH KPFF CONSULTING ENGINEERS AND TASK ORDER 1 FOR THE GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE PROJECT IN THE CITY OF LA VERNE**

### **RECOMMENDATION**

Authorize the Executive Director, or designee, to execute a design services contract with KPFF Consulting Engineers and Task Order No. 1 in a not-to-exceed amount of \$545,720 for the Gold Line Transit Oriented Development Pedestrian Bridge Project in the City of La Verne.

### **BACKGROUND**

The City of La Verne has an adopted Enhanced Infrastructure Financing District (EIFD) plan that includes several infrastructure projects to promote development within and near the City's Transportation Oriented Development (TOD) area on Arrow Hwy near the LA County Fairgrounds. One such project is the Arrow Highway Pedestrian Bridge. The pedestrian bridge will span Arrow Highway and the Metrolink railroad track, connecting the future La Verne Gold Line Station and TOD area to the northern edge of the Fairplex property. This improvement is not only expected to make the two areas convenient for visitors to access but also significantly reduce conflicts between pedestrian and vehicle movements. The benefits will not only be related to events at the fairgrounds but also that of the development that is expected to occur on the 10.7 acres on the northern part of Fairplex campus, which is in La Verne, as well as the adjacent 5.3 acres of property owned by others. This project will serve as a critical connector and identifier to visitors that they are in the core of the La Verne TOD area.

In late 2018, the City submitted a \$4.9 million request to the SGVCOG under the Measure M sub-regional program seeking project funding. In May 2019, Metro approved \$895,000 for plans, specifications and estimates (PS&E) and noted support for construction funding following completion of the PS&E. Recently the SGVCOG submitted an Active Transportation Project grant application for \$6.8 million to fund the construction of the project.

The City requested the SGVCOG's assistance in delivering this project. The project was assigned to the Capital Projects and Construction Committee, and staff worked with the City of La Verne on an agreement for these services. On September 23, 2019 the Committee authorized the Chief Engineer to execute an agreement with the City of La Verne to undertake the design of the Gold Line Transit Oriented Development Pedestrian Bridge on behalf of the City of La Verne

Consistent with our procurement process, a Request-for-Qualifications (RFQ) was issued on January 6, 2020. The availability of the RFP was advertised in various publications (newspapers

of local circulation, minority and business publications), posted on SGVCOG websites, as well as on our online bidding system. A pre-proposal conference was held on January 27, 2020. SGVCOG received proposals on March 4, 2020.

Responsive proposals were received from the following firms:

- Moffat Nichol Engineering
- KPFF Consulting Engineers

A 4-member Technical Evaluation Committee (TEC), consisting of representatives from City of La Verne, Fairplex, Foothill Gold Line, and the SGVCOG, all with relevant technical qualifications was convened to review the proposals.

Based on the proposal received the TEC ranked the team of Moffat Nichol Engineering the highest.

Staff proceeded with negotiating Task Order 1 to be issued under this contract. Task Order 1 would consist of completing all preliminary studies and developing the plans to a 35% conceptual level allowing all of the agencies involved (Metrolink, Foothill Gold Line, County Fairgrounds, and City of La Verne) to select the best design alternative.

After several months of negotiations with Moffat Nichol Engineering, the parties could not agree on the fees and total cost for this initial task order. Negotiations with Moffat Nichol were terminated and staff initiated negotiations with the second ranked firm, KPFF Consulting Engineers. Similar to negotiations with Moffat Nichol, KPFF's proposed costs for design services were compared with estimates independently prepared by staff. Staff recently concluded contract negotiations with KPFF and is satisfied that the proposed costs are reasonable and is recommending approval of a not-to-exceed amount of \$545,720 for the initial design work on this project (Task Order 1). A subsequent task order for final plans will be negotiated and brought back for Committee approval upon conclusion of this initial conceptual design effort and selection of the preferred alternative by the agencies involved in the project

The RFP was issued under the Small Business Enterprise (SBE) Program currently in place. Staff established an 8% SBE goal on the project. KPFF is committed to meet a 18.5% SBE goal and will be required to report all SBE participation achieved through the life of the contract

This authorization includes a 10% contingency allowance to the Executive Director, or designee, in accordance with normal agency procedures. Any contract amount changes due to contract changes that exceed the Executive Directors authorization will be brought back to the Committee for further consideration and approval.

### **BUDGET IMPACT**

All design costs for the proposed Gold Line Transit Oriented Development Pedestrian Bridge Project will be reimbursed to the SGVCOG under the September 23, 2019 agreement with the City of La Verne and the Measure M funding agreement with Metro for this project.

Prepared by: Mark Christoffels, Chief Engineer

Approved by: Marisa Creter, Executive Director

**ATTACHMENTS**

Attachment A – Agreement No. 20-01 for Design Services

Attachment B – Task Order No. 1 for Conceptual (35%) Design Services



**SAN GABRIEL VALLEY CONUCIL OF GOVERNMENTS**

**APPENDIX C**

**SAMPLE PRO FORMA AGREEMENT**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES  
FOR THE  
GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE  
PROJECT**

**AGREEMENT NO. 20-01**

**AGREEMENT FOR**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR THE  
GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE  
PROJECT**

**BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AND**

**KPFF CONSULTING ENGINEERS**

**NOVEMBER 16, 2020**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS  
AGREEMENT FOR**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR THE  
GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE  
PROJECT**

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**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR THE  
GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE  
PROJECT**

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**LIST OF ATTACHMENTS:**

EXHIBIT "A"	SCOPE OF SERVICES
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**AGREEMENT NO. 20-01**

**AGREEMENT FOR THE  
PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR THE  
GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE  
PROJECT**

**BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS  
AND**

**KPFF CONSULTING ENGINEERS**

This AGREEMENT FOR **PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR THE GOLD LINE TRANSIT ORIENTED DEVELOPMENT PEDESTRIAN BRIDGE PROJECT** BY AND BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND KPFF CONSULTING ENGINEERS (the "AGREEMENT"), is made and entered into effective as of the 16th day of November, 2020, by and between the San Gabriel Valley Council of Governments, a California Joint Powers Authority (the "SGVCOG") and KPFF Consulting Engineers (the "CONSULTANT").

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 24 "TERMINATION OF AGREEMENT", this AGREEMENT shall remain in force from the effective date, as first shown above, and shall expire on May 1, 2022 and upon completion and acceptance of the **Preliminary Engineering and Final Design Services for The Gold Line Transit Oriented Development Pedestrian Bridge Project**. Such term may be extended upon written agreement of both parties to this AGREEMENT.

**SECTION 2. SUBCONTRACTORS.**

CONSULTANT shall perform the services contemplated under this AGREEMENT using the resources available within its own organization and any subcontractors that have been authorized, in writing, by SGVCOG. Any substitution of subcontractors must be approved, in writing, by SGVCOG. Unless otherwise required by this AGREEMENT, any subcontract with a value in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) that is executed by CONSULTANT in connection with this AGREEMENT shall contain all of the provisions of this AGREEMENT that are applicable to subcontractors. CONSULTANT shall submit to SGVCOG a copy of each of its fully executed agreements with its subcontractors within fifteen (15) working days of the effective date of this AGREEMENT.

### **SECTION 3. SCOPE OF SERVICES.**

- A. EXHIBIT “A” describes the total SCOPE OF SERVICES that SGVCOG expects to assign to CONSULTANT over the term of the AGREEMENT. Individual TASK ORDERS, each covering a part of the total SCOPE OF SERVICES, will be issued to CONSULTANT. SGVCOG expects to issue individual TASK ORDERS to CONSULTANT as required. CONSULTANT is only authorized to undertake services as described in each individual TASK ORDER. It is understood and agreed that the total SCOPE OF SERVICES is only an estimate and that the actual services collectively required of CONSULTANT through individual TASK ORDERS may be less than the SCOPE OF SERVICES. Further, it is understood and agreed that SGVCOG makes no guarantee; either express or implied, as to the actual task orders to be issued and total dollar value of all of the TASK ORDERS that will be authorized under this AGREEMENT.
- B. When SGVCOG determines that a TASK ORDER is required, SGVCOG will request that CONSULTANT prepare a draft TASK ORDER (sample attached as EXHIBIT “B”) identifying the services to be performed, deliverables, period of performance, proposed compensation (i.e. as a firm fixed price or as billing rates with a not-to-exceed budget ceiling), Small Business Enterprise (“SBE”) goals, and other items, as appropriate. CONSULTANT shall provide the draft TASK ORDER to SGVCOG, which shall review the draft TASK ORDER and negotiate its contents with CONSULTANT. After agreement is reached regarding all items in the TASK ORDER, it shall be signed by representatives of both SGVCOG and CONSULTANT.
- C. CONSULTANT shall not undertake any work associated with a specific TASK ORDER until that TASK ORDER has been approved by SGVCOG, signed by SGVCOG and CONSULTANT and a notice to proceed has been issued by SGVCOG.
- D. The period of performance for each TASK ORDER will be in accord with the dates specified in the TASK ORDER. No TASK ORDER shall extend beyond the term of this AGREEMENT as specified in SECTION 1 and any TASK ORDER which purports to extend beyond the term of this AGREEMENT shall not be valid.
- E. Upon execution of a TASK ORDER by SGVCOG and CONSULTANT, the TASK ORDER shall be incorporated into and made a part of this AGREEMENT.

### **SECTION 4. CHANGES IN WORK**

CONSULTANT shall make changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by SGVCOG, without additional compensation thereof. Should SGVCOG find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, CONSULTANT shall make such revision as directed by SGVCOG.

Any revisions to satisfactorily completed work as directed by SGVCOG shall be considered as additional services and will be paid for as herein provided under Section 5.

## **SECTION 5. ADDITIONAL SERVICES.**

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT, which are in addition to or outside of those described in SECTION 3 above, unless such additional services are authorized in advance and in writing by SGVCOG. CONSULTANT shall be compensated for any such additional authorized services in the amounts and in the manner agreed to in writing by SGVCOG.

## **SECTION 6. RIGHT OF ENTRY**

To perform the services described in this AGREEMENT, it may be necessary for CONSULTANT's employees, agents or subcontractors to enter upon and have ingress to and egress from various railroad crossing locations that are owned by or under the control of the UNION PACIFIC RAILROAD COMPANY ("RAILROAD"). Should CONSULTANT require access to RAILROAD, CONSULTANT shall apply for their own Right of Entry with RAILROAD ("RIGHT OF ENTRY AGREEMENT") under which, CONSULTANT's employees, agents, sub consultants and contractors of SGVCOG will be allowed to enter at the permitted RAILROAD crossing locations. Prior to CONSULTANT's entry into RAILROAD crossing locations, CONSULTANT must review said RIGHT OF ENTRY AGREEMENT and execute CONTRACTOR's ENDORSEMENT, said execution shall not be unreasonably withheld, and any entry into RAILROAD crossing locations by CONSULTANT without execution of CONTRACTOR's ENDORSEMENT shall be a material breach of this AGREEMENT that may result in termination of this AGREEMENT and/or claims for damages and/or other legal or equitable remedies in accordance with SECTION 25 of this AGREEMENT. In the event of any inconsistency between this AGREEMENT and RIGHT OF ENTRY AGREEMENT, the terms of this AGREEMENT shall be controlling. Unless otherwise directed by SGVCOG, CONSULTANT shall channel all communications with RAILROAD through SGVCOG and all CONSULTANT requests for entry to grade crossings shall be made to SGVCOG, which shall obtain necessary approvals from RAILROAD.

## **SECTION 7. COMPENSATION AND METHOD OF PAYMENT**

- A. The total compensation to be payable by SGVCOG to CONSULTANT under this AGREEMENT shall be based on executed TASK ORDERS issued by SGVCOG. There is no guarantee, either express or implied, as to the actual dollar value of services to be authorized through TASK ORDERS.
- B. CONSULTANT shall be compensated in the manner and amounts specified in Attachment "B" COMPENSATION" of each TASK ORDER attached hereto and made a part of this AGREEMENT. The total compensation due CONSULTANT for each TASK ORDER shall not exceed the amount set forth in the budget contained in Attachment "B" of each TASK ORDER unless additional



compensation is approved in writing in advance by SGVCOG. CONSULTANT shall incur only such costs as are reasonable and necessary and in the best interests of SGVCOG. CONSULTANT agrees to use its best efforts to perform the work specified in Attachment "A" SCOPE OF SERVICES of each TASK ORDER and all obligations under this AGREEMENT within any not-to-exceed limit specified in Attachment "B" in such TASK ORDER. Any costs incurred by CONSULTANT in excess of the aforesaid limitation without the express written consent of SGVCOG shall be at CONSULTANT's own risk. Reimbursements on subcontracts for goods and services shall be limited to the actual amount paid by CONSULTANT to the subcontractor(s). Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rates payable to CONSULTANT.

- C. CONSULTANT's compensation for work under any awarded contract will be based on firm fixed hourly rates [which must include all overhead costs and a fee of the hourly cost rate] multiplied by the direct labor hours performed. CONSULTANT's compensation will be subject to a cap on total budget for each TASK ORDER. CONSULTANT's performance period will start on the date of the first Notice to Proceed issued to CONSULTANT. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are direct result of changes in the prevailing wage rates are reimbursable. These hourly rate limitations are applicable to all sub consultants as well.
- D. CONSULTANT shall notify SGVCOG in writing whenever CONSULTANT has reason to believe that within the following sixty (60) day period its total costs and/or compensation for any TASK ORDER will exceed seventy five percent (75%) of the budget for that TASK ORDER as identified in the applicable TASK ORDER Exhibit "B". As part of any such notification, CONSULTANT shall provide SGVCOG with written justification for and a revised estimate of the total cost to SGVCOG for the completion of such TASK ORDER.
- E. As soon as practical after the first day of each calendar month, but in no event later than the tenth (10<sup>th</sup>) of the month, CONSULTANT shall furnish to SGVCOG an original invoice. The invoice shall identify all compensation due CONSULTANT by SGVCOG for services performed in the previous month. Each original invoice shall also include sufficient supporting materials to enable SGVCOG to confirm that all claimed services have been properly completed and costs incurred as claimed by CONSULTANT. SGVCOG shall endeavor to pay the amount due CONSULTANT in full within thirty (30) days after receipt of invoice.

Each CONSULTANT invoice shall also be accompanied by a Program Report. Histogram and Production S-curve chart exhibits shall be furnished upon request. Program Reports shall be a narrative that includes, but is not limited to, a report of accomplishment(s) for the billing period; anticipated accomplishment(s) for the next billing period, and issues identified that may

impact scope, schedule and budget. Production S-curve and Histogram charts shall depict planned and actual activities for (a) project manpower, (b) monthly cumulative expenditures and (c) monthly expenditures versus percent complete. CONSULTANT invoices submitted without the required exhibits will be rejected by SGVCOG.

- F. SGVCOG shall independently review each invoice submitted by CONSULTANT to determine if said invoice is in compliance with all provisions of this AGREEMENT, including the budget and scope of services for each of the TASK ORDERS. All billings for services and for costs and expenses that are submitted by CONSULTANT under this AGREEMENT and any subcontractor costs and expenses billed under this AGREEMENT, if any, must be in accord with the Contract Cost Principles and Procedures of the Federal Acquisition Regulations 48 CFR Part 31 et seq. (the "FAR"), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18, the travel and subsistence rates authorized under the U.S. General Services Administration, and the Los Angeles County Metropolitan Transportation Authority's (Metro) funding guidelines. Any payments made to CONSULTANT and/or CONSULTANT's subcontractors that are determined by subsequent audit to be inconsistent with the budget for one or more TASK ORDERS and/or otherwise unallowable are subject to repayment by CONSULTANT and/or CONSULTANT's subcontractors to SGVCOG. The eligibility requirements for billings for services, costs and expenses, as described in this SECTION 7 (E), must be contained in all CONSULTANT subcontracts and all CONSULTANT subcontracts must also include a provision mandating reimbursement of SGVCOG for any costs for which payment has been made that are determined to be inconsistent with any TASK ORDER budget and/or determined by audit to be unallowable.
- G. In the event SGVCOG disputes any item in any invoice, SGVCOG shall notify CONSULTANT within thirty (30) days of receipt by SGVCOG of said invoice. SGVCOG shall process and endeavor to pay the undisputed portion of said invoice within thirty (30) days of receipt. CONSULTANT shall correct and resubmit any properly disputed portions of said invoice.
- H. Payment to CONSULTANT for services performed pursuant to this AGREEMENT shall not be deemed to waive any deficiencies in services performed by CONSULTANT.
- I. In accordance with the requirements of Metro, a SGVCOG funding source, SGVCOG will apply five percent (5%) retention to all payments made under this AGREEMENT. SGVCOG will make payment of CONSULTANT retained funds accumulated in any audit period, less any disallowance, no more than ninety (90) days after the issuance of a periodic or final audit report for CONSULTANT. SGVCOG will make a good faith effort to schedule an audit of CONSULTANT on at least an annual basis. After completion of each audit, SGVCOG will issue a Draft Audit Report to CONSULTANT. CONSULTANT and Sub consultant will be

afforded thirty (30) days to review and respond to the Draft Audit Report. Upon resolution of any findings in the Draft Audit Report, a Final Audit Report will be issued. In the event CONSULTANT and Sub consultant fail to respond to or acknowledge the Draft Audit Report within thirty (30) days, SGVCOG will issue the Final Audit Report. The Final Audit Report will not be subject to reconsideration by SGVCOG.

Neither pendency of a dispute nor its consideration by SGVCOG will excuse CONSULTANT and Sub consultant from full and timely performance, in accordance with the terms of this AGREEMENT.

- J. In lieu of said retention, CONSULTANT may establish, at CONSULTANT's own cost, an escrow account that will bear interest for the benefit of CONSULTANT to accept the deposit of those monies that otherwise would have been retained. Monies deposited to the escrow account less any disallowed amounts will be released to CONSULTANT after the issuance of the audit report of CONSULTANT and repayment by CONSULTANT of any disallowed amounts. CONSULTANT may alternatively deposit with the escrow agent securities equivalent in value to the monies that would have been retained. Said securities will be returned to CONSULTANT after the issuance of the audit report and after repayment by CONSULTANT of any disallowed amounts. SGVCOG shall approve the type of any securities to be provided by CONSULTANT, the escrow agent selected by CONSULTANT and the escrow agreement negotiated by CONSULTANT. None of the approvals by SGVCOG shall be unreasonably withheld.
- K. SGVCOG requires that prompt progress payments be made to all lower tier subcontractors in accordance with the requirements of Section 7108.5 of the California Business and Professions Code. CONSULTANT agrees to make a progress payment to each of its subcontractors for the respective amount allowed CONSULTANT on account of the work performed by the subcontractors work no later than seven (7) calendar days after CONSULTANT receives any progress payment from SGVCOG for the work of CONSULTANT's subcontractors.
- L. CONSULTANT agrees to make payment of subcontractor retained funds to subcontractors no later than seven (7) calendar days after SGVCOG pays any retained funds to CONSULTANT for work of CONSULTANT's subcontractors. CONSULTANT further agrees to pay each of its subcontractors all remaining retained funds within thirty (30) calendar days after each subcontractor's work is satisfactorily completed and a final invoice is submitted to CONSULTANT; provided, however, that CONSULTANT may withhold any retainage payments associated with invoice items that are in dispute. The prompt payment provisions of this paragraph shall be included in all of CONSULTANT's subcontract agreements.
- M. Interest payments made by CONSULTANT to subcontractors of CONSULTANT because of late payments by CONSULTANT are an unallowable cost under this AGREEMENT and will not be reimbursed by SGVCOG. Repeated and persistent

failures by CONSULTANT to comply with the prompt payment policy of SGVCOG will be considered a material failure to comply with the terms of this AGREEMENT and may result in CONSULTANT being in default under SECTION 25.

- N. This AGREEMENT is subject to the requirements of the Caltrans Local Assistance Procedures Manual related to audits, including pre-award, interim and post audits of the AGREEMENT and any amendments thereto, all of which shall be conducted consistent with the generally accepted government auditing standards prepared by the United States General Accounting Office and all of which shall utilize, among other guidelines, the cost principles and procedures outlined in the Federal Acquisition Regulation (48 CFR Part 31 et seq.). CONSULTANT and Sub consultants also agree to comply with all applicable federal requirements including 49 CFR Part 18, Uniform Administrative Requirements and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 et seq. or any other audit procedures or regulations are subject to repayment by CONSULTANT to SGVCOG. Pre-award audit recommendations will be included in the AGREEMENT or in the amendments prior to their execution. In the event SGVCOG or its funding agencies, conduct a post-award audit of the AGREEMENT or any amendments, in lieu of a pre-award audit, the following shall apply:

CONSULTANT's COST PROPOSAL, which is included in each executed TASK ORDER, is subject to a pre and/or post award audit, which shall be conducted consistent with the generally accepted government auditing standards prepared by the United States General Accounting Office and which shall utilize, among other guidelines, the cost principles and procedures outlined in the Federal Acquisition Regulation (48 CFR Part 31 et seq.). Subsequent to any pre and/or post award audit, SGVCOG, in the reasonable exercise of its discretion, may require that the COST PROPOSAL be amended by CONSULTANT to conform to any audit recommendations with any such amendments being subject to the approval of SGVCOG. CONSULTANT further agrees that individual items of cost identified or confirmed during the aforementioned audit shall be incorporated into the AGREEMENT at the request of SGVCOG, in its reasonable discretion. Refusal by CONSULTANT to incorporate audit recommendations or individual items of cost into the COST PROPOSAL subject to the above would be a failure to perform a material obligation of this AGREEMENT that could cause CONSULTANT to be in default of the AGREEMENT as described in SECTION 25.

CONSULTANT and Sub consultants' cost proposals and indirect cost rates (ICR) are subject to audits or reviews such as, but not limited to, an Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. CONSULTANT and Subconsultant are expected to fully

cooperate and shall provide documents in a timely manner during the audit process.

## **SECTION 8. DEFICIENT SERVICES.**

- A. CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT. CONSULTANT shall at all times competently, and, consistent with its ability, experience and talents, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by consulting firms engaged in providing services similar to those required of CONSULTANT under this AGREEMENT. SGVCOG may disapprove services that do not conform to these standards and practices and may withhold or deny compensation for deficient services. Upon disapproval of services by SGVCOG, CONSULTANT shall immediately re-perform, at its own costs, the services that are deficient. SGVCOG must notify CONSULTANT in writing of the existence of such deficient services within a reasonable time, not to exceed sixty (60) days after its discovery thereof, but in no event later than one (1) year after the completion of such deficient services. No approval, disapproval, or omission to provide approval or disapproval shall release CONSULTANT from any responsibility under this AGREEMENT.
- B. Any costs incurred by SGVCOG and/or CONSULTANT due to CONSULTANT's failure to meet the standards required by the AGREEMENT or CONSULTANT's failure to perform fully the tasks described in the SCOPE OF SERVICES which, in either case, causes SGVCOG to require that CONSULTANT perform again all or part of the SCOPE OF SERVICES shall be at the sole cost of CONSULTANT and, further, SGVCOG shall not pay any additional compensation to CONSULTANT for its re-performance.

## **SECTION 9. EQUIPMENT PURCHASES AND CONSULTANT SERVICES.**

- A. Prior authorization, in writing, by SGVCOG's Chief Engineer or designee shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or consulting services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs. Three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- B. Any equipment purchased as a result of this AGREEMENT is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, SGVCOG shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit SGVCOG

in an amount equal to its fair market value, or sell such equipment at the best prices obtainable at a public or private sale, in accordance with established SGVCOG procedures; and credit SGVCOG in an amount equal to the sales prices. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SGVCOG and CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved, in advance, by SGVCOG."

- C. All subcontracts in excess of twenty five thousand (\$25,000) shall contain all the provisions of this SECTION 9.

## **SECTION 10. OWNERSHIP OF DOCUMENTS.**

All materials, information and data prepared, developed, or assembled by CONSULTANT or furnished to CONSULTANT by SGVCOG in connection with this AGREEMENT, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memorandum ("Data") shall be the exclusive property of SGVCOG. If requested, Data shall be given to SGVCOG. SGVCOG shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to CONSULTANT. Copies of Data may be retained by CONSULTANT but CONSULTANT warrants that Data shall not be made available to any person or entity for use without the prior written approval of SGVCOG. This warranty shall survive termination of this AGREEMENT for five (5) years.

## **SECTION 11. CONSULTANT'S BOOKS AND RECORDS.**

- A. CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to SGVCOG pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for not less than four (4) years from the date of final payment made to CONSULTANT by SGVCOG in accordance with this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.
- B. Any and all records or documents required to be maintained pursuant to this SECTION 11 shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by SGVCOG or its designated

representatives or representatives of any governmental entity, including the Federal Highway Administration, Metro and Caltrans, that is providing funding for SGVCOG Project, if a portion of such funding is used to compensate CONSULTANT hereunder. Copies of such documents or records shall be provided directly to SGVCOG for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

- C. Where SGVCOG has reason to believe that any of the documents or records required to be maintained pursuant to this SECTION 11 may be lost or discarded due to dissolution or termination of CONSULTANT's business, SGVCOG may, in writing, require that custody of such documents or records be given to SGVCOG and that such documents and records thereafter be maintained by SGVCOG.

## **SECTION 12. STATUS OF CONSULTANT.**

- A. CONSULTANT is and shall at all times remain a wholly independent CONSULTANT and not an officer, employee or agent of SGVCOG. CONSULTANT shall have no authority to bind SGVCOG in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against SGVCOG, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by SGVCOG.
- B. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither SGVCOG, nor any elected or appointed boards, officers, officials, employees or agents of SGVCOG, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of SGVCOG. In the event SGVCOG is audited by any Federal or State agency regarding the independent contractor status of Consultant's personnel and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between SGVCOG and Consultant or its personnel, Consultant agrees to reimburse SGVCOG for all costs, including accounting and attorney's fees, arising out of such audit and appeals relating thereto.
- C. Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to SGVCOG's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.
- D. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between SGVCOG and any subcontractors of

CONSULTANT, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to SGVCOG for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subcontractors is an independent obligation from SGVCOG's obligation to make payments to CONSULTANT.

### **SECTION 13. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither SGVCOG, nor any elected or appointed boards, officers, officials, employees or agents of SGVCOG, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this SECTION 13.

### **SECTION 14. SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION.**

SGVCOG is a recipient of non-federal funds from state, county and local funding sources. A SBE Program has been established to ensure that small businesses have the maximum opportunity to participate in all of SGVCOG's non-federally funded contracts.

Eligible firms for participation under this program as an SBE must be a firm that is either certified as a small business as defined by the U.S. Small Business Administration size standards in accordance with 13 CFR Part 121, or certified as a DBE firm in accordance with 49 CFR Part 26 regulations.

SGVCOG will ensure that the following clause is placed in non-federally funded contracts:

The consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out all applicable requirements in the award and administration of the SBE Program. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SGVCOG deems appropriate.

- A. Performance of SBE Contractors and other SBE Subcontractors/Suppliers
  - i. A SBE will perform a commercially useful function if it is responsible for the execution of part of the scope of the work described in the AGREEMENT and carries out its responsibilities by actually performing,



managing, and supervising the work involved. In order to perform a commercially useful function, a SBE must also be responsible for negotiating price, determining quality and quantity, ordering material, and installing (where applicable) and paying for any materials and supplies associated with the work that the SBE performs. To determine whether a SBE is performing a commercially useful function, CONSULTANT must also evaluate the amount of work subcontracted to the SBE, industry practices, whether the amount the SBE is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- ii. A SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether a SBE is such an extra participant, CONSULTANT should examine similar transactions, particularly those in which SBEs do not participate.
- iii. If a SBE does not perform or exercise responsibility for at least thirty percent (30%) of the work (measured by cost) it performs under the AGREEMENT with its own work force, or if the SBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, SGVCOG will presume that the SBE it is not performing a commercially useful function.

**B. SBE Records**

- i. CONSULTANT shall maintain records of materials purchased from and/or services supplied under all subcontracts entered into with certified SBEs, identified in Exhibit D-2. The records shall show the name and business address of each SBE or vendor and the total dollar amount actually paid each SBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. If CONSULTANT is a SBE it shall also show the date of work performed by its own forces along with the corresponding dollar value of the work.
- ii. "Quarterly SBE Subcontractors Paid Report Summary and Payment Verification" (EXHIBIT D-3):
  - a. If CONSULTANT is a SBE firm and/or has proposed to utilize SBE firms, CONSULTANT will be required to complete and submit a Quarterly SBE Report to SGVCOG by the 15<sup>th</sup> of each quarter until completion of the AGREEMENT to facilitate reporting of SBE participation. CONSULTANT shall report the total dollar value paid to SBEs for the applicable reporting period. CONSULTANT shall also report the SBE's scope of work and the total subcontract value of commitment for each SBE reported.

- b. CONSULTANT is required to submit a final SBE report no later than fourteen (14) calendar days after the receipt of final payment and retention from SGVCOG in order to facilitate reporting and capturing the final and actual SBE attainments.
- iii. CONSULTANT shall not to report the participation of SBEs toward the CONSULTANT's SBE attainment until the amount being counted has been paid to the SBE.
  - a. When a SBE subcontractor is terminated, or fails to complete its designated scope of work under the terms of the contract for any reason, CONSULTANT must make good faith efforts to find another SBE subcontractor to substitute for the original SBE.
- iv. Substitutions or additions of an approved SBE subcontractor to be performed by the approved SBE subcontractor must be requested in writing by CONSULTANT and approved by SGVCOG.

C. SBE Certification and De-Certification Status

If a SBE subcontractor is decertified during the life of the AGREEMENT, the decertified subcontractor shall notify CONSULTANT in writing of the date of de-certification. If a subcontractor becomes a certified SBE during the life of the AGREEMENT, the subcontractor shall notify CONSULTANT in writing of the date of certification. Any changes brought to the attention of CONSULTANT shall be reported to SGVCOG within thirty (30) days.

Any changes in the ownership and/or certification status of a SBE subcontractor subsequent to contract award must be reported in writing within thirty (30) days to SGVCOG.

D. SBE Materials and Supplies

**Materials or supplies purchased from SBEs will count towards SBE credit, purchases will count towards the SBE goal under the following conditions:**

- i. If the materials or supplies are obtained from a SBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the SBE participation. A SBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the AGREEMENT and of the general character described by the specifications.
- ii. If the materials or supplies are purchased from a SBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will count toward SBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the AGREEMENT, are bought, kept in stock, and regularly

sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- iii. In order to be considered a regular dealer, if the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
- iv. Credit toward SBE goals for materials or supplies purchased from a SBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## **SECTION 15. FAIR EMPLOYMENT PRACTICES.**

- A. During the performance of this AGREEMENT, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, color, sex, religious creed, national origin, age (over 40), ancestry, pregnancy, physical disability (including HIV and AIDS), mental disability, sexual orientation, medical condition (e.g., cancer) or marital status and denial of family care leave. CONSULTANT and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts under this AGREEMENT.

- B. CONSULTANT will take affirmative action to ensure that employees are treated

during employment without regard to their race, sex, actual or perceived sexual orientation, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall post in conspicuous places, available to employees, notices provided by state and federal agencies regarding fair employment practices.

C. CONSULTANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by representatives of any agency designated by the State of California to investigate or ascertain compliance with this SECTION 15 of this AGREEMENT.

D. Remedies for willful violation:

- i. SGVCOG may determine a willful violation of the fair employment provision of this AGREEMENT to have occurred upon receipt of a final judgment to that effect from a court in an action to which CONSULTANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONSULTANT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.
- ii. For willful violation of the fair employment provision of this AGREEMENT, SGVCOG shall have the right to terminate this AGREEMENT, either in whole or in part, and any loss or damage sustained by SGVCOG in securing the goods or services described herein shall be borne by and paid for by CONSULTANT and SGVCOG may deduct from any moneys due or that thereafter may become due to CONSULTANT, the difference between the price named in the AGREEMENT and the actual cost thereof to SGVCOG to cure CONSULTANT's breach of this AGREEMENT.

## **SECTION 16. NONDISCRIMINATION ASSURANCES.**

A. CONSULTANT hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d - 42 U.S.C. 2000d-4 (the "ACT"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Part 26.13, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (the "REGULATIONS"), the Federal-Aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the basis of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to

discrimination under any program or activity of CONSULTANT under this AGREEMENT. CONSULTANT hereby gives assurance that CONSULTANT and subcontractors will promptly take any measures necessary to effectuate this SECTION 16. Failure by CONSULTANT to carry out these requirements would be a material breach of the AGREEMENT and may result in termination of the AGREEMENT in accordance with SECTION 25 or other actions by SGVCOG in accordance with SECTION 25.

B. CONSULTANT, without limiting the above general assurance, hereby gives the following specific assurances:

i. CONSULTANT agrees that each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or will be operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

ii. CONSULTANT shall insert the following notification in all solicitations for bids for work or material made in connection with this AGREEMENT and, in adapted form, in all proposals for negotiated agreements:

“CONSULTANT hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, age, religion, or disability in consideration for an award”.

iii. CONSULTANT shall insert the clauses of EXHIBIT “F” “NONDISCRIMINATION ASSURANCES IN SUBCONTRACTS” into every subcontract under this AGREEMENT.

iv. CONSULTANT agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this AGREEMENT.

v. CONSULTANT shall provide for such methods of administering its obligations under the AGREEMENT as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that CONSULTANTS and its agents, subcontractors, and successors in interest will comply with all requirements imposed by, or pursuant to the ACT, the REGULATIONS, and this AGREEMENT.

## **SECTION 17. UNAUTHORIZED ALIENS.**

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and, in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against SGVCOG for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse SGVCOG for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by SGVCOG in connection therewith.

## **SECTION 18. CONFLICTS OF INTEREST.**

- A. CONSULTANT shall disclose any financial, business, or other relationship with SGVCOG that may have an impact upon the outcome of this AGREEMENT, or any ensuing SGVCOG **construction contracts**. CONSULTANT shall also disclose current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing SGVCOG **construction contracts** which will follow.
- B. CONSULTANT certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- C. Any subcontract in excess of twenty-five thousand dollars (\$25,000) entered into as a result of this AGREEMENT shall contain all of the provisions of this SECTION 18.
- D. CONSULTANT certifies that it will NOT bid individually or as part of a team on any ensuing **environmental services and construction contracts** on any SGVCOG project covered by this AGREEMENT.
- E. CONSULTANT certifies that any sub consultant and any firm affiliated with CONSULTANT or sub consultants that earn revenue in excess of twenty-five thousand dollars (\$25,000) in connection with this AGREEMENT will NOT be allowed to bid individually or as part of a team on any ensuing **construction contracts** on any SGVCOG project covered by this AGREEMENT.

## **SECTION 19. RESTRICTIONS ON LOBBYING.**

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
  - 1. By signing this AGREEMENT, CONSULTANT certifies, to the best of its knowledge and belief, that no state, federal or local agency appropriated funds have been paid or will be paid, by or on behalf of CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any

federal agency, a Member of Congress, an officer or an employee of the Congress, or an employee of a Member of Congress in connection with this AGREEMENT (See Exhibit "G").

2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or an employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this AGREEMENT, CONSULTANT shall complete and submit all required lobbying disclosure forms and reports.
- C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT was executed. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - D. The language of this SECTION 19 shall be included in all subcontracts that exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) in value and that all such subcontractors shall certify and disclose accordingly.

## **SECTION 20. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

- A. All information gained or work products produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work products to persons or entities other than SGVCOG without prior written authorization from SGVCOG, except as may be required by law.
- B. CONSULTANT, its officers, employees, agents or subcontractors shall not, without prior written authorization from SGVCOG or unless requested by legal counsel to SGVCOG, voluntarily provide declarations, letters of support, and testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives SGVCOG notice of such court order or subpoena.
- C. CONSULTANT shall not issue any news release or public relations item of any nature regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by SGVCOG and receipt of SGVCOG'S written permission.
- D. If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then SGVCOG shall be indemnified by and have the right to reimbursement and CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

- E. CONSULTANT shall promptly notify SGVCOG should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. SGVCOG retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with SGVCOG and to provide SGVCOG with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean that SGVCOG has an obligation to control, direct, or rewrite said response.
- F. All information related to the construction estimate is confidential until the opening of all construction bids and shall not be disclosed by CONSULTANT to any entity other than SGVCOG.

**SECTION 21. INDEMNIFICATION.**

- A. To the maximum extent permitted by Civil Code section 2782.8 CONSULTANT shall indemnify, defend, protect and hold harmless RAILROAD, the and SGVCOG and its individual members, and their respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, the ‘INDEMNITEES”) from and against, any and all losses, liabilities, claims, actions, demands, proceedings, costs and expense of whatever nature (collectively, “CLAIMS”) arising out of or in connection with the performance by CONSULTANT under this AGREEMENT.
- B. If any CLAIMS are asserted against INDEMNITEES which arise out of CONSULTANT’s agreement to defend the INDEMNITEES, CONSULTANT shall upon notice from SGVCOG defense indemnitees at its expense by counsel acceptable to SGVCOG, such acceptance not to be unreasonably withheld. CONSULTANT’s cost of defense shall be subject to the limitation of Civil Code section 2782.8. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 22 shall ensure CONSULTANT’s obligations under this SECTION 21, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this SECTION 21 shall survive the expiration or earlier termination of this AGREEMENT.
- C. The provisions of this SECTION 21 do not apply to CLAIMS occurring as a result of the sole negligence or willful misconduct of SGVCOG or of RAILROAD.

**SECTION 22. INSURANCE.**



CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "H" INSURANCE and made part of this AGREEMENT and, unless waived by SGVCOG in its sole discretion, to require that all its subcontractors also obtain and maintain the insurance policies set forth in EXHIBIT "H". CONSULTANT insurance shall provide coverage for all activities under this AGREEMENT, whether performed by CONSULTANT or any subcontractors. The insurance policies shall name RAILROAD, SGVCOG and their respective elected and appointed boards, officials, officers, agents, employees and volunteers as "additional insureds" with respect to all liabilities arising out of CONSULTANT'S or subcontractors obligations under the AGREEMENT. All insurance policies shall be subject to approval by SGVCOG as to form and content. The insurance policy requirements as set forth in EXHIBIT "H" are subject to amendment or waiver if so approved in writing by SGVCOG. Upon request by SGVCOG, CONSULTANT agrees to provide certificates evidencing that CONSULTANT and its subcontractors have obtained the required policies.

### **SECTION 23. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. SGVCOG has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of SGVCOG. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling SGVCOG to any and all remedies at law or in equity, including summary termination of this AGREEMENT.

Notwithstanding any other provisions in this SECTION 23, SGVCOG may assign this AGREEMENT, in whole or in part, including performance of SGVCOG's duties and responsibilities, to a successor organization that will undertake the project(s) named herein and this AGREEMENT shall inure to the benefit of and shall be binding upon any such successor organization and CONSULTANT.

## **SECTION 24. TERMINATION OF AGREEMENT.**

- A. SGVCOG may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress unless the written notice provides otherwise.
- B. If CONSULTANT is in default under this AGREEMENT, then, in addition to an other remedies, SGVCOG may terminate this AGREEMENT immediately upon written notice.
- C. Upon termination of this AGREEMENT, all property belonging to SGVCOG, which is in CONSULTANT's possession, shall be returned to SGVCOG. CONSULTANT shall furnish to SGVCOG a final invoice for work performed and reasonable expenses incurred up to the date that CONSULTANT was to cease work as provide in this AGREEMENT. CONSULTANT shall not be entitled to any claim for lost profits. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 7 of this AGREEMENT.

## **SECTION 25. DEFAULT.**

If either CONSULTANT or SGVCOG fails to perform any material obligation under this AGREEMENT, the non-breaching party shall notify the breaching party in writing. Within thirty (30) days of receipt of such written notice, the breaching party shall commence curing such breach and shall diligently pursue such cure to completion. If the breaching party fails to diligently pursue such cure to completion, the breaching party shall be in default under the terms of this AGREEMENT. In the event that CONSULTANT is in default, SGVCOG shall not have any obligation or duty to continue compensating CONSULTANT for any services performed after the date of default, and SGVCOG, without limiting any other legal or equitable remedies available to it, shall be entitled to withhold from CONSULTANT amounts unpaid hereunder and to offset such amounts against damages or losses incurred by SGVCOG, including increased costs of services.

## **SECTION 26. CONSULTANT'S ENDORSEMENT.**

CONSULTANT shall place its endorsement on all developed plans, estimates, specifications or any other engineering provided to SGVCOG.

## **SECTION 27. CONTINUITY OF PERSONNEL.**

CONSULTANT may not replace key staff, set forth in CONSULTANT's Proposal, and included as EXHIBIT "I" "LIST OF KEY PERSONNEL" attached hereto, unless their employment is terminated or their replacement is agreed upon by SGVCOG. SGVCOG must approve replacement staff before the replacement staff are assigned to perform services under this AGREEMENT. SGVCOG reserves the right to request that CONSULTANT replace a staff person assigned to perform services under this AGREEMENT in the event SGVCOG, in its sole discretion, determines such a

replacement is necessary. Replacement staff, in every case, are subject to SGVCOG written approval prior to assignment to perform services under this AGREEMENT.

**SECTION 28. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this AGREEMENT.

**SECTION 29. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, and acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

**SECTION 30. PATENT RIGHTS.**

Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the AGREEMENT, as appropriate.

**SECTION 31. COPYRIGHTS.**

SGVCOG may permit copyrighting reports or other agreement products. If copyrights are permitted, the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

**SECTION 32. LABOR COMPLIANCE REQUIREMENTS.**

This AGREEMENT is subject to State prevailing wage requirements of the California Labor Code including Sections 1770 and 1773. All covered work classifications required in performance of this AGREEMENT will be subject to prevailing wage provisions. If there is a difference between the Federal and State wage rates, CONSULTANT and its subcontractors shall pay not less than the higher wage rate. CONSULTANT shall further adhere to the requirements contained in Exhibit "J" - Labor Compliance Provisions.

In order to demonstrate compliance if CONSULTANT provides employer sponsored fringe benefit packages to its employees, CONSULTANT must be able to show that CONSULTANT's payments on behalf of its employees to the benefit packages are equal to the aggregate fringe benefit credit amount specified in the applicable prevailing wage determination. In the event that CONSULTANT pays for a total fringe benefit package in an amount less than the aggregate credit allowed in the prevailing wage determination, CONSULTANT must pay the difference directly to the employee. However, in no event will employer payments in excess of the amount specified as the total for fringe benefits be used to reduce the basic wage rate paid to the employee.

Additionally, payments in excess of the basic hourly prevailing wage rate may be credited towards the fringe benefit payment requirement.

This matter is addressed in Section 16200 of the California Code of Regulations (CCR) and is cited in pertinent part:

”...(I) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages...”

### **SECTION 33. SAFETY.**

CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by SGVCOG. CONSULTANT shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to Section 591 of the California Vehicle Code, SGVCOG has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the California Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this AGREEMENT, shall contain all of the provisions of this Section 33.

### **SECTION 34. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.**

In accordance with Public Contract Code 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt by court by a federal court has been issued against CONSULTANT within the immediately preceded two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

**SECTION 35. EVALUATION OF CONSULTANT.**

CONSULTANT'S performance will be evaluation by SGVCOG in interim basis. At the discretion of SGVCOG, a copy of the evaluation may be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract files.

**SECTION 36. WAIVER.**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any default of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent default or violation of any provision of this AGREEMENT. Acceptance by SGVCOG of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

**SECTION 37. NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by facsimile, or overnight delivery service or certified mail, postage prepaid and return receipt requested, addressed as follows:

To SGVCOG:

Mr. Mark Christoffels  
Chief Engineer  
San Gabriel Valley Council of Governments  
4900 Rivergrade Road, Suite A120  
Irwindale, CA 91706  
Telephone: (626) 962-9292  
Facsimile: (626) 962-3552

With a copy to:

Mr. David DeBerry  
General Counsel  
San Gabriel Valley Council of Governments  
c/o Woodruff Spradlin & Smart, A Professional Corporation  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626-7670  
Telephone: (714) 415-1088  
Facsimile: (714) 415-1188

To CONSULTANT:

Aaron Reynolds  
Managing Principal  
KPF Consulting Engineers  
700 S. Flower Street, Suite 2100  
Los Angeles, CA 90017  
Telephone: (213) 418-0201

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, if mailed three (3) days after deposit of the same in the custody of the United States Postal Service or if via overnight delivery, on the date one (1) day after deposit of same to overnight delivery service.

**SECTION 38. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 39. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by CONSULTANT and by SGVCOG. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 40. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

**SECTION 41. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 42. SEVERABILITY.**

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provisions.

**SECTION 43. COVENANT AGAINST CONTINGENT FEES.**

CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT to solicit or secure this AGREEMENT and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this AGREEMENT. For breach or violation of this warranty, SGVCOG, in its sole discretion, shall have the right to terminate this AGREEMENT without liability, or at its discretion to pay only for the work performed or to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**SECTION 44. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.**

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any SGVCOG employee. For breach or violation of this warranty, SGVCOG shall have the right, in its sole discretion, to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **SECTION 45. CONSULTANT DESIGN STANDARDS**

NOT USED

## **SECTION 46. DISPUTES.**

- A. Any dispute, other than audit, concerning a fact arising with the work that is not disposed of by AGREEMENT shall be referred for a determination by SGVCOG Project Manager or his designee, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by SGVCOG Chief Engineer of unresolved disputes, other than audit. The request for review may be submitted verbally or in writing.
- C. Neither the pendency of a dispute, nor its consideration by SGVCOG will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

## **SECTION 47. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she/they has/have the authority to execute this AGREEMENT on behalf of his/her/their organization and warrants and represents that he/she/they has/have the authority to bind CONSULTANT to the performance of its obligations hereunder.

## **SECTION 48. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "K", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and SGVCOG prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.



**SECTION 49. SIGNATURES.**

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CONSULTANT KPFF CONSULTING ENGINEERS**

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

Date: \_\_\_\_\_

Counsel to SAN GABRIEL VALLEY COUNCIL  
OF GOVERNMENTS

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**TASK ORDER**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES  
FOR THE GOLD LINE TRANSIT ORIENTED DEVELOPMENT  
PEDESTRIAN BRIDGE PROJECT**

<b>CONSULTANT:</b> KPFF Consulting Engineers	<b>AGREEMENT NO.:</b> 20-01	<b>TASK ORDER NO.:</b> 1
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<b>TASK ORDER TITLE:</b>	Preliminary Engineering and Final Design Services for the Gold Line Transit Oriented Development Pedestrian Bridge Project
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<b>EFFECTIVE DATE OF THIS TASK ORDER:</b> November 16, 2020	<b>TASK ORDER VALUE:</b> \$545,720.00
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<b>CONTACT:</b> Aaron Reynolds	<b>TELEPHONE:</b> (213) 418-0201
<b>FACSIMILE:</b>	<b>EMAIL:</b> <a href="mailto:aaron.reynolds@kpff.com">aaron.reynolds@kpff.com</a>
<b>ADDRESS:</b> 700 S. Flowers Street, Suite 2100, Los Angeles, CA 90017	

**1. SCOPE OF SERVICES:**

CONSULTANT agrees to perform services identified in Attachment "A", Scope of Services, which is attached hereto and made a part hereof this TASK ORDER NO. 1.

**2. COMPENSATION:**

The total amount payable to CONSULTANT under this TASK ORDER NO. 1 shall not exceed: Five-hundred forty-five thousand seven hundred twenty dollars (\$545,720.00) as per Attachment "B" (Consultant's cost proposal), and as defined in further detail in SECTION 7 (COMPENSATION AND METHOD OF PAYMENT) and Exhibit "C" (COMPENSATION) of the AGREEMENT.

**3. SUBCONTRACTORS:**

Attachment "C" List of Proposed Subcontractors for TASK ORDER NO. 1 is attached hereto and made a part hereof this TASK ORDER NO. 1.

**4. KEY PERSONNEL:**

Attachment "D" List of Key Personnel for TASK ORDER NO. 1 is attached hereto and made a part hereof this TASK ORDER NO. 1.

**5. SBE GOAL**

There is an 8% SBE goal for TASK ORDER NO. 1.

**6. PERIOD OF PERFORMANCE/NOTICE TO PROCEED**

Work under this TASK ORDER NO. 1 shall commence on November 16, 2020 through September 30, 2021.

All other terms and conditions of this AGREEMENT NO. 20-01 remains unchanged.

In witness whereof, this TASK ORDER NO. 1 has been executed under the provisions of AGREEMENT NO. 20-01 between SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and the above-named CONSULTANT. By signature below, the parties hereto agree that all terms and conditions of this TASK ORDER NO. 1 and AGREEMENT NO. 20-01 shall be in full force and effect.

---

**CONSULTANT:**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

Authorized  
Signature: \_\_\_\_\_

Authorized  
Signature: \_\_\_\_\_

Print Name: Aaron Reynolds

Print Name: Mark Christoffels

Print Title: Managing Principal

Print Title: Chief Engineer



MEMO TO: Capital Projects and Construction Committee Members and Alternates

FROM: Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

DATE: November 16, 2020

SUBJECT: **APPROVAL OF AWARD OF CONSTRUCTION MANAGEMENT SERVICES CONTRACT WITH ANSER ADVISORY LLC AND APPROVAL OF TASK ORDER NO. 1 FOR THE DIAMOND BAR GOLF COURSE PROJECT**

### **RECOMMENDATION**

Authorize the Executive Director, or designee, to execute a construction management (CM) services contract with Anser Advisory LLC and Task Order No. 1 in a not-to-exceed amount of \$170,000 for the for the Diamond Bar Golf Course Project in the City of Diamond Bar.

### **BACKGROUND**

The Los Angeles County Metropolitan Transportation Authority (LACMTA) is serving as the implementing agency for the design phase of the State Route 57-60 Confluence Chokepoint Relief Project to add lanes and make improvements to the freeway confluence area in the east San Gabriel Valley to reduce traffic congestion and improve traffic operations and safety. The SR 57-60 improvements are a longstanding regional highway improvement priority project for the SGVCOG. The proposed project will fix the congested and hazardous confluence of State Routes 57 and 60, ranked no. 1 in California for freight delays and truck accidents.

LACMTA entered into an agreement with the SGVCOG on July 30, 2019 for coordination of utility relocations, acquisition of rights of way, and oversee the bid, award and construction of the State Route 57-60 Confluence Chokepoint Relief Project. As memorialized in the Final Environmental Impact Report-Finding of No Significant Impact (FEIR FONSI) this project will require the modification of the Diamond Bar Golf Course. The golf course modifications must proceed in advance of the freeway project and therefore will be done as a separate stand-alone construction contract by the SGVCOG.

The proposed modifications to the golf course are necessary to mitigate and minimize impacts from the SR-57/SR-60 Confluence Project, specifically the widening of the freeway into the current golf course. The proposed reconfigured realignments of the golf course will free up approximately 10 acres of frontage that will be needed for the freeway project. In addition to reconfiguring the hole alignments, the project includes the construction of a new maintenance facility, replacement of the irrigation system, relocation of a storm drain, and the relocation of SCE electrical transmission facilities. Plans will be completed next month and it is anticipated that a project award will occur in Spring of 2021 with construction to begin in July 2021 and take 17 months to complete. The golf course will be closed during the closure.

Currently, design plans for the Diamond Bar Golf Course Project are 90% complete and staff now needs the services of a Construction Management firm to assist in constructability reviews prior to placing the project out to bid, and later for the oversight of construction after the contract is awarded. As construction manager for SGVCOG on this project, services would include ensuring that the general contractor and subcontractors construct the project as designed, submit complete and accurate schedules for approval by SGVCOG, and adhere to these schedules during the life of the project. The CM is also responsible for the control of change work, through identification and quantification of work necessary for the project that is not included in the contract documents. Anser would also represent SGVCOG when negotiating change orders. CM services also include quality assurance and material quantity inspections, managing submittal reviews, monitoring of contractors' compliance with air quality, noise and debris control regulations, and local agency ordinance and permitting requirements.

Consistent with our procurement process, a Request-for-Proposals (RFP) was issued on July 13, 2020. The availability of the RFP was advertised in various publications (newspapers of local circulation, minority and business publications), posted on ACE and SGVCOG websites, as well as on our online bidding system. A pre-proposal conference was not held. SGVCOG received proposals on August 17, 2020.

Responsive proposals were received from the following firms:

- AECOM
- Anser Advisory
- BERG
- Dudek
- Ghirardelli
- Griffin Structures
- Infrastructure Engineers
- KOA
- PreScience
- Swinerton
- Wallace & Associates
- Wildan Engineering

A 4-member Technical Evaluation Committee (TEC), consisting of two (2) SGVCOG staff and representatives from County of Los Angeles Department of Parks and Recreation and Los Angeles Metro, all with relevant technical qualifications was convened to review the proposals. The TEC reviewed the written proposals and selected the following firms to be interviewed.

- AECOM
- Anser Advisory
- Dudek
- Wildan Engineering

Interviews were held on September 2, 2020. All firms interviewed were highly regarded, experienced and well qualified. The TEC ranked the team of Anser Advisory the highest.

Notices of staff's recommendation were sent to the other finalists on September 2, 2020. No protests were received.

The RFP was issued under the Small Business Enterprise (SBE) Program currently in place. Staff established an 8% SBE goal on the project. Anser Advisory is committed to meet the 8% SBE goal and will be required to report all SBE participation achieved through the life of the contract.

Staff proceeded with negotiating task order 1 to be issued under this contract.

Task 1, Pre-construction CM services will include the following limited tasks:

- Constructability Analysis
- Construction Schedule Review
- Review of the Engineer's Construction Cost Estimate
- Review and inspection of early utility re-locations

Proposed costs for the above pre-construction CM services were compared with estimates independently prepared by staff. Staff recently concluded contract negotiations and is recommending approval of a not-to-exceed amount of \$170,000.

This authorization includes a 10% contingency allowance to the Executive Director, or designee, in accordance with normal agency procedures. Any contract amount changes due to contract changes that exceed the Executive Directors authorization will be brought back to the Committee for further consideration and approval.

### **BUDGET IMPACT**

The estimated cost for the golf course modifications is \$30 million. All project costs for the proposed Diamond Bar Golf Course modifications including the costs associated with this construction management contract will be reimbursed to the SGVCOG under the July 30, 2019 LACMTA agreement with the SGVCOG.

Prepared by: Mark Christoffels, Chief Engineer

Approved by: Marisa Creter, Executive Director

### **ATTACHMENTS**

Attachment A – Agreement No. 20-08 for Construction Management Services  
Attachment B – Task Order No. 1 for Pre-Construction Services

**AGREEMENT NO. 20-08**

**AGREEMENT FOR**

**CONSTRUCTION MANAGEMENT SERVICES**  
**FOR**  
**DIAMOND BAR GOLF COURSE PROJECT**

**BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AND**

**ANSER ADVISORY, LLC**

**NOVEMBER 16, 2020**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS  
 AGREEMENT FOR  
 CONSTRUCTION MANAGEMENT SERVICES  
 FOR  
 DIAMOND BAR GOLF COURSE PROJECT**

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**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES  
FOR  
DIAMOND BAR GOLF COURSE PROJECT**

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**AGREEMENT NO. 20-08**

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES  
FOR  
DIAMOND BAR GOLF COURSE PROJECT  
BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS  
AND**

**ANSER ADVISORY, LLC**

This AGREEMENT FOR **CONSTRUCTION MANAGEMENT SERVICES FOR DIAMOND BAR GOLF COURSE PROJECT** BY AND BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND ANSER ADVISORY, LLC (the "AGREEMENT"), is made and entered into effective as of the 16 day of November, 2020 by and between the San Gabriel Valley Council of Governments, a California Joint Powers Authority (the "SGVCOG") and ANSER ADVISOR, LLC (the "CONSULTANT").

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 24 "TERMINATION OF AGREEMENT", this AGREEMENT shall remain in force from the effective date, as first shown above, and shall expire on December 2022 and upon completion and acceptance of the **Construction Management Services for Diamond Bar Golf Course Project**. Such term may be extended upon written agreement of both parties to this AGREEMENT.

**SECTION 2. SUBCONTRACTORS.**

CONSULTANT shall perform the services contemplated under this AGREEMENT using the resources available within its own organization and any subcontractors that have been authorized, in writing, by SGVCOG. Any substitution of subcontractors must be approved, in writing, by SGVCOG. Unless otherwise required by this AGREEMENT, any subcontract with a value in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) that is executed by CONSULTANT in connection with this AGREEMENT shall contain all of the provisions of this AGREEMENT that are applicable to subcontractors. CONSULTANT shall submit to SGVCOG a copy of each of its fully executed agreements with its subcontractors within fifteen (15) working days of the effective date of this AGREEMENT.

### **SECTION 3. SCOPE OF SERVICES.**

- A. EXHIBIT "A" describes the total SCOPE OF SERVICES that SGVCOG expects to assign to CONSULTANT over the term of the AGREEMENT. Individual TASK ORDERS, each covering a part of the total SCOPE OF SERVICES, will be issued to CONSULTANT. SGVCOG expects to issue individual TASK ORDERS to CONSULTANT as required. CONSULTANT is only authorized to undertake services as described in each individual TASK ORDER. It is understood and agreed that the total SCOPE OF SERVICES is only an estimate and that the actual services collectively required of CONSULTANT through individual TASK ORDERS may be less than the SCOPE OF SERVICES. Further, it is understood and agreed that SGVCOG makes no guarantee; either express or implied, as to the actual task orders to be issued and total dollar value of all of the TASK ORDERS that will be authorized under this AGREEMENT.
- B. When SGVCOG determines that a TASK ORDER is required, SGVCOG will request that CONSULTANT prepare a draft TASK ORDER (sample attached as EXHIBIT "B ") identifying the services to be performed, deliverables, period of performance, proposed compensation (i.e. as a firm fixed price or as billing rates with a not-to-exceed budget ceiling), Small Business Enterprise ("SBE") goals, and other items, as appropriate. CONSULTANT shall provide the draft TASK ORDER to SGVCOG, which shall review the draft TASK ORDER and negotiate its contents with CONSULTANT. After agreement is reached regarding all items in the TASK ORDER, it shall be signed by representatives of both SGVCOG and CONSULTANT.
- C. CONSULTANT shall not undertake any work associated with a specific TASK ORDER until that TASK ORDER has been approved by SGVCOG, signed by SGVCOG and CONSULTANT and a notice to proceed has been issued by SGVCOG.
- D. The period of performance for each TASK ORDER will be in accord with the dates specified in the TASK ORDER. No TASK ORDER shall extend beyond the term of this AGREEMENT as specified in SECTION 1 and any TASK ORDER which purports to extend beyond the term of this AGREEMENT shall not be valid.
- E. Upon execution of a TASK ORDER by SGVCOG and CONSULTANT, the TASK ORDER shall be incorporated into and made a part of this AGREEMENT.

### **SECTION 4. CHANGES IN WORK.**

CONSULTANT shall make changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by SGVCOG, without additional compensation thereof. Should SGVCOG find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, CONSULTANT shall make such revision as directed by SGVCOG.

Any revisions to satisfactorily completed work as directed by SGVCOG shall be considered as additional services and will be paid for as herein provided under Section 5.

**SECTION 5. ADDITIONAL SERVICES.**

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT, which are in addition to or outside of those described in SECTION 3 above, unless such additional services are authorized in advance and in writing by SGVCOG. CONSULTANT shall be compensated for any such additional authorized services in the amounts and in the manner agreed to in writing by SGVCOG.

**SECTION 6. RIGHT OF WAY.**

NOT USED

**SECTION 7. COMPENSATION AND METHOD OF PAYMENT.**

- A. The total compensation to be payable by SGVCOG to CONSULTANT under this AGREEMENT shall be based on executed TASK ORDERS issued by SGVCOG. There is no guarantee, either express or implied, as to the actual dollar value of services to be authorized through TASK ORDERS.
- B. CONSULTANT shall be compensated in the manner and amounts specified in each TASK ORDER, a sample of which is attached hereto as Exhibit "B" and made a part of this AGREEMENT. The total compensation due CONSULTANT for each TASK ORDER shall not exceed the amount set forth in each TASK ORDER. CONSULTANT shall use its best efforts to perform the work specified in each TASK ORDER within the total amount payable set forth in each TASK ORDER and in accordance with CONSULTANT's obligations under this AGREEMENT. Any costs incurred by CONSULTANT in excess of the total amount payable in each TASK ORDER without the prior written approval of SGVCOG shall be at CONSULTANT'S own risk. Reimbursements on subcontracts for goods and services shall be limited to the actual amount paid by CONSULTANT to the subcontractor(s). Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rates payable to CONSULTANT.
- C. CONSULTANT's compensation for work under any awarded contract will be based on firm fixed hourly rates [which must include all overhead costs and a fee of the hourly cost rate] multiplied by the direct labor hours performed. CONSULTANT's compensation will be subject to a cap on total budget for each TASK ORDER. CONSULTANT's performance period will start on the date of the first Notice to Proceed issued to CONSULTANT. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are direct result of changes in the prevailing wage rates are

reimbursable. These hourly rate limitations are applicable to all sub consultants as well.

- D. CONSULTANT shall notify SGVCOG in writing whenever CONSULTANT has reason to believe that within the following sixty (60) day period its total costs and/or compensation for any TASK ORDER will exceed seventy five percent (75%) of the budget for that TASK ORDER as identified in the applicable TASK ORDER Exhibit "B". As part of any such notification, CONSULTANT shall provide SGVCOG with written justification for and a revised estimate of the total cost to SGVCOG for the completion of such TASK ORDER.
- E. As soon as practical after the first day of each calendar month, but in no event later than the tenth (10<sup>th</sup>) of the month, CONSULTANT shall furnish to SGVCOG an original invoice. The invoice shall identify all compensation due CONSULTANT by SGVCOG for services performed in the previous month. Each original invoice shall also include sufficient supporting materials to enable SGVCOG to confirm that all claimed services have been properly completed and costs incurred as claimed by CONSULTANT. SGVCOG shall endeavor to pay the amount due CONSULTANT in full within thirty (30) days after receipt of invoice.

Each CONSULTANT invoice shall also be accompanied by a Program Report. Histogram and Production S-curve chart exhibits shall be furnished upon request. Program Reports shall be a narrative that includes, but is not limited to, a report of accomplishment(s) for the billing period; anticipated accomplishment(s) for the next billing period, and issues identified that may impact scope, schedule and budget. Production S-curve and Histogram charts shall depict planned and actual activities for (a) project manpower, (b) monthly cumulative expenditures and (c) monthly expenditures versus percent complete. CONSULTANT invoices submitted without the required exhibits will be rejected by SGVCOG.

- F. SGVCOG shall independently review each invoice submitted by CONSULTANT to determine if said invoice is in compliance with all provisions of this AGREEMENT, including the budget and scope of services for each of the TASK ORDERS. All billings for services and for costs and expenses that are submitted by CONSULTANT under this AGREEMENT and any subcontractor costs and expenses billed under this AGREEMENT, if any, must be in accord with the Contract Cost Principles and Procedures of the Federal Acquisition Regulations 48 CFR Part 31 et seq. (the "FAR"), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18, the travel and subsistence rates authorized under the U.S. General Services Administration, and the Los Angeles County Metropolitan Transportation Authority's (Metro) funding guidelines. Any payments made to CONSULTANT and/or CONSULTANT's subcontractors that are determined by subsequent audit to be inconsistent with the budget for one or more TASK ORDERS and/or otherwise unallowable are subject to repayment by CONSULTANT and/or CONSULTANT's subcontractors to SGVCOG. The eligibility requirements for billings for services, costs and expenses, as described in this SECTION 7 (E), must be contained in all CONSULTANT subcontracts and all CONSULTANT subcontracts must also include

a provision mandating reimbursement of SGVCOG for any costs for which payment has been made that are determined to be inconsistent with any TASK ORDER budget and/or determined by audit to be unallowable.

- G. In the event SGVCOG disputes any item in any invoice, SGVCOG shall notify CONSULTANT within thirty (30) days of receipt by SGVCOG of said invoice. SGVCOG shall process and endeavor to pay the undisputed portion of said invoice within thirty (30) days of receipt. CONSULTANT shall correct and resubmit any properly disputed portions of said invoice.
- H. Payment to CONSULTANT for services performed pursuant to this AGREEMENT shall not be deemed to waive any deficiencies in services performed by CONSULTANT.
- I. In accordance with the requirements of Metro, a SGVCOG funding source, SGVCOG will apply five percent (5%) retention to all payments made under this AGREEMENT. SGVCOG will make payment of CONSULTANT retained funds accumulated in any audit period, less any disallowance, no more than ninety (90) days after the issuance of a periodic or final audit report for CONSULTANT. SGVCOG will make a good faith effort to schedule an audit of CONSULTANT on at least an annual basis. After completion of each audit, SGVCOG will issue a Draft Audit Report to CONSULTANT. CONSULTANT and Sub consultant will be afforded thirty (30) days to review and respond to the Draft Audit Report. Upon resolution of any findings in the Draft Audit Report, a Final Audit Report will be issued. In the event CONSULTANT and Sub consultant fail to respond to or acknowledge the Draft Audit Report within thirty (30) days, SGVCOG will issue the Final Audit Report. The Final Audit Report will not be subject to reconsideration by SGVCOG.

Neither pendency of a dispute nor its consideration by SGVCOG will excuse CONSULTANT and Sub consultant from full and timely performance, in accordance with the terms of this AGREEMENT.

- J. In lieu of said retention, CONSULTANT may establish, at CONSULTANT's own cost, an escrow account that will bear interest for the benefit of CONSULTANT to accept the deposit of those monies that otherwise would have been retained. Monies deposited to the escrow account less any disallowed amounts will be released to CONSULTANT after the issuance of the audit report of CONSULTANT and repayment by CONSULTANT of any disallowed amounts. CONSULTANT may alternatively deposit with the escrow agent securities equivalent in value to the monies that would have been retained. Said securities will be returned to CONSULTANT after the issuance of the audit report and after repayment by CONSULTANT of any disallowed amounts. SGVCOG shall approve the type of any securities to be provided by CONSULTANT, the escrow agent selected by CONSULTANT and the escrow agreement negotiated by CONSULTANT. None of the approvals by SGVCOG shall be unreasonably withheld.

- K. SGVCOG requires that prompt progress payments be made to all lower tier subcontractors in accordance with the requirements of Section 7108.5 of the California Business and Professions Code. CONSULTANT agrees to make a progress payment to each of its subcontractors for the respective amount allowed CONSULTANT on account of the work performed by the subcontractors work no later than seven (7) calendar days after CONSULTANT receives any progress payment from SGVCOG for the work of CONSULTANT's subcontractors.
- L. CONSULTANT agrees to make payment of subcontractor retained funds to subcontractors no later than seven (7) calendar days after SGVCOG pays any retained funds to CONSULTANT for work of CONSULTANT's subcontractors. CONSULTANT further agrees to pay each of its subcontractors all remaining retained funds within thirty (30) calendar days after each subcontractor's work is satisfactorily completed and a final invoice is submitted to CONSULTANT; provided, however, that CONSULTANT may withhold any retainage payments associated with invoice items that are in dispute. The prompt payment provisions of this paragraph shall be included in all of CONSULTANT's subcontract agreements.
- M. Interest payments made by CONSULTANT to subcontractors of CONSULTANT because of late payments by CONSULTANT are an unallowable cost under this AGREEMENT and will not be reimbursed by SGVCOG. Repeated and persistent failures by CONSULTANT to comply with the prompt payment policy of SGVCOG will be considered a material failure to comply with the terms of this AGREEMENT and may result in CONSULTANT being in default under SECTION 25.
- N. This AGREEMENT is subject to the requirements of the Caltrans Local Assistance Procedures Manual related to audits, including pre-award, interim and post audits of the AGREEMENT and any amendments thereto, all of which shall be conducted consistent with the generally accepted government auditing standards prepared by the United States General Accounting Office and all of which shall utilize, among other guidelines, the cost principles and procedures outlined in the Federal Acquisition Regulation (48 CFR Part 31 et seq.). CONSULTANT and Sub consultants also agree to comply with all applicable federal requirements including 49 CFR Part 18, Uniform Administrative Requirements and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 et seq. or any other audit procedures or regulations are subject to repayment by CONSULTANT to SGVCOG. Pre-award audit recommendations will be included in the AGREEMENT or in the amendments prior to their execution. In the event SGVCOG or its funding agencies, conduct a post-award audit of the AGREEMENT or any amendments, in lieu of a pre-award audit, the following shall apply:

CONSULTANT's COST PROPOSAL, which is included in each executed TASK ORDER, is subject to a pre and/or post award audit, which shall be conducted consistent with the generally accepted government auditing standards prepared by the United States General Accounting Office and

which shall utilize, among other guidelines, the cost principles and procedures outlined in the Federal Acquisition Regulation (48 CFR Part 31 et seq.). Subsequent to any pre and/or post award audit, SGVCOG, in the reasonable exercise of its discretion, may require that the COST PROPOSAL be amended by CONSULTANT to conform to any audit recommendations with any such amendments being subject to the approval of SGVCOG. CONSULTANT further agrees that individual items of cost identified or confirmed during the aforementioned audit shall be incorporated into the AGREEMENT at the request of SGVCOG, in its reasonable discretion. Refusal by CONSULTANT to incorporate audit recommendations or individual items of cost into the COST PROPOSAL subject to the above would be a failure to perform a material obligation of this AGREEMENT that could cause CONSULTANT to be in default of the AGREEMENT as described in SECTION 25.

CONSULTANT and Sub consultants' cost proposals and indirect cost rates (ICR) are subject to audits or reviews such as, but not limited to, an Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. CONSULTANT and Subconsultant are expected to fully cooperate and shall provide documents in a timely manner during the audit process.

- O. The CONSULTANT's compensation for work under any awarded contract will be based on firm fixed hourly rates [which must include all overhead costs and a markup fee that is no more than nine percent (9%) of the hourly cost rate] multiplied by the direct labor hours performed. The CONSULTANT's not-to-exceed compensation will be subject to a cap on total budget as specified in each TASK ORDER. CONSULTANT's hourly rates are not adjustable for the first two (2) years of the performance period under the AGREEMENT. The CONSULTANT's performance period will start on the date of the first TASK ORDER issued to the CONSULTANT. After the first two (2) years, CONSULTANT's hourly rates may have annual adjustments based on the amount the CPI for the Los Angeles-Long Beach-Anaheim metropolitan area for the month immediately preceding the start of the third year of the performance period ("Index Month") has increased over the CPI for the month one year prior to the Index Month as measured by the Bureau of Labor Statistics or three (3) percent, whichever is less; subject to review and approval of SGVCOG. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are direct result of changes in the prevailing wage rates are reimbursable. These hourly rate limitations are applicable to all subconsultants as well.

## **SECTION 8. DEFICIENT SERVICES.**

- A. CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this



AGREEMENT. CONSULTANT shall at all times competently, and, consistent with its ability, experience and talents, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by consulting firms engaged in providing services similar to those required of CONSULTANT under this AGREEMENT. SGVCOG may disapprove services that do not conform to these standards and practices and may withhold or deny compensation for deficient services. Upon disapproval of services by SGVCOG, CONSULTANT shall immediately re-perform, at its own costs, the services that are deficient. SGVCOG must notify CONSULTANT in writing of the existence of such deficient services within a reasonable time, not to exceed sixty (60) days after its discovery thereof, but in no event later than one (1) year after the completion of such deficient services. No approval, disapproval, or omission to provide approval or disapproval shall release CONSULTANT from any responsibility under this AGREEMENT.

- B. Any costs incurred by SGVCOG and/or CONSULTANT due to CONSULTANT's failure to meet the standards required by the AGREEMENT or CONSULTANT's failure to perform fully the tasks described in the SCOPE OF SERVICES which, in either case, causes SGVCOG to require that CONSULTANT perform again all or part of the SCOPE OF SERVICES shall be at the sole cost of CONSULTANT and, further, SGVCOG shall not pay any additional compensation to CONSULTANT for its re-performance.

## **SECTION 9. EQUIPMENT PURCHASES AND CONSULTANT SERVICES.**

- A. Prior authorization, in writing, by SGVCOG's Chief Engineer or designee shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or consulting services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs. Three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- B. Any equipment purchased as a result of this AGREEMENT is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, SGVCOG shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit SGVCOG in an amount equal to its fair market value, or sell such equipment at the best prices obtainable at a public or private sale, in accordance with established SGVCOG procedures; and credit SGVCOG in an amount equal to the sales prices. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable

to SGVCOG and CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved, in advance, by SGVCOG.”

- C. All subcontracts in excess of twenty five thousand (\$25,000) shall contain all the provisions of this SECTION 9.

#### **SECTION 10. OWNERSHIP OF DOCUMENTS.**

All materials, information and data prepared, developed, or assembled by CONSULTANT or furnished to CONSULTANT by SGVCOG in connection with this AGREEMENT, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memorandum ("Data") shall be the exclusive property of SGVCOG. If requested, Data shall be given to SGVCOG. SGVCOG shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to CONSULTANT. Copies of Data may be retained by CONSULTANT but CONSULTANT warrants that Data shall not be made available to any person or entity for use without the prior written approval of SGVCOG. This warranty shall survive termination of this AGREEMENT for five (5) years.

#### **SECTION 11. CONSULTANT'S BOOKS AND RECORDS.**

- A. CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to SGVCOG pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for not less than four (4) years from the date of final payment made to CONSULTANT by SGVCOG in accordance with this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.
- B. Any and all records or documents required to be maintained pursuant to this SECTION 11 shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by SGVCOG or its designated representatives or representatives of any governmental entity, including the Federal Highway Administration, Metro and Caltrans, that is providing funding for SGVCOG Project, if a portion of such funding is used to compensate CONSULTANT hereunder. Copies of such documents or records shall be provided directly to SGVCOG for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be

made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

- C. Where SGVCOG has reason to believe that any of the documents or records required to be maintained pursuant to this SECTION 11 may be lost or discarded due to dissolution or termination of CONSULTANT's business, SGVCOG may, in writing, require that custody of such documents or records be given to SGVCOG and that such documents and records thereafter be maintained by SGVCOG.

## **SECTION 12. STATUS OF CONSULTANT.**

- A. CONSULTANT is and shall at all times remain a wholly independent CONSULTANT and not an officer, employee or agent of SGVCOG. CONSULTANT shall have no authority to bind SGVCOG in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against SGVCOG, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by SGVCOG.
- B. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither SGVCOG, nor any elected or appointed boards, officers, officials, employees or agents of SGVCOG, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of SGVCOG. In the event SGVCOG is audited by any Federal or State agency regarding the independent contractor status of Consultant's personnel and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between SGVCOG and Consultant or its personnel, Consultant agrees to reimburse SGVCOG for all costs, including accounting and attorney's fees, arising out of such audit and appeals relating thereto.
- C. Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to SGVCOG's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.
- D. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between SGVCOG and any subcontractors of CONSULTANT, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to SGVCOG for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subcontractors is an independent obligation from SGVCOG's obligation to make payments to CONSULTANT.

### **SECTION 13. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither SGVCOG, nor any elected or appointed boards, officers, officials, employees or agents of SGVCOG, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this SECTION 13.

### **SECTION 14. SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION.**

SGVCOG is a recipient of non-federal funds from state, county and local funding sources. A SBE Program has been established to ensure that small businesses have the maximum opportunity to participate in all of SGVCOG's non-federally funded contracts.

Eligible firms for participation under this program as an SBE must be a firm that is either certified as a small business as defined by the U.S. Small Business Administration size standards in accordance with 13 CFR Part 121, or certified as a DBE firm in accordance with 49 CFR Part 26 regulations.

SGVCOG will ensure that the following clause is placed in non-federally funded contracts:

The consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out all applicable requirements in the award and administration of the SBE Program. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SGVCOG deems appropriate.

#### **A. Performance of SBE Contractors and other SBE Subcontractors/Suppliers**

- i. A SBE will perform a commercially useful function if it is responsible for the execution of part of the scope of the work described in the AGREEMENT and carries out its responsibilities by actually performing, managing, and supervising the work involved. In order to perform a commercially useful function, a SBE must also be responsible for negotiating price, determining quality and quantity, ordering material, and installing (where applicable) and paying for any materials and supplies associated with the work that the SBE performs. To determine whether a SBE is performing a commercially useful function, CONSULTANT must also evaluate the amount of work subcontracted to the SBE, industry

practices, whether the amount the SBE is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- ii. A SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether a SBE is such an extra participant, CONSULTANT should examine similar transactions, particularly those in which SBEs do not participate.
- iii. If a SBE does not perform or exercise responsibility for at least thirty percent (30%) of the work (measured by cost) it performs under the AGREEMENT with its own work force, or if the SBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, SGVCOG will presume that the SBE it is not performing a commercially useful function.

B. SBE Records

- i. CONSULTANT shall maintain records of materials purchased from and/or services supplied under all subcontracts entered into with certified SBEs, identified in Exhibit D-2. The records shall show the name and business address of each SBE or vendor and the total dollar amount actually paid each SBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. If CONSULTANT is a SBE it shall also show the date of work performed by its own forces along with the corresponding dollar value of the work.
- ii. "Quarterly SBE Subcontractors Paid Report Summary and Payment Verification" (EXHIBIT D-3):
  - a. If CONSULTANT is a SBE firm and/or has proposed to utilize SBE firms, CONSULTANT will be required to complete and submit a Quarterly SBE Report to SGVCOG by the 15<sup>th</sup> of each quarter until completion of the AGREEMENT to facilitate reporting of SBE participation. CONSULTANT shall report the total dollar value paid to SBEs for the applicable reporting period. CONSULTANT shall also report the SBE's scope of work and the total subcontract value of commitment for each SBE reported.
  - b. CONSULTANT is required to submit a final SBE report no later than fourteen (14) calendar days after the receipt of final payment and retention from SGVCOG in order to facilitate reporting and capturing the final and actual SBE attainments.

- iii. CONSULTANT shall not to report the participation of SBEs toward the CONSULTANT's SBE attainment until the amount being counted has been paid to the SBE.
  - a. When a SBE subcontractor is terminated, or fails to complete its designated scope of work under the terms of the contract for any reason, CONSULTANT must make good faith efforts to find another SBE subcontractor to substitute for the original SBE.
- iv. Substitutions or additions of an approved SBE subcontractor to be performed by the approved SBE subcontractor must be requested in writing by CONSULTANT and approved by SGVCOG.

#### C. SBE Certification and De-Certification Status

If a SBE subcontractor is decertified during the life of the AGREEMENT, the decertified subcontractor shall notify CONSULTANT in writing of the date of de-certification. If a subcontractor becomes a certified SBE during the life of the AGREEMENT, the subcontractor shall notify CONSULTANT in writing of the date of certification. Any changes brought to the attention of CONSULTANT shall be reported to SGVCOG within thirty (30) days.

Any changes in the ownership and/or certification status of a SBE subcontractor subsequent to contract award must be reported in writing within thirty (30) days to SGVCOG.

#### D. SBE Materials and Supplies

**Materials or supplies purchased from SBEs will count towards SBE credit, purchases will count towards the SBE goal under the following conditions:**

- i. If the materials or supplies are obtained from a SBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the SBE participation. A SBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the AGREEMENT and of the general character described by the specifications.
- ii. If the materials or supplies are purchased from a SBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will count toward SBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the AGREEMENT, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk

items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- iii. In order to be considered a regular dealer, if the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
- iv. Credit toward SBE goals for materials or supplies purchased from a SBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## **SECTION 15. FAIR EMPLOYMENT PRACTICES.**

- A. During the performance of this AGREEMENT, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, color, sex, religious creed, national origin, age (over 40), ancestry, pregnancy, physical disability (including HIV and AIDS), mental disability, sexual orientation, medical condition (e.g., cancer) or marital status and denial of family care leave. CONSULTANT and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts under this AGREEMENT.

- B. CONSULTANT will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, actual or perceived sexual orientation, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall post in conspicuous places, available to employees, notices provided by state and federal agencies regarding fair employment practices.

- C. CONSULTANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by representatives of any agency designated by the State of California to investigate or ascertain compliance with this SECTION 15 of this AGREEMENT.
  
- D. Remedies for willful violation:
  - i. SGVCOG may determine a willful violation of the fair employment provision of this AGREEMENT to have occurred upon receipt of a final judgment to that effect from a court in an action to which CONSULTANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that CONSULTANT has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.
  - ii. For willful violation of the fair employment provision of this AGREEMENT, SGVCOG shall have the right to terminate this AGREEMENT, either in whole or in part, and any loss or damage sustained by SGVCOG in securing the goods or services described herein shall be borne by and paid for by CONSULTANT and SGVCOG may deduct from any moneys due or that thereafter may become due to CONSULTANT, the difference between the price named in the AGREEMENT and the actual cost thereof to SGVCOG to cure CONSULTANT's breach of this AGREEMENT.

## **SECTION 16. NONDISCRIMINATION ASSURANCES.**

- A. CONSULTANT hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d - 42 U.S.C. 2000d-4 (the "ACT"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Part 26.13, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (the "REGULATIONS"), the Federal-Aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the basis of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of CONSULTANT under this AGREEMENT. CONSULTANT hereby gives assurance that CONSULTANT and subcontractors will promptly take any measures necessary to effectuate this SECTION 16. Failure by CONSULTANT to carry out these requirements would



be a material breach of the AGREEMENT and may result in termination of the AGREEMENT in accordance with SECTION 25 or other actions by SGVCOG in accordance with SECTION 25.

B. CONSULTANT, without limiting the above general assurance, hereby gives the following specific assurances:

i. CONSULTANT agrees that each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or will be operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

ii. CONSULTANT shall insert the following notification in all solicitations for bids for work or material made in connection with this AGREEMENT and, in adapted form, in all proposals for negotiated agreements:

“CONSULTANT hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, age, religion, or disability in consideration for an award”.

iii. CONSULTANT shall insert the clauses of EXHIBIT “F” “NONDISCRIMINATION ASSURANCES IN SUBCONTRACTS” into every subcontract under this AGREEMENT.

iv. CONSULTANT agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this AGREEMENT.

v. CONSULTANT shall provide for such methods of administering its obligations under the AGREEMENT as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that CONSULTANTS and its agents, subcontractors, and successors in interest will comply with all requirements imposed by, or pursuant to the ACT, the REGULATIONS, and this AGREEMENT.

## SECTION 17. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and, in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against SGVCOG for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse SGVCOG for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by SGVCOG in connection therewith.

## SECTION 18. CONFLICTS OF INTEREST.

- A. CONSULTANT shall disclose any financial, business, or other relationship with SGVCOG that may have an impact upon the outcome of this AGREEMENT, or any ensuing SGVCOG **construction contracts**. CONSULTANT shall also disclose current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing SGVCOG **construction contracts** which will follow.
- B. CONSULTANT certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- C. Any subcontract in excess of twenty-five thousand dollars (\$25,000) entered into as a result of this AGREEMENT shall contain all of the provisions of this SECTION 18.
- D. CONSULTANT certifies that it will NOT bid individually or as part of a team on any ensuing **environmental services and construction contracts** on any SGVCOG project covered by this AGREEMENT.
- E. CONSULTANT certifies that any sub consultant and any firm affiliated with CONSULTANT or sub consultants that earn revenue in excess of twenty-five thousand dollars (\$25,000) in connection with this AGREEMENT will NOT be allowed to bid individually or as part of a team on any ensuing **construction contracts** on any SGVCOG project covered by this AGREEMENT.

## SECTION 19. RESTRICTIONS ON LOBBYING.

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
  - 1. By signing this AGREEMENT, CONSULTANT certifies, to the best of its knowledge and belief, that no state, federal or local agency appropriated funds have been paid or will be paid, by or on behalf of CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any federal

agency, a Member of Congress, an officer or an employee of the Congress, or an employee of a Member of Congress in connection with this AGREEMENT (See Exhibit "G").

2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or an employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this AGREEMENT, CONSULTANT shall complete and submit all required lobbying disclosure forms and reports.
- C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT was executed. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - D. The language of this SECTION 19 shall be included in all subcontracts that exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) in value and that all such subcontractors shall certify and disclose accordingly.

## **SECTION 20. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

- A. All information gained or work products produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work products to persons or entities other than SGVCOG without prior written authorization from SGVCOG, except as may be required by law.
- B. CONSULTANT, its officers, employees, agents or subcontractors shall not, without prior written authorization from SGVCOG or unless requested by legal counsel to SGVCOG, voluntarily provide declarations, letters of support, and testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives SGVCOG notice of such court order or subpoena.
- C. CONSULTANT shall not issue any news release or public relations item of any nature regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by SGVCOG and receipt of SGVCOG'S written permission.
- D. If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then SGVCOG shall be indemnified by and have the right to reimbursement and CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

- E. CONSULTANT shall promptly notify SGVCOG should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. SGVCOG retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with SGVCOG and to provide SGVCOG with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean that SGVCOG has an obligation to control, direct, or rewrite said response.
- F. All information related to the construction estimate is confidential until the opening of all construction bids and shall not be disclosed by CONSULTANT to any entity other than SGVCOG.

## **SECTION 21. INDEMNIFICATION.**

- A. SGVCOG along with its individual members, and their respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all losses, liabilities, claims, actions, demands, detriments, penalties, charges, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s) (including, but not limited to, employees, subcontractors, agents, and invitees of CONSULTANT, SGVCOG along with its individual members, or any other person to whom a duty of care is owed), damage to or destruction of property, loss of use of property, economic loss of third parties or otherwise relating to, occurring as a result of, or allegedly caused during the term of this AGREEMENT by the negligence, or reckless acts or omissions or willful misconduct of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.
- B. If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from SGVCOG, shall defend INDEMNITEES at its expense by counsel acceptable to SGVCOG, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 22 shall ensure CONSULTANT's obligations under

this SECTION 21, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this SECTION 21 shall survive the expiration or earlier termination of this AGREEMENT.

- C. The provisions of this SECTION 21 do not apply to CLAIMS occurring as a result of the sole negligence or willful misconduct of SGVCOG.

## **SECTION 22. INSURANCE.**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "H" INSURANCE and made part of this AGREEMENT and, unless waived by SGVCOG in its sole discretion, to require that all its subcontractors also obtain and maintain the insurance policies set forth in EXHIBIT "H". CONSULTANT insurance shall provide coverage for all activities under this AGREEMENT, whether performed by CONSULTANT or any subcontractors. The insurance policies shall name SGVCOG and their respective elected and appointed boards, officials, officers, agents, employees and volunteers as "additional insureds" with respect to all liabilities arising out of CONSULTANT'S or subcontractors obligations under the AGREEMENT. All insurance policies shall be subject to approval by SGVCOG as to form and content. The insurance policy requirements as set forth in EXHIBIT "H" are subject to amendment or waiver if so approved in writing by SGVCOG. Upon request by SGVCOG, CONSULTANT agrees to provide certificates evidencing that CONSULTANT and its subcontractors have obtained the required policies.

## **SECTION 23. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. SGVCOG has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of SGVCOG. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling SGVCOG to any and all remedies at law or in equity, including summary termination of this AGREEMENT.

Notwithstanding any other provisions in this SECTION 23, SGVCOG may assign this AGREEMENT, in whole or in part, including performance of SGVCOG's duties and responsibilities, to a successor organization that will undertake the project(s) named herein and this AGREEMENT shall inure to the benefit of and shall be binding upon any such successor organization and CONSULTANT.

## **SECTION 24. TERMINATION OF AGREEMENT.**

- A. SGVCOG may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. CONSULTANT shall cease immediately all work under this AGREEMENT upon receipt unless the written notice provide otherwise.
- B. If CONSULTANT is in default under this AGREEMENT, then, in addition to and other remedies, SGVCOG may terminate this AGREEMENT immediately upon written notice.
- C. Upon termination of this AGREEMENT, all property belonging to SGVCOG, which is in CONSULTANT's possession, shall be returned to SGVCOG. CONSULTANT shall furnish to SGVCOG a final invoice for work performed and reasonable expenses incurred up to the date that CONSUTLANT was to cease work as provide in this AGREEMENT. CONSULTANT shall not be entitled to any claim for lost profits. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 7 of this AGREEMENT.

## **SECTION 25. DEFAULT.**

If either CONSULTANT or SGVCOG fails to perform any material obligation under this AGREEMENT, the non-breaching party shall notify the breaching party in writing. Within thirty (30) days of receipt of such written notice, the breaching party shall commence curing such breach and shall diligently pursue such cure to completion. If the breaching party fails to diligently pursue such cure to completion, the breaching party shall be in default under the terms of this AGREEMENT. In the event that CONSULTANT is in default, SGVCOG shall not have any obligation or duty to continue compensating CONSULTANT for any services performed after the date of default, and SGVCOG, without limiting any other legal or equitable remedies available to it, shall be entitled to withhold from CONSULTANT amounts unpaid hereunder and to offset such amounts against damages or losses incurred by SGVCOG, including increased costs of services.

## **SECTION 26. CONSULTANT'S ENDORSEMENT.**

CONSULTANT shall place its endorsement on all developed plans, estimates, specifications or any other engineering provided to SGVCOG.

## **SECTION 27. CONTINUITY OF PERSONNEL.**

CONSULTANT may not replace key staff, set forth in CONSULTANT's Proposal, and included as EXHIBIT "I" "LIST OF KEY PERSONNEL" attached hereto, unless their employment is terminated or their replacement is agreed upon by SGVCOG. SGVCOG must approve replacement staff before the replacement staff are assigned to perform services under this AGREEMENT. SGVCOG reserves the right to request that CONSULTANT replace a staff person assigned to perform services under this

AGREEMENT in the event SGVCOG, in its sole discretion, determines such a replacement is necessary. Replacement staff, in every case, are subject to SGVCOG written approval prior to assignment to perform services under this AGREEMENT.

**SECTION 28. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this AGREEMENT.

**SECTION 29. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, and acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term of this AGREEMENT may be extended for delays outside CONSULTANT's control. No price adjustment shall be made unless the delay is caused by SGVCOG and then only to the extent CONSULTANT is damaged.

**SECTION 30. PATENT RIGHTS.**

Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the AGREEMENT, as appropriate.

**SECTION 31. COPYRIGHTS.**

SGVCOG may permit copyrighting reports or other agreement products. If copyrights are permitted, the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

**SECTION 32. LABOR COMPLIANCE REQUIREMENTS.**

This AGREEMENT is subject to State prevailing wage requirements of the California Labor Code including Sections 1770 and 1773. All covered work classifications required in performance of this AGREEMENT will be subject to prevailing wage provisions. If there is a difference between the Federal and State wage rates, CONSULTANT and its subcontractors shall pay not less than the higher wage rate. CONSULTANT shall further adhere to the requirements contained in Exhibit "J" - Labor Compliance Provisions.

In order to demonstrate compliance if CONSULTANT provides employer sponsored fringe benefit packages to its employees, CONSULTANT must be able to show that CONSULTANT's payments on behalf of its employees to the benefit packages are equal to the aggregate fringe benefit credit amount specified in the applicable prevailing wage determination. In the event that CONSULTANT pays for a total fringe benefit package in an amount less than the aggregate credit allowed in the prevailing wage determination, CONSULTANT must pay the difference directly to the employee.

However, in no event will employer payments in excess of the amount specified as the total for fringe benefits be used to reduce the basic wage rate paid to the employee. Additionally, payments in excess of the basic hourly prevailing wage rate may be credited towards the fringe benefit payment requirement.

This matter is addressed in Section 16200 of the California Code of Regulations (CCR) and is cited in pertinent part:

”...(I) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages...”

### **SECTION 33. SAFETY.**

CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by SGVCOG. CONSULTANT shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to Section 591 of the California Vehicle Code, SGVCOG has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the California Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this AGREEMENT, shall contain all of the provisions of this Section 33.

### **SECTION 34. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.**

In accordance with Public Contract Code 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt by court by a federal court has been issued against CONSULTANT within the immediately preceded two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.



**SECTION 35. EVALUATION OF CONSULTANT.**

CONSULTANT'S performance will be evaluated by SGVCOG in interim basis. At the discretion of SGVCOG, a copy of the evaluation may be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract files.

**SECTION 36. WAIVER.**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any default of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent default or violation of any provision of this AGREEMENT. Acceptance by SGVCOG of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

**SECTION 37. NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by facsimile, or overnight delivery service or certified mail, postage prepaid and return receipt requested, addressed as follows:

To SGVCOG:

Mr. Mark Christoffels  
Chief Engineer  
San Gabriel Valley Council of Governments  
4900 Rivergrade Road, Suite A120  
Irwindale, CA 91706  
Telephone: (626) 962-9292  
Facsimile: (626) 962-3552

With a copy to:

Mr. David DeBerry  
General Counsel  
San Gabriel Valley Council of Governments  
c/o Woodruff Spradlin & Smart, A Professional Corporation  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626-7670  
Telephone:(714) 415-1088  
Facsimile: (714) 415-1188

To CONSULTANT:

Paul Buckley, PE, CCM  
Project Manager  
Anser Advisory, LLC  
1820 E. First Street, Suite 410, Santa Ana, CA 92705  
Telephone: 562.743.9400  
Email: paul.buckley@anseradvisory.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, if mailed three (3) days after deposit of the same in the custody of the United States Postal Service or if via overnight delivery, on the date one (1) day after deposit of same to overnight delivery service.

**SECTION 38. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 39. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by CONSULTANT and by SGVCOG. The parties agree that this

requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 40. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

**SECTION 41. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 42. SEVERABILITY.**

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provisions.

**SECTION 43. COVENANT AGAINST CONTINGENT FEES.**

CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT to solicit or secure this AGREEMENT and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this AGREEMENT. For breach or violation of this warranty, SGVCOG, in its sole discretion, shall have the right to terminate this AGREEMENT without liability, or at its discretion to pay only for the work performed or to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**SECTION 44. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.**

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any SGVCOG employee. For breach or violation of this warranty, SGVCOG shall have the right, in its sole discretion, to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **SECTION 45. CONSULTANT DESIGN STANDARDS.**

NOT USED

## **SECTION 46. DISPUTES.**

- A. Any dispute, other than audit, concerning a fact arising with the work that is not disposed of by AGREEMENT shall be referred for a determination by SGVCOG Project Manager or his designee, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by SGVCOG Chief Engineer of unresolved disputes, other than audit. The request for review may be submitted verbally or in writing.
- C. Neither the pendency of a dispute, nor its consideration by SGVCOG will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

## **SECTION 47. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she/they has/have the authority to execute this AGREEMENT on behalf of his/her/their organization and warrants and represents that he/she/they has/have the authority to bind CONSULTANT to the performance of its obligations hereunder.

## **SECTION 48. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "K", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and SGVCOG prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 49. SIGNATURES.**

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CONSULTANT: ANSER ADVISORY, LLC**

By \_\_\_\_\_

Title Sudhir Damle, P.E. President

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

By \_\_\_\_\_

Title Chief Engineer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
General Counsel to SAN GABRIEL VALLEY COUNCIL  
OF GOVERNMENTS

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**TASK ORDER**

**CONSTRUCTION MANAGEMENT SERVICES FOR**

<b>CONSULTANT:</b> Anser Advisory, LLC	<b>AGREEMENT NO.:</b> 20-08	<b>TASK ORDER NO.:</b> 1
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<b>TASK ORDER TITLE:</b>	Pre-construction services for the Diamond Bar Golf Course Project
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<b>EFFECTIVE DATE OF THIS TASK ORDER:</b> November 16, 2020	<b>TASK ORDER VALUE:</b> \$170,000.00
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<b>CONTACT:</b> Paul Buckley	<b>TELEPHONE:</b> 562.743.9400
<b>FACSIMILE:</b>	<b>EMAIL:</b> paul.buckley@anseradvisory.com
<b>ADDRESS:</b> 1820 E. First Street, Suite 410, Santa Ana, CA 92705	

**1. SCOPE OF SERVICES:**

CONSULTANT agrees to perform the services identified in Attachment "A", Scope of Services, which is attached hereto and made a part hereof this **TASK ORDER NO. 1**.

**2. COMPENSATION:**

The total amount payable to CONSULTANT under this **TASK ORDER NO. 1** shall not exceed: **One Hundred Seventy Thousand Dollars (\$170,000.00)** as per Attachment "B" (Consultant's cost proposal), and as defined in further detail in SECTION 7 (COMPENSATION AND METHOD OF PAYMENT) and Exhibit "C" (COMPENSATION) of the AGREEMENT.

**3. SUBCONTRACTORS:**

Attachment "C" List of Proposed Subcontractors for **TASK ORDER NO. 1** is attached hereto and made a part hereof this **TASK ORDER NO. 1**.

**4. KEY PERSONNEL:**

Attachment "D" List of Key Personnel for **TASK ORDER NO. 1** is attached hereto and made a part hereof this **TASK ORDER NO. 1**.

**5. SBE GOAL**

The SBE goal is unchanged by this **TASK ORDER NO. 1**. The SBE goal for this project is 8%.

**6. PERIOD OF PERFORMANCE/NOTICE TO PROCEED**

Work under this **TASK ORDER NO. 1** shall commence on January 1, 2021 through July 31, 2021.

All other terms and conditions of this AGREEMENT NO. 20-08 remain unchanged.

In witness whereof, this TASK ORDER NO. 1 has been executed under the provisions of AGREEMENT NO. 20-08 between SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and the above named CONSULTANT. By signature below, the parties hereto agree that all terms and conditions of this TASK ORDER NO. 1 and AGREEMENT NO. 20-08 shall be in full force and effect.

**CONSULTANT:**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

Authorized  
Signature: \_\_\_\_\_

Authorized  
Signature: \_\_\_\_\_

Print Name: Sudhir Damle

Print Name: Mark Christoffels

Print Title: President

Print Title: Chief Engineer



MEMO TO: Capital Projects & Construction Committee Members and Alternates

FROM: Mark Christoffels, Chief Engineer  
Marisa Creter, Executive Director

DATE: November 16, 2020

SUBJECT: **APPROVAL TO REJECT ALL BIDS RECEIVED FOR THE CONSTRUCTION OF THE FULLERTON ROAD GRADE SEPARATION PROJECT**

### **RECOMMENDATION**

Reject the bids received for the construction of the Fullerton Road Grade Separation Project IFB-2.

### **BACKGROUND**

In 2016, SGVCOG awarded and entered into a contract with Shimmick Construction Company ("Contract") for the construction of the Fullerton Road Grade Separation Project ("Project"). Pursuant to the Contract, Shimmick agreed to furnish all material and perform all work set forth in the Contract, and to fulfill obligations set forth in the Contract Documents. On April 17, 2020, Shimmick sent a letter to SGVCOG stating that SGVCOG materially breached the Contract and, as a result, it was suspending work on the Project. On April 22, 2020, SGVCOG responded to Shimmick's April 17, 2020 letter stating that Contractor's suspension was a material breach of the Contract and an abandonment of the Project.

Based on further discussions and direction by the Committee, SGVCOG and Shimmick agreed to the termination of Shimmick's further performance under the Contract and on the terms, conditions, and final compensation of the Contract, in accordance with a Termination Agreement dated August 26, 2020. Under the terms of that agreement Shimmick was required to vacate from the construction site and is prohibited from performing any contract work with SGVCOG for a period of three years. Under the agreement Shimmick agreed not to object in any manner to SGVCOG bidding out the remaining work on the Contract.

On November 2, 2020, SGVCOG received the following bids to complete the remaining work on this project:

- |                            |                  |
|----------------------------|------------------|
| 1. OHL USA                 | Non responsive   |
| 2. Stacy and Witbeck       | \$95,815,662.54  |
| 3. Security Paving Company | \$101,808,810.30 |

The low bid from OHL was deemed to be non-responsive due to missing line item and lack of total bid price, specifically OHL failed to provide a value for bid item No. 65 and did not include a written total which means the agency had no means to determine the actual bid amount. OHL has been provided written notice that its bid is non-responsive and of its ability to appear before the



Committee and submit materials that its bid should not be deemed non-responsive. Based on communications with OHL, staff believes OHL is in agreement that the OHL bid is non-responsive. The remaining bids were reviewed and values corrected based on the tabulation of bids

The disparity between the bid prices and the fact that the bids came in almost 20 to 30% higher than the engineer's estimate is of concern to staff. Staff is recommending that the bids be rejected, that staff review the bids received and determine if some value engineering can be done on the plans and specifications to reduce the cost of completing this grade separation project. Once this review has been completed and the plans modified, the project will be put back out to bid again. It is anticipated that the project will go back out to bid early next year.

The Committee is authorized by Public Contract Code section 20166 to reject all bids and it may do so for any reason as long as it is not arbitrary and capricious. As noted above, the bids came in higher than anticipated, the lowest of the bids was non-responsive and staff believes that with some project modifications, lower bids are possible

### **BUDGET IMPACT**

There is no impact based on the recommendation to reject the bids. The bids received did confirm that the current Project budget is insufficient to award a contract to complete the grade separation project. To close this gap, funding currently allocated for the construction of the remaining projects in the ACE program that have not started construction (Montebello, Turnbull, and the At-Grade Crossings) will need to be re-programmed to the Project. This will create an overall funding gap for the completion of the ACE program and will result in a potential delay of the construction of the three remaining projects as staff seeks to fill this funding gap. Staff is working closely with our funding agencies on options to close this gap, including the advancement of funds under the Measure M MSP funds that may include \$33 million in Measure M grade crossing funds currently programmed in 2048, and a portion of the \$73 million earmarked in Subregional Equity Funds for the San Gabriel Valley but programmed in 2043.