



San Gabriel Valley Council of Governments*

AGENDA AND NOTICE OF THE MEETING OF THE SGVCOG EXECUTIVE COMMITTEE

Monday, October 5, 2020 – 10:00 AM

Teleconference Meeting

Livestream is Available at: <https://youtu.be/i9-3Vet3-d8>

President
Margaret Clark

1st Vice President
Becky Shevlin

2nd Vice President
Tim Hepburn

3rd Vice President
Ed Reece

Past President
Cynthia Sternquist

Transportation Chair
John Fasana

Homelessness Chair
Becky Shevlin

EENR Chair
Denis Bertone

Water Policy Chair
Gloria Crudgington

ACE Chair
Tim Sandoval

Thank you for participating in today's meeting. The Executive Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Executive Committee are held the first Monday of every month at 10:00 a.m. at the SGVCOG Office (1000 S. Fremont Ave., Building 10, Suite 10210, Alhambra, California 91803).* The Executive Committee agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvkog.org. Copies are available via email upon request (sgv@sgvcog.org). Documents distributed to a majority of the Board after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

PUBLIC PARTICIPATION: Your participation is welcomed and invited at all Executive Committee meetings. Time is reserved at each regular meeting for those who wish to address the Board. SGVCOG requests that persons addressing the Executive Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE EXECUTIVE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Board 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 Executive Committee may not discuss or vote on items not on the agenda.**

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

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Board member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Executive Committee.



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.



***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 Executive Committee meeting scheduled for October 5, 2020 at 10:00 a.m. will not be allowed. Members of the public may view the meeting live on the SGVCOG's website. To access the meeting video, please see the link on the front page of the agenda.

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 Katie Ward (kward@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 Katie Ward (kward@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 Katie Ward at least 48 hours prior to the meeting at (626) 457-1800 or at kward@sgvcog.org.

PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment *(If necessary, the President may place reasonable time limits on all comments)*
4. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting *(It is anticipated that the Executive Committee may take action on these matters)*

CONSENT CALENDAR *(It is anticipated that the Executive Committee may take action on the following matters)*

5. Executive Committee Meeting Minutes – Page 1
Recommended Action: Approve Executive Committee minutes.

UPDATE ITEMS

- 4th Quarter Financial Report / Treasurer’s Report – Page 3
- Audit Status Report – Page 27
- Updated Purchasing and Procurement Policies and Procedures – Page 31
- Employment Contract with Mark Christoffels for Special Projects Manager – Page 155

PRESIDENT’S REPORT

EXECUTIVE DIRECTOR’S REPORT

GENERAL COUNSEL’S REPORT

ACTION ITEMS *(It is anticipated that the Executive Committee may take action on the following matters)*

6. Draft Governing Board Agenda – Page 165
Recommended Action: Approve draft SGVCOG Governing Board agenda.
7. Multi-Unit Housing in Single-Family Residential Zones – Page 169
Recommended Action: Discuss and provide direction to staff regarding state legislation requiring approval of multi-unit developments in single-family residential neighborhoods. Staff recommends working with members of the Executive Committee and City Managers Committee to develop SGVCOG legislative goals in the area of housing to present to the Executive Committee for consideration and to discuss multi-unit housing legislation with Senator Rubio.

ANNOUNCEMENTS

CLOSED SESSION

8. Conference with Legal Counsel – Anticipated Litigation
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2), one potential case.
Recommended Action: Discuss and provide direction.

ADJOURN



SGVCOG
Executive Committee *Special* Meeting Minutes
August 31, 2020
10:00 AM
Teleconference Meeting via Zoom

PRELIMINARY BUSINESS

1. Call to Order
 The meeting was called to order at 10:02 AM.

2. Roll Call

Members Present

- C. Sternquist, President
- M. Clark, 1st Vice President
- B. Shevlin, 2nd Vice President/Homelessness Chair
- T. Hepburn, 3rd Vice President
- D. Bertone, EENR Chair
- J. Fasana, Transportation Chair
- D. Mahmud, Water Policy Chair

Members Absent

- T. Sandoval, ACE Chair

Staff/Guests:

- M. Creter, SGVCOG Executive Director
- K. Ward; P. Hubler; M. Christoffels; D. Stanley; B. McCullom; A. Fung, SGVCOG Staff
- D. DeBerry, Woodruff, Spradlin & Smart

3. Public Comment
 There were no comments from the public.

4. Changes to Agenda Order:
 There were no changes to the agenda order.

CONSENT CALENDAR

5. Executive Committee Meeting Minutes
Recommended Action: Approve Executive Committee minutes.

There was a motion to approve the consent calendar (M/S: D. Bertone/B. Shevlin).

[MOTION PASSES]

AYES:	C. Sternquist, B. Shevlin, T. Hepburn, D. Bertone, M. Clark
NOES:	
ABSTAIN:	
ABSENT:	J. Fasana, D. Mahmud, T. Sandoval

UPDATE ITEMS

- SGVCOG Officer Nominations
 M. Creter provided an update on this item.
- Approval of Section 115 Trust Account with the California Public Employees’ Retirement System
 M. Creter provided an update on this item. There was a request to understand what types of investments CalPERS makes in the Trust and how risky those investments are. There was a

request to explain the advantage/benefit of using CalPERS to setup the Trust and to compare to alternative options.

PRESIDENT’S REPORT

- C. Sternquist reported on this item. She provided an update on the Statewide eviction moratorium legislation.

EXECUTIVE DIRECTOR’S REPORT

- M. Creter reported on this item. She introduced the new SGVCOG Homelessness Coordinator, Brian McCullom.

GENERAL COUNSEL’S REPORT

- No report was given.

ACTION ITEMS

6. Draft Governing Board Agenda
K. Ward presented on this item.

There was a motion to approve the draft SGVCOG Governing Board agenda as amended. (M/S: B. Shevlin/ T. Hepburn).

[MOTION PASSES]

AYES:	C. Sternquist, B. Shevlin, T. Hepburn, J. Fasana, D. Mahmud, D. Bertone, M. Clark
NOES:	
ABSTAIN:	
ABSENT:	T. Sandoval

7. Legislative Update: SB 1120
A. Fung reported on this item.

There was a motion recommend the Governing Board oppose SB 1120 (M/S: M. Clark/ D. Mahmud).

[MOTION PASSES]

AYES:	C. Sternquist, B. Shevlin, T. Hepburn, D. Mahmud, D. Bertone, M. Clark
NOES:	
ABSTAIN:	
NO VOTE RECORDED:	
ABSENT:	T. Sandoval, J. Fasana

ANNOUNCEMENTS

ADJOURN

The meeting adjourned at 11:13 AM.

REPORT

DATE: October 5, 2020
TO: Executive Committee
FROM: Marisa Creter, Executive Director
RE: **4TH QUARTER FINANCIAL REPORT / TREASURER'S REPORT**

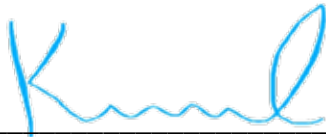
RECOMMENDED ACTION

Receive and file.

BACKGROUND

Staff is recommending to receive and file the Treasurer's report. The full 4th Quarter Financial Reports for the SGVCOG and the ACE Project are included as attachments to the Treasurer's report. The Treasurer's report was prepared by the SGVCOG's Treasurer, CliftonLarsonAllen LLP. Renee Graves from CliftonLarsonAllen will present on this item.

Prepared by:



Katie Ward
Senior Management Analyst

Approved by:



Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – 4th Quarter Treasurer's Report

Attachment A

**San Gabriel Valley Council
of Governments
and
Alameda Corridor – East
Construction Authority**

Quarterly Report Ended June 30, 2020

Attachment A

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I. **Executive Summary**

Background and Objective

CliftonLarsonAllen LLP (CLA) was retained by the San Gabriel Valley Council of Governments (SGVCOG) to perform consulting services related to the San Gabriel Valley Council of Governments (COG) and the Alameda Corridor-East Construction Authority (ACE). The objective is for CLA to read and assess SGVCOG's quarterly reports, perform selective ratio analysis, and report to the Executive Committee accordingly. Throughout the consulting engagement, CLA maintained contact with Marisa Creter, Executive Director/ Chief Executive Officer and Rey Alimoren, Finance Manager.

Professional Standards

CLA performed this engagement in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Consulting Services. In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (CLA) and the client. The analysis and report does not constitute an audit, compilation, review, agreed-upon procedures or examination in accordance with Standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, CLA does not express any such assurance.

Scope of Engagement

General

CLA reviewed the bank reconciliations, trial balance, and quarterly reports regarding financial position for the quarter ended June 30, 2020. CLA created or obtained various electronic files in order to prepare this report to the Executive Committee; the electronic files are available upon request.

Dollar values included in this report have been rounded; therefore the numbers included here may differ slightly when comparing the values included in this report to the underlying detail.

Results of Procedures Performed

This section summarizes our findings from the analyses and procedures performed. The applicable sections of the report include a more detailed discussion of each area, specific observations, and recommendations, if applicable.

ACE Investments and Cash Balances, including LAIF

CLA was provided with a Fixed Income Investments Portfolio Summary report dated June 30, 2020. The report included the current book value and market values for ACE's: Government Securities, Certificates of Deposit, Corporate Bonds, Government Mortgages, Municipals, and Cash and Cash Equivalents. The portfolio's total market value of \$29,287,038 includes unrealized gains of \$180,144. The amount on the *Fixed Income Investments Portfolio* report was verified against the Citizens Trust investment book value (cost) balance of \$29,106,894 for the period ending June 30, 2020. The book value and market value of the Local Agency Investment Fund (LAIF) was substantiated through review of the LAIF balance confirmation as of June 2020. The amounts reported as current book value and market value on the June 30, 2020 Fixed Income Investments Portfolio report were reconciled.

ACE's bank account reconciliations and coordinating bank statements were reviewed and corroborated with the trial balance for the quarter ended June 30, 2020.

ACE 4th Quarter 2020 Reports

Expenditures vs. Reimbursements (Exhibit V): Approximately 97% of ACE's Income-to-Date (ITD) Expenditures have been reimbursed, an increase of 1% from the 96% reimbursement rate at the prior quarter ended March 31, 2020.

Receivables total \$47,064,773 of which \$36,930,222 or 78%, was to be billed after the June 30 balance sheet date. Ratio analysis showed expenditures and reimbursements to be consistent with the prior quarter ended March 2020. Cash increased over 200%. The increase can be attributed to the net decrease in receivables (cash collected) and increase in accounts payable (cash not yet paid) from the prior quarter.

Other receivables, surplus property and deferred costs remained relatively flat; the 2020 Q4 balance is \$14.820m while the 2020 Q3 balance was \$16.771m. The decrease is partially due to a reclassification of Unbilled Receivables accounts from this line item to the *To Be Billed Receivable* line item; the Unbilled Receivables balance for 2020 Q4 is \$1,401,766 while the 2020 Q3 balance was \$1,697,806.

Treasury/Banking Investments (Exhibit VII): Report amounts were agreed to the trial balance. Below is a summary of changes between the 2020 Q4 balance and the 2020 Q3 balance.

		Q4	Q3	%
		06.30.2020	03.31.2020	Increase/ (Decrease)
Cash		\$24,424,404	\$7,401,348	230.0%
Investments		\$30,794,597	\$25,717,489	19.7%
Receivables		\$47,064,773	\$55,566,925	-15.3%
Other Receivables, Surplus Property and Deferred Costs		\$14,820,782	\$16,771,053	-11.6%
Liabilities		\$103,769,723	\$92,264,486	12.5%
Fund Balance before PERS Liability		\$13,334,833	\$13,192,329	1.1%

COG Cash Balances, including LAIF

CLA was provided a Comparative Summary Balance Sheet for 2020 Q4 and 2020 Q3. Cash balances and Local Agency Investment Fund (LAIF) were verified with the Citizens Business Bank account statements for the period ended June 30, 2020 and the LAIF statement as of June 2020.

Overall, COG's cash and cash equivalents increased 5.2% since the prior quarter (2020 Q3) from \$7,502,408 to \$7,895,803 for the period ended June 30, 2020. During 2020 Q2, \$5,625,000 was received for the Housing/Homeless project resulting in an initial increase in cash and liabilities (unearned revenue) from historical balances.

		Q4	Q3	%
		06.30.2020	03.31.2020	Increase/ (Decrease)
Cash		\$7,895,803	\$7,502,408	5.2%
Receivables		\$1,246,737	\$1,059,885	17.6%
Prepays and Deferrals		\$162,360	\$159,957	1.5%
Liabilities		\$8,063,680	\$7,232,353	11.5%
Net Position, End of Period		\$1,241,220	\$1,489,897	-16.7%

COG's bank account reconciliations and coordinating bank statements were reviewed and corroborated with the trial balance for the quarter ended June 30, 2020.

COG 4th Quarter 2020 Reports

All balances on the Comparative Summary Balance Sheet as of June 30, 2020 were verified against the period trial balance as of June 30, 2020. The Grants Receivable Aging Detail report as of June 2020 was also verified to the trial balance.

Risks and Uncertainties

The Coronavirus Disease 2019 (COVID-19) has recently affected global markets, supply chains, employees of companies and the local communities. Management is taking appropriate actions to mitigate the impact. However, the full impact of COVID-19 is unknown and cannot be reasonably estimated as of June 30, 2020.

Conclusion

As discussed herein, no instances that would cause concern that the quarterly reports prepared by ACE and COG are inaccurate or inadequate to meet the governance needs of the Executive Committee and the Board of Directors were noted, specifically related to the sections of the Joint Powers Agreement effective March 12, 2007 included herein.

- Section 4. Purpose and Powers of the Council. The Council shall have, and may exercise the powers to:
 - Subsection b(4) utilize member resources or presently existing single purpose public and public/private groups to carry out its programs and projects;
 - Subsection b(8) serve as a mechanism for obtaining state, federal and regional grants to assist in financing the expenditures of the Council;
 - Subsection b(9) make and enter into contracts, including contracts for the services of engineers, consultants, planners, attorneys and single purpose public/private groups;
 - Subsection b(11) apply for, receive and administer a grant or grants under any federal, state, or regional programs;
 - Subsection b(12) receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;
- Section 6. Use of Public Funds and Property. The Council shall be empowered to utilize for its purposes, public and/or private funds, property and other resources received from the Members and/or from other sources.
- Section 17. Control and Investment of Council Funds. The Governing Board shall adopt a policy for the control and investment of its funds and shall require strict compliance with such policy. The policy shall comply, in all respects, with all provisions of applicable law.



Renee S. Graves, CPA, CGFM
Principal
CliftonLarsonAllen LLP

II. Background and Scope of Engagement

A. Engagement Background and Objectives

CliftonLarsonAllen LLP (CLA), was retained by the San Gabriel Valley Council of Governments. Throughout the engagement, CLA maintained regular contact with the Marisa Creter, Executive Director/ Chief Executive Officer and Rey Alimoren, Finance Manager.

B. Professional Standards

CLA performed this engagement in accordance with the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Consulting Services. In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (CLA) and the client. The analysis and report does not constitute an audit, compilation, review, agreed-upon procedures or examination in accordance with Standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, CLA does not express any assurance.

C. Scope of Engagement

Attachment A to our agreement includes possible consulting procedures to be performed on a monthly basis. Correspondence between Renee Graves of CLA and SGVCOG’s Marisa Creter, Executive Director/ Chief Executive Officer and Rey Alimoren, Finance Manager, occurred to clarify the scope of the engagement for the quarter ending June 30, 2020. The following areas were agreed to regarding 4th Quarter 2020 Reports prepared as of June 30, 2020.

ACE

1. Verify reconciled bank, investment and LAIF statements to the general ledger
2. Review the 4th Quarter 2020 Report as of June 30, 2020
2. Verify key information in the Quarterly Report reconciles to the general ledger

COG

1. Verify reconciled bank and LAIF statements to the general ledger
2. Review the 4th Quarter 2020 Report as of June 30, 2020
3. Verify key information in the Quarterly Report reconciles to the general ledger

D. General Disclosures

CLA created or obtained various electronic files in order to prepare this report to the Executive Committee; the electronic files are available upon request.

Dollar values included in this report have been rounded; therefore the numbers included here may differ slightly when comparing the values included in this report to the underlying detail.

E. Background Information

San Gabriel Valley Council of Governments (COG)

The San Gabriel Valley Council of Governments (SGVCOG) is a joint powers authority made up of representatives from 30 cities, three Los Angeles County Supervisorial Districts, and the three Municipal Water Districts located in the San Gabriel Valley. The SGVCOG serves as a regional voice for its member agencies and works to improve the quality of life for the more than two million residents living in the San Gabriel Valley. The SGVCOG works on issues of importance to its member agencies, including transportation, housing, economic development, the environment, and water, and seeks to address these regionally.

The SGVCOG is a sub-regional government that serves as a unified voice to maximize resources and advocate for regional and member interests to improve the quality of life in the San Gabriel Valley.

The vision of SGVCOG is that by 2021, the SGVCOG will serve as a model subregional agency in Southern California by continuing its existing support of member agency goals and priorities while leveraging the new opportunities provided by the extension and expansion of ACE.

Alameda Corridor-East Construction Authority (ACE)

The Alameda Corridor-East (ACE) Construction Authority was established in 1998 by the San Gabriel Valley Council of Governments (SGVCOG) as a single-purpose construction authority to implement a construction program intended to mitigate the vehicle delays and collisions at rail-roadway crossings resulting from growing freight rail traffic in the San Gabriel Valley. The ACE Trade Corridor rail mainlines through Southern California carry 16 percent of all oceangoing containers in the United States and have been designated by Congress as a Project of National and Regional Significance. With trade volumes through the Ports of Los Angeles and Long Beach projected to grow, train counts through the Valley are expected to increase by 150% by 2042, resulting in additional adverse crossing impacts. In 2017, the

SGVCOG was restructured and established the SGVCOG Capital Projects and Construction Committee, as a successor to the ACE Construction Authority with full responsibility for implementing the ACE Project.

The ACE Project is a comprehensive program of constructing grade separations, where the road goes over or under the railroad, at 19 crossings (resulting in the elimination of 23 at-grade crossings) and safety and mobility upgrades at 53 crossings. Construction has been completed on fourteen rail-roadway grade separations. Three grade separations are under construction with another two grade separations and eight crossing safety projects in the design phase. Jump Start safety improvements have been completed at 40 at-grade crossings.

F. Acronyms Used

ACE - Alameda Corridor-East Construction Authority

CM – Construction Management

COG – San Gabriel Valley Council of Governments

LAIF – Local Agency Investment Fund

MTA – Metropolitan Transit Authority

PERS – Public Employee’s Retirement System

ROW – Right of Way

III. Review of identified areas for ACE

A. Investments and Cash Balances, including LAIF

The June 30, 2020 Fixed Income Investments Portfolio report was verified with the Citizens Trust statement for the period of June 1, 2020 through June 30, 2020 and the LAIF statements as of June 30, 2020. The amounts reported as the market value and the current book value on the June 30, 2020 Fixed Income Investments Portfolio report were reconciled. The allocation of investments within the pool by the type of investment is consistent with the current Investment Policy.

Due to the daily volatility of investments, the balance is reported on a cost basis during the fiscal year and adjusted to fair value during the year end closing process. The applicable balances for the quarter ending June 30, 2020 are:

- Trial balance amount of \$29,287,038 is offset by a “change in market value” balance of \$180,144 for a reported balance of \$29,106,894.
- Book value and market value per Citizens Trust Investment Statement is \$29,106,894 and \$29,287,038, respectively. The unrealized gain of \$180,144 is included in the Other Receivables balance in the 2020 Q4 reports.
- Exhibit VII Treasury/ Banking Investments Report amount of \$29,106,894.

B. Information Provided by ACE

Exhibit V ACE Expenditures vs. Reimbursements and Exhibit VII Treasury/ Banking Investments reports as of June 30, 2020 were obtained and verified against the preliminary trial balance as of June 30, 2020.

Exhibit V ACE Expenditures vs. Reimbursements Report

Amounts shown under the reimbursement status for the categories of 1) *Current/ 30 days or less* of \$7.547m; 2) *Aged Receivable* with no balance; 3) *To be billed* of \$35.527m; and 4) *MTA retention* of \$2.582m were verified against the accounts listed on the trial balance. The *Current/ 30 days or less* and *MTA retention* balances are each in a separate general ledger account. The *To be billed* amount is the aggregate balance of approximately 28 accounts for each individual project by various phases (CM, ROW, Design, Construction, Construction Management and Betterment). These amounts were verified with the accounts listed on the trial balance.

Exhibit VII Treasury/ Banking Investments Report

Each of the accounts listed on Exhibit VII were verified with the trial balance. Consistent with the previous quarterly report, Exhibit VII presents *other receivables, unsold surplus property and deferred costs* at the gross aggregate amount of \$14.821m from approximately 13 separate accounts, the most significant accounts being Surplus Property of \$11.1m. The applicable balances for the quarter ending June 30, 2020 are as shown herein.

Other receivables	\$	(13,695)
Notes receivable		150,000
Prepaid expenses		183,188
Surplus property		11,100,036
Due from COG		511,947
Deferred costs - indirect		2,709,162
Unrealized change in investments		180,144
	\$	<u>14,820,782</u>

The PERS unfunded termination liability of \$5.867m was obtained from the CalPERS Annual Valuation Report as of June 30, 2018, issued July 2019. This liability is not reflected on the trial balance, but is shown on Exhibit VII to reflect the payout that could occur should ACE cease to exist. The actuarially determined PERS net pension liability, including the related deferred outflows and deferred inflows would be reported in the annual audited financial statements in accordance with applicable GASB standards.

IV. Review of identified areas for COG

A. Cash Balances, including LAIF

The June 30, 2020 Bank and LAIF balances reported on the Comparative Summary Balance Sheet were verified against each Citizens Business Bank statement and LAIF statement as of June 30, 2020.

B. Fourth Quarter 2020 Reports

As of June 30, 2020, the Comparative Summary Balance Sheet report was verified to the trial balance. Individual balances on the trial balance were verified to reconciled bank statements and to the LAIF statement at June 30, 2020. All amounts reported were verified to the trial balance. The allocation of investments within the pool by the type of investment is consistent with the current Investment Policy.

Grants Receivable Aging Summary

The Grants Receivable Aging Summary report was reconciled to the trial balance. As of June 30, the receivable balance was \$772,711. The most significant receivables are \$327,202 (aged 90 days) for April 2020 activity for the LA County Regional Homelessness Agreement and \$260,635 (aged 60 days) for May 2020 activity for Caltrans Bike Share Agreement; ACE's Finance Department, reported that the \$260,635 was collected subsequent to the June 30 quarter end. Management believes that all amounts are reasonably expected to be collected. The aged receivable balance is as shown herein.

Aged 30 days	\$	49,883	6.5%
Aged 31-60 days		280,682	36.3%
Aged 61-90 days		385,142	49.8%
Aged 91+ days		57,004	7.4%
	\$	<u>772,711</u>	

The remaining receivable balance of \$512,076 as of the date of this report is an increase compared to the amount of remaining receivables in the 2020 Q3 report of \$334,902.

Credit Card Charges

Purchases for the period of March 2020 to June 2020 totaled \$22,678. Purchases compared to the prior year quarter and prior year-to-date is shown herein.

	Q4	Q4	%
	06.30.2020	06.30.2019	Increase/ (Decrease)
Total Credit Card Expenditures - Current Quarter	\$ 22,678	\$ 35,441	-36.0%

	YTD	YTD	%
	06.30.2020	06.30.2019	Increase/ (Decrease)
Total Credit Card Expenditures - Year-to-Date	\$ 73,638	\$ 73,747	-0.1%

During the quarter, no amounts were expended for meetings and travel, a decrease from last year’s Q4 spending of \$7,197. Year-to-date expenses for meetings and travel is \$14,798, a 29% decrease from last year’s YTD spending of \$20,710. The decrease is a result of COVID-19 and the stay-at-home guidelines implemented by the Governor of California.

	<u>Q4</u>	<u>Q4</u>	<u>YTD</u>	<u>YTD</u>
	<u>06.30.2020</u>	<u>06.30.2019</u>	<u>06.30.2020</u>	<u>06.30.2019</u>
Administrative Fees	\$ 1	\$ -	\$ 1	\$ 12
Bike Share	-	-	109	-
Contract Services	1,500	-	1,500	-
Coyote Program	163	-	7,251	-
Dues & Subscriptions	-	-	16	-
Energy Wise - Gas Co	261	146	1,271	936
Energy Wise - SCE	-	220	589	1,405
Equipment & Software	115	1,925	2,011	1,925
General Assembly Event	-	17,884	-	23,503
Homelessness Program	-	29	300	2,739
Interco due from ACE	12,676	-	26,084	-
Meetings/Travel	-	6,241	11,678	16,421
Meetings/Travel - Board	-	956	3,120	4,289
Miscellaneous	-	161	-	161
Office Supplies	566	1,022	1,839	3,293
Open Streets - Heart of Foothills	-	-	365	-
Open Streets - El Monte	-	-	3,692	-
Postage	8	65	173	326
Postage - Board	-	45	133	232
Prepaid expenses	3,223	2,893	4,953	6,312
Printing and Publications	-	19	-	19
Recruitment	250	33	900	1,983
Staff Training	2,000	-	2,049	1,733
Subscriptions	-	20	-	20
Utilities	943	854	3,551	3,599
Webpage/ Software Services	972	2,928	2,053	4,839
	<u>\$ 22,678</u>	<u>\$ 35,441</u>	<u>\$ 73,638</u>	<u>\$ 73,747</u>

Purchases by credit card are utilized for efficiencies in procurement of goods and services.

Budget to Actual Comparison Report

Budget v. Actual

Member Dues comprise approximately 87% (actual and budget) of operating revenue through 2020 Q4. As of June 30, 100% of total Member Dues revenue budgeted for the 2020 fiscal year has been recognized. COG had actual year-to-date revenue of 86% and year-to-date expenses of 87% of the 2020 fiscal year budget, ending the quarter with year-to-date net income of \$20,094.

A comparison of the quarterly budget, fiscal budget and percent of fiscal budget is presented herein.

Attachment A

	Q4 Actual 2019-20 (Operating)	FY 2020 Revised Budget 2019-20	Year-To-Date % of Budget 2019-20	Q4 Actual 2019-20 (Non-Capital Projects)	FY 2020 Revised Budget 2019-20	Year-To-Date % of Budget 2019-20
Membership Dues	\$ 779,899	\$ 779,898	100%	-	-	0%
Sponsorships	-	-	0%	-	-	0%
Hero Program	1,341	3,200	42%	-	-	0%
Transportation Administration (Local)	101,451	101,569		-	-	0%
Interest	17,086	1,000	1709%	-	-	0%
Ticket Sales	1,098					
Grants & Special Projects	-	-	0%	1,275,019	1,644,789	78%
Total Revenue	\$ 900,875	\$ 885,667	102%	\$1,275,019	\$1,644,789	78%
Personnel	\$ 141,898	\$ 395,946	36%	-	131,982	0%
Committee & Employee Expenses	37,294	61,060	61%	-	11,140	0%
Professional Services	180,592	285,656	63%	-	20,617	0%
Other Expenses	110,165	96,499	114%	-	35,801	0%
Total Indirect Expenses	\$ 469,949	\$ 839,161	56%	\$ -	\$ 199,540	0%
Personnel	\$ -	\$ -	0%	617,248	227,460	271%
Program Management	-	-	0%	1,068,603	1,217,789	88%
Total Direct Expenses	\$ -	\$ -	0%	1,685,851	1,445,249	117%
Total Expenditures	469,949	839,161	56%	1,685,851	1,644,789	102%
Net Income (Loss)	\$ 430,926	\$ 46,506	N/A	(410,832)	-	N/A

V. List of Exhibits

2020 4th Quarter Reports as of June 30, 2020

- ACE – Exhibit V – Expenditures vs. Reimbursements
- ACE – Exhibit VII – Treasury/ Banking Investments (pages 1 and 2)
- ACE – Exhibit VII – Investments Summary
- ACE – Exhibit VII – Investments Portfolio

- COG – Comparative Summary Balance Sheet
- COG – Grants Receivable Aging Summary
- COG – CitiCard Charges
- COG – Consolidated Budget to Actual

Reimbursement Status (\$ 000)							
Projects	ITD Expenditures	Received	Current / 30 Days or less	Aged Receivable	To Be Billed	MTA Retention	
At Grade Crossing	\$ 4,087	\$ 4,024	\$ -	\$ -	\$ 57	\$ 6	
Durfee	54,230	44,871	-	-	8,973	387	
Fairway Drive	151,331	135,942	4,679	-	10,529	182	
Fairway-Lemon Betterment	21,911	21,482	165	-	-	264	
Fullerton	91,781	81,146	2,213	-	7,904	519	
Montebello	28,036	25,698	-	-	2,258	80	
Maple Ave.	612	607	-	-	1	4	
Montebello At Grade	360	246	-	-	113	0	
Nogales (LA)	120,639	116,953	132	-	3,093	460	
Puente Ave.	88,615	87,874	358	-	287	95	
SG Trench	298,521	298,016	-	-	463	42	
Temple	94,722	94,503	-	-	-	219	
Turnbull Cyn.	11,076	9,394	-	-	1,360	322	
Baldwin	70,365	70,363	-	-	-	2	
Brea Canyon	73,459	73,459	-	-	-	-	
Crossing Safety / IRRIS	34,343	34,343	-	-	-	-	
EE/Reservoir	78,960	78,960	-	-	-	-	
Hamilton	1,789	1,789	-	-	-	-	
Nogales (AH)	49,797	49,797	-	-	-	-	
Ramona	53,091	53,091	-	-	-	-	
Sunset	93,794	93,794	-	-	-	-	
Sub-total Projects	\$ 1,421,523	\$ 1,376,355	7,547	-	35,039	2,582	
Project Administration	9,265	9,110	-	-	155	-	
Total ACE	1,430,787	1,385,466	7,547	-	35,192	2,582	
Non-Grade Separation							
Rio Hondo	330	330	-	-	-	-	
57/60 Project	329	-	-	-	329	-	
Gold Line Pedestrian	6	-	-	-	6	-	
	1,431,452	1,385,795	7,547	-	35,527	2,582	

	<u>06.30.20</u>	Change	<u>03.31.20</u>
<u>Cash on hand</u>			
Operating Account	\$ 5,566,017	\$ 3,387,977	\$ 2,178,040
Money Market Account (2)	17,088,975	13,633,946	3,455,029
Money Market (UPRR Contributions)	1,769,413	1,134	1,768,279
Total cash on hand	<u>24,424,404</u>	<u>17,023,056</u>	<u>7,401,348</u>
<u>Investments</u>			
LAIF	1,687,703	8,451	1,679,252
CBT - Fixed Income at cost	29,106,894	5,068,657	24,038,237
Total investments	<u>30,794,597</u>	<u>5,077,108</u>	<u>25,717,489</u>
<u>Current - 30 days or less</u>	<u>7,547,158</u>	<u>(32,223,469)</u>	<u>39,770,627</u>
<u>Aged Receivable</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>To Be Billed</u>	<u>36,930,222</u>	<u>23,716,317</u>	<u>13,213,905</u>
<u>MTA Retention</u>	<u>2,587,393</u>	<u>5,000</u>	<u>2,582,393</u>
Total Exhibit V	<u>47,064,773</u>	<u>(8,502,152)</u>	<u>55,566,925</u>
Other receivables, unsold surplus properties, and deferred costs	14,820,782	(1,950,271)	16,771,053
Total Cash, Cash Equivalents & Receivables	<u>117,104,556</u>	<u>11,647,741</u>	<u>105,456,815</u>
<u>Liabilities</u>			
Payables & other Accruals	18,046,110	16,021,372	2,024,738
Unearned revenues	40,723,613 (a.)	(4,516,134)	45,239,747
MTA Working Capital Loan	45,000,000	-	45,000,000
Total liabilities	<u>103,769,723</u>	<u>11,505,238</u>	<u>92,264,486</u>
<u>Fund balance</u>			
Resources net of actual liabilities	13,334,833	142,504	13,192,329
Less estimated:			
CalPERS - Hypothetical termination liability	5,866,990 (b.)	(480,046)	6,347,036
Resources net of estimated liabilities	<u>\$ 7,467,843 (c.)</u>	<u>\$ 622,550</u>	<u>\$ 6,766,953</u>

a.) Represents surplus property appraised value, net proceeds from sale of ROW surplus properties, advanced UPRR funding, disallowed retention, and Betterment funds billed in advance to City of Industry for Fairway Drive and Fullerton projects, as well as Rio Hondo payments from cities.

b.) Updated based on CalPERS's annual valuation report as of June 30, 2018.

c.) Decrease represents increase in 06/30/2018 hypothetical termination liability and effect of prior year's deficiency of expenses over revenues

Attachment A

Quarter 4 Report June 30, 2020 Attachment 3

Deposit/ Investment Amount 03.31.20	% of Invest- ments	Bank Deposits	Maximum Maturity	Maximum Percent of Portfolio	Maximum Investment in One Issuer
\$ 5,566,017 18,858,388		Ace deposits are held by Citizens Business Bank (CBB) under a deposit agreement in amounts not to exceed \$50 million. Under the agreement, CBB maintains collateral deposits of at least 110% of the value of all ACE deposits at Bank of New York Mellon in eligible securities. The CBB deposits accounts are: Checking Account Money Market Accounts (3) *			
24,424,404		Total Deposits			
Permitted Investments **					
19,531,390	63.42%	Government Securities (1.15 - 5.01 years)	5 years	50%	15%<=
5,775,669	18.76%	Corporate Bonds (1.47 - 4.99 years)	5 years	30%	10%<=
1,009,917	3.28%	Gov't Mortgages (4.13 - 4.80 years)	5 years	15%	None stated
248,232	0.81%	Municipals (1.94 - 4.27 years)	None stated	None stated	None stated
700,069	2.27%	CDs (3.50 - 5.00 years)	5 years	30%	10%<=
1,841,618	5.98%	Cash and Cash Equivalents	None stated	None stated	None stated
29,106,894	94.52%	Subtotal Investments - Book value *			
1,687,703	5.48%	State's Local Agency Investment Fund	None stated	None stated	None stated
30,794,597	100.00%	Total Investments			
\$ 55,219,002		Total			

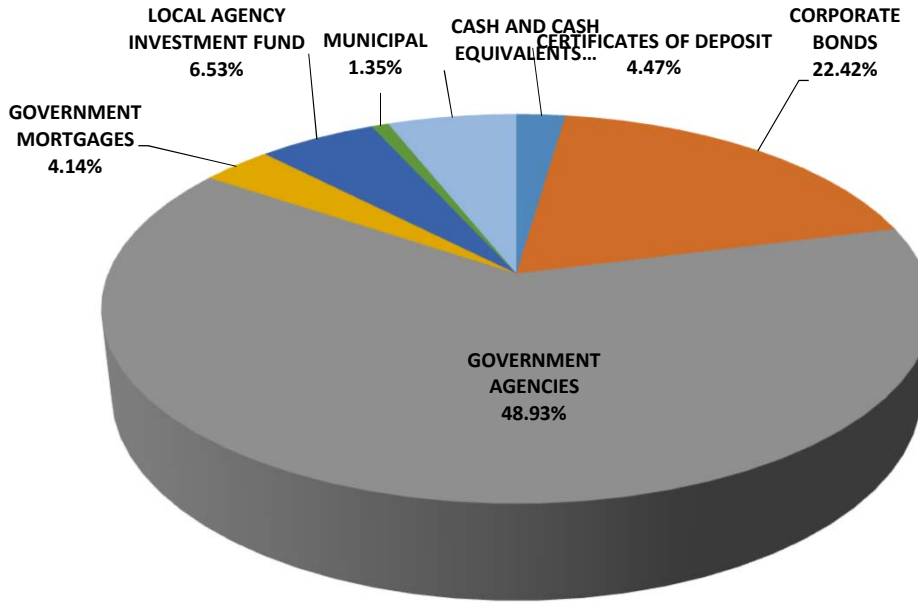
* Note: UPRR, MTA Loan, Sweep Accounts



Alameda Corridor - East Construction Project
Office of ACE Construction Authority Finance Director/Treasurer

ASSET ALLOCATION

Assets (Dollars)	Current Par Value	Current Book Value	Market Value	Mkt/Book
CERTIFICATES OF DEPOSIT	700,000	700,069	706,273	100.89%
CORPORATE BONDS	5,765,000	5,775,669	5,900,615	102.16%
GOVERNMENT AGENCIES	19,187,010	19,531,390	19,652,303	100.62%
GOVERNMENT MORTGAGES	915,215	1,009,917	930,689	92.16%
LOCAL AGENCY INVESTMENT FUND	1,687,703	1,687,703	1,687,703	100.00%
MUNICIPALS	250,000	248,232	255,540	102.94%
CASH AND CASH EQUIVALENTS	1,841,618	1,841,618	1,841,618	100.00%
Totals (Dollars)	30,346,546	30,794,597	30,974,741	100.58%



Fixed Income Composition by Book Value

Par Value: Or face value is the amount of money redeemed to the bondholder once the bonds matures

Book Value : Is the par value or face value plus any unamortized premiums or less any unamortized discounts.

Market Value: Is the current price at which the bond is trading

Mkt/Book: Measures the market value over the book value of a bond.

Attachment A

Quarter 4 Report June 30, 2020 Attachment 5

Cusip	Name	Coupon	Yield to Maturity	Purchase Date	Maturity Date	Current Price	Par Value	Market Value	Current Book Value			
3137FEU99	Federal Home Loan Bank	3.45	2.386	12/27/2019	9/25/2024	104.762	74,042	77,568	76,112			
3130ADMJ8	Federal Home Loan Bank	2.38	1.215	12/16/2019	2/8/2021	101.321	130,000	131,717	130,931			
	Federal Home Loan Bank	0.75	0.770	6/24/2020	6/24/2025	99.900	1,500,000	1,498,500	1,499,530			
3130AJF53	Federal Home Loan Bank	0.45	0.475	6/30/2020	6/30/2023	99.926	500,000	499,630	500,000			
3133ELZY3	Federal Farm Credit Bank	0.64	0.664	5/20/2020	5/20/2024	99.905	2,000,000	1,998,100	1,998,440			
3133EJ2R9	Federal Farm Credit Bank	2.75	2.155	12/14/2018	12/14/2020	101.160	200,000	202,320	199,724			
3134GVRM2	Freddie Mac	0.90	0.892	5/6/2020	5/6/2025	100.037	2,800,000	2,801,036	2,799,804			
3134GVVT2	Freddie Mac	0.92	0.919	5/19/2020	5/19/2025	100.007	2,000,000	2,000,140	2,000,000			
3134GVZS0	Freddie Mac	0.90	0.894	5/28/2020	5/28/2025	100.027	500,000	500,135	499,950			
3134GU4S6	Freddie Mac	1.80	1.775	1/21/2020	4/21/2023	100.078	300,000	300,234	300,000			
3137F5LM9	FHLMC Series KSMC Class	3.00	1.511	5/26/2020	3/25/2025	106.914	919,679	983,269	981,840			
3137B04Y7	FHLMC Series KSMC Class	2.62	2.067	3/1/2013	1/25/2023	104.886	680,000	713,225	664,063			
31381K7C7	Fannie Mae Pool FN 469621	5.14	3.879	10/1/2009	10/1/2024	114.242	251,391	287,194	291,456			
	Fannie Mae Call	0.74	0.769	6/30/2020	6/30/2025	99.860	500,000	499,280	500,000			
3138L4N58	Fannie Mae Pool AM4011	3.67	2.816	7/1/2013	7/1/2023	107.398	475,000	510,141	499,883			
3138L7GY6	Fannie Mae Pool AM6514	3.26	1.458	9/10/2019	9/1/2024	108.626	308,931	335,579	326,791			
3138EJNY0	Fannie Mae Pool AL2206	3.73	3.034	9/18/2019	7/1/2022	101.841	296,902	302,368	303,861			
3136AHAG5	Fannie Mae	3.33	1.575	11/12/2019	10/25/2023	106.700	151,085	161,184	157,202			
3135G0N66	Fannie Mae	1.40	1.130	8/25/2016	8/25/2021	101.311	400,000	405,244	400,000			
3136G4VN0	Fannie Mae	0.50	0.493	5/7/2020	5/5/2023	100.022	1,000,000	1,000,220	1,000,000			
	Federal Farm Credit Bank	0.23	0.273	6/23/2020	12/23/2021	99.940	1,000,000	999,350	999,500			
880591EN8	Tenn Valley Authority DTD	1.88	0.671	1/23/2020	8/15/2022	103.054	600,000	618,324	604,100			
880591ER9	Tenn Valley Authority DTD	2.88	0.627	1/21/2020	9/15/2024	110.296	2,100,000	2,316,216	2,285,632			
880591EL2	Tenn Valley Authority DTD	3.88	3.319	9/19/2016	2/15/2021	102.266	500,000	511,330	512,572			
63.42% Government Securities (1.15 - 5.01 years)							19,187,010	19,652,303	19,531,390			
05580ACZ5	BMW Bk North, America DTD	2.20	2.085	10/8/2015	9/30/2020	100.543	250,000	251,358	249,950			
140420YS3	Capital One Bank Medium	1.60	1.325	5/4/2016	5/4/2021	101.326	250,000	253,315	250,119			
254672W20	Discover Bank DTD	1.85	1.643	12/14/2016	12/14/2020	100.800	200,000	201,600	200,000			
2.27% CDs (3.50 - 5.00 years)							700,000	706,273	700,069			
291011BC7	Emerson Electric Co	4.25	3.607	9/28/2018	11/15/2020	101.310	280,000	283,668	281,487			
911312AMB	United Parcel Service DTD	3.13	2.798	6/10/2016	1/15/2021	101.403	185,000	187,596	187,819			
440452AE0	Hormel Foods Corp	4.13	3.716	1/31/2017	4/15/2021	101.578	500,000	507,890	508,596			
14912L6U0	Caterpillar Financial Serv Corp	1.70	1.407	9/9/2016	8/9/2021	101.386	746,000	756,340	742,815			
02665WBG5	American Honda Finance	1.70	1.404	9/15/2016	9/9/2021	101.420	1,400,000	1,419,880	1,392,034			
06406RAA5	Bank of NY Mellon Corp	2.60	1.802	10/18/2017	2/7/2022	103.296	511,000	527,843	513,858			
166764AT7	Chevron	2.41	1.742	7/26/2017	3/3/2022	102.950	370,000	380,915	371,659			
244199BE4	Deere & Co	2.60	1.780	7/26/2017	6/8/2022	103.811	150,000	155,717	151,235			
	John Deere Capital	2.80	2.183	6/26/2012	1/27/2023	105.811	100,000	105,811	105,646			
037833DC1	Apple Inc	2.10	1.121	9/25/2018	9/12/2022	103.788	500,000	518,940	486,762			
207597EF8	CONNECTICUT LIGHT & PWR DTD	2.50	0.939	5/19/2020	1/15/2023	104.091	223,000	232,123	231,768			
69371RN93	PACCAR Financial Corp	2.80	1.690	9/12/2019	3/1/2021	101.603	300,000	304,809	302,359			
05531FBJ1	BB&T Corporation	2.20	1.085	9/16/2019	3/16/2023	103.817	500,000	519,085	499,630			
18.76% Corporate Bonds (1.47 - 4.99 years)							102,352	5,765,000	5,900,615	5,775,669		
31407RTU8	Fannie Mae Pool #838563	5.00	3.746	4/29/2016	10/1/2020	105.074	3,508	3,686	3,725			
3137A6B27	Freddie Mac	4.33	4.219	9/7/2016	10/25/2020	100.430	109,639	110,110	121,117			
3137A8PP7	Freddie Mac	4.18	3.884	9/7/2016	12/25/2020	101.155	306,068	309,603	338,063			
3137ABFH9	Freddie Mac	3.99	3.470	9/7/2016	6/25/2021	102.276	496,000	507,290	547,013			
3.28% Gov't Mortgages (4.13 - 4.80 years)							101,691	915,215	930,689	1,009,917		
13066YTZ2	California State Dept of Water Resources PWI	2.00	1.517	9/28/2016	5/1/2022	102.578	150,000	153,867	148,231			
13063DGA0	California State Dept of Water Resources PWI	2.80	2.209	4/25/2018	4/1/2021	101.673	100,000	101,673	100,001			
0.81% Municipals (1.94 - 4.27 years)							102,216	250,000	255,540	248,232		
31607A208	Fidelity Prime Mon Mar-Ins	1.00		10/7/2015		100.000	1,841,618	1,841,618	1,841,618			
5.98% Cash and Cash Equivalents								1,841,618	1,841,618	1,841,618		
TOTAL (Dollars)							\$	28,658,842	\$	29,287,038	\$	29,106,894

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

Comparative Summary Balance Sheet

As of June 30, 2020

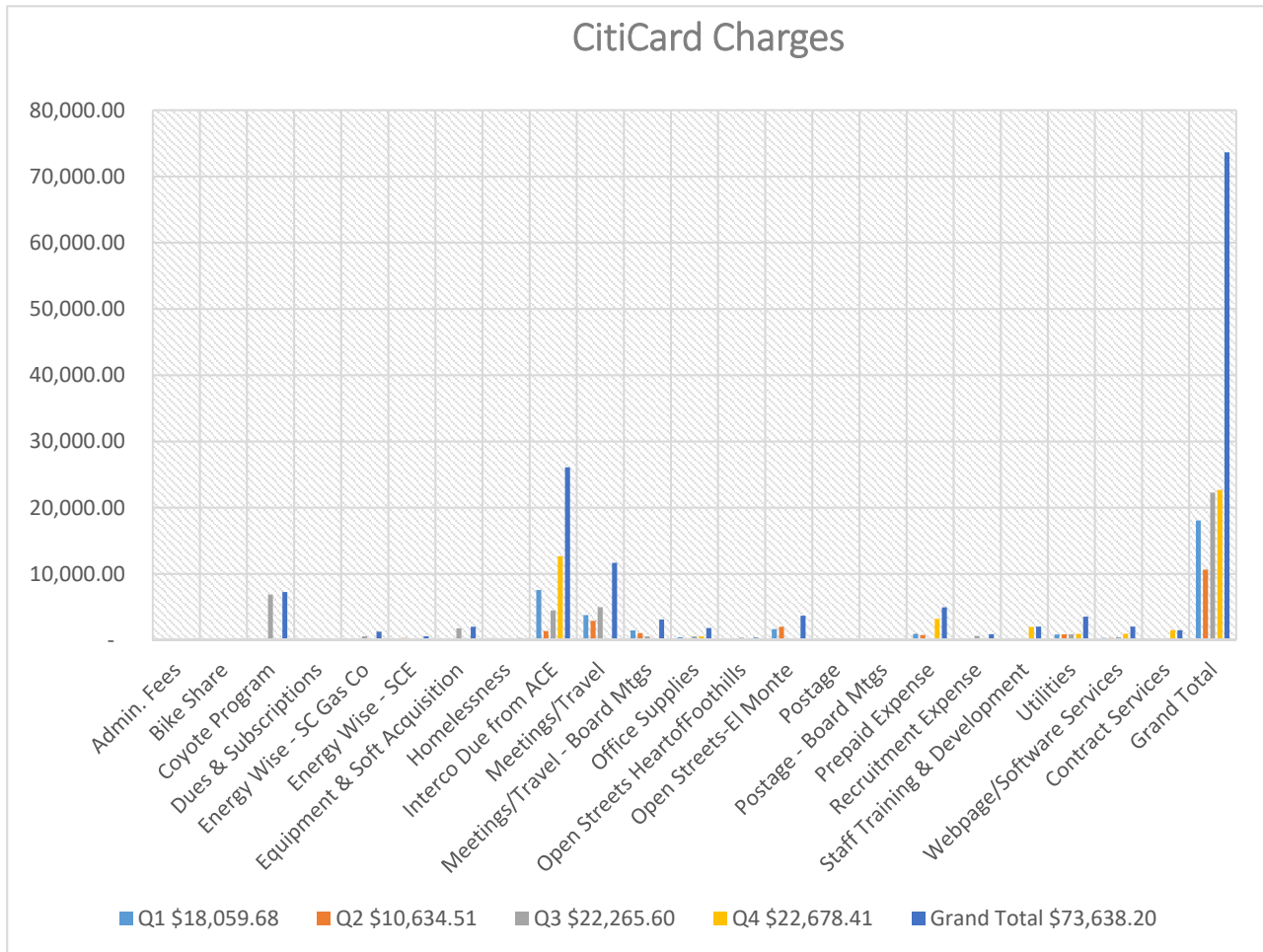
	6.30.2020	Change	03.31.20
CBB - Checking	\$ 1,901,717	\$ 388,072	\$ 1,513,645
CBB- 242-034-325 CD	55,730	14	55,716
CBB - 2766 Savings	1,592	1	1,592
CBB -242-034-953 CD	54,961	14	54,947
CBB - 242-300-597 Money Market	5,637,896	4,075	5,633,821
Petty Cash	400	-	400
LAIF	243,421	1,219	242,202
LAIF Market Value	86	-	86
Cash and equivalents	<u>7,895,803</u>	<u>393,395</u>	<u>7,502,408</u>
Member Receivable	(0)	(52,780)	52,780
Grants/Contracts Receivable	772,711	422,290	350,421
Sponsorships Receivable	-	-	-
Rental Deposit Receivable	5,489	-	5,489
Unbilled Grant Receivable	204,358	(200,218)	404,576
Receivables - other	264,179	17,560	246,619
Receivables	<u>1,246,737</u>	<u>186,852</u>	<u>1,059,885</u>
Prepays and deferrals	<u>162,360</u>	<u>2,404</u>	<u>159,956</u>
Total assets	<u>9,304,900</u>	<u>582,651</u>	<u>8,722,249</u>
Accounts Payable	352,844	352,844	-
Citi Bank Card	6,165	3,925	2,240
Payroll Payable	(26)	(19)	(7)
Accrued Vacation	36,314	(1,471)	37,785
Unearned Revenues - Member Cities Dues	-	(245,084)	245,084
Unearned Revenues - Housing/Homelessness	5,590,716	1,524,287	4,066,429
Unearned Revenues - SGVRHT	-	(1,550,000)	1,550,000
Accruals, deferrals and other payables	2,077,667	746,844	1,330,823
Total liabilities	<u>8,063,680</u>	<u>831,326</u>	<u>7,232,354</u>
Net Position, beginning of period **	1,221,127	-	1,221,127
Change in net position	20,094	(248,676)	268,770
Net Position, end of period	<u>\$ 1,241,220</u>	<u>\$ (248,676)</u>	<u>\$ 1,489,897</u>



San Gabriel Valley Council of Governments
 Grants Receivable Aging Summary
 As of June 30, 2020

Month	SC Gas - Energy Wise	LA County - Homelessness Planning Grant	MTA - Measure M	Caltrans - BikeShare	Various Cities - Service Delivery Cost Study	Various Cities - VMT	LA County- SGVRHT	SoCAL REN	Totals	Notes
Jun-19	-	-	-	-	9,450				9,450	
Jul-19	-	13,167	-	-					13,167	
Aug-19	-	13,167	-	-					13,167	
Sep-19	-	13,167	-	-					13,167	
Dec-19	-		-	-					-	
Jan-20			-	-					-	
Mar-20	8,054		-	-					8,054	
Apr-20	9,024		-	-		48,916	327,202		385,142	
May-20	7,819			260,635		12,229	-		280,682	
Jun-20	17,042		3,303			24,458	-	5,080	49,883	
	\$ 41,938	\$ 39,500	\$ 3,303	\$ 260,635	\$ 9,450	\$ 85,603	\$ 327,202	\$ 5,080	\$ 772,711	

**San Gabriel Valley Council of Governments
Credit Charges July 1, 2019 - June 30, 2020**



SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
Consolidated Budget to Actual
FY 2020 Fourth Quarter Report
As of June 30, 2020

	Jul 19 - Jun 20 Actual (Operating)	FY 2020 Budget	% of Budget	Jul 19 - Jun 20 Actual (Non-Capital Projects)	FY 2020 Budget	% of Budget
1 Revenue						
2 Operating						
3 Member Dues	\$ 779,899	\$ 779,898	100%			
4 Hero Program	1,341	3,200	42%			
5 Transportation Administration (Local)	101,451	101,569	100%			
6 Interest	17,086	1,000	1709%			
7 Ticket Sales	1,098		100%			
8 <i>Subtotal Operating Revenue</i>	<u>\$ 900,875</u>	<u>\$ 885,667</u>	<u>102%</u>			
9						
10 Non-Capital Projects						
11 Local (Homelessness, Energy, Measure M, Transportation, Stormwater) **				1,275,019	1,644,789	78%
12 <i>Subtotal Revenue</i>	<u>\$ -</u>	<u>\$ -</u>	<u>0%</u>	<u>\$ 1,275,019</u>	<u>\$ 1,644,789</u>	<u>0%</u>
13 Total Revenue	<u>\$ 900,875</u>	<u>\$ 885,667</u>	<u>0%</u>	<u>\$ 1,275,019</u>	<u>\$ 1,644,789</u>	<u>78%</u>
14						
15 Expenditure						
16 Indirect Expenses						
17 Personnel	\$141,898	395,946	36%		131,982	0%
18 Committee & Employee Expenses (Meetings/Travel, Dues & Subscription)	37,294	61,060	61%	-	11,140	0%
19 Professional Services (Audit, Legal, Const, MTA Supp)	180,592	285,656	63%	-	20,617	0%
20 Other Expenses	110,165	96,499	114%	-	35,801	0%
21 <i>Total Indirect Expenses</i>	<u>\$ 469,949</u>	<u>\$ 839,161</u>	<u>56%</u>	<u>\$ -</u>	<u>\$ 199,540</u>	<u>0%</u>
22						
23 Direct Expenses						
24 Personnel/Construction Direct Labor			0%	617,248	227,460	271%
25 Program Management **			0%	1,068,603	1,217,789	88%
26 <i>Total Direct Expenses</i>	<u>\$ -</u>	<u>\$ -</u>	<u>0%</u>	<u>\$ 1,685,851</u>	<u>\$ 1,445,249</u>	<u>117%</u>
27 Total Expenditures	<u>\$ 469,949</u>	<u>\$ 839,161</u>	<u>56%</u>	<u>\$ 1,685,851</u>	<u>\$ 1,644,789</u>	<u>102%</u>
28 Net income (Loss)	<u>\$ 430,926</u>	<u>\$ 46,506</u>	<u>N/A</u>	<u>\$ (410,832)</u>	<u>\$ -</u>	<u>N/A</u>

** Includes Bike Share

REPORT

DATE: October 5, 2020
TO: Executive Committee
FROM: Marisa Creter, Executive Director
RE: **AUDIT STATUS REPORT**

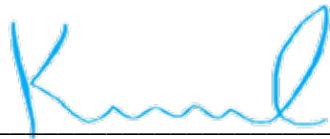
RECOMMENDED ACTION

Receive and file.

BACKGROUND

On an ongoing basis, the SGVCOG conducts audits on the agency's professional services contracts to verify that billable rates are being billed correctly. When discrepancies are discovered, audit staff will withhold disputed amounts from future progress or final retention payments on these contracts. Attachment A summarizes the activities by SGVCOG audit staff through September 30, 2020. Rey Alimoren, the SGVCOG Acting Finance Director, will provide a presentation on this item.

Prepared by:



Katie Ward
Senior Management Analyst

Approved by:



Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Audit Status Report

CONTRACT AUDIT STATUS REPORT, *through 09/30/2020*

AUDITOR	COMPLETED AUDITS QUARTER/TOTAL	AMOUNT RECOVERED THIS QTR	AMOUNT RECOVERED TOTAL	AUDITS TO BE DONE
MTA (5/01-6/06)	0 / 130	\$ 0	\$ 427,520	0
SGVCOG (4/08-Present)	3 / 214	\$ 67,628	\$ 5,688,405	16*
TOTAL	3 / 344	\$ 67,628	\$ 6,115,925	16

	PREVIOUS QUARTER	ADD(DEDUCT) THIS QUARTER	LESS: COMPLETED	TO BE DONE
Interim	0	2	2	0
Close-out	6	8	1	13
Post Award	1	2	0	3
TOTAL (SGVCOG)	7	12	3	16

CONTRACT AUDIT STATUS REPORT, 7/1/20 – 9/30/20

CONTRACTOR	PROJECT	AUDIT PERIOD	AMOUNT	QUESTIONED COSTS
Jacobs Program Mgmt.	SGT	12/30/17 – 12/27/19	\$ 3,307,710	\$ 1,534
Safety Environmental Consulting	Nogales LA	Closeout	\$ 291,481	\$ 66,094
Moffatt & Nichol	Puente	12/31/17 – 12/28/19	\$ 241,324	-
TOTAL				\$ 67,628

CONTRACT AUDIT STATUS REPORT, *through 09/30/20*

Safety Environmental Consulting (Nogales LA)

QUESTIONED COSTS	
Labor:	
Billed	\$ 291,481
Audited	\$ 225,387
TOTAL QUESTIONED COST	<u>\$ 66,094</u>

REPORT

DATE: October 5, 2020

TO: Executive Committee

FROM: Marisa Creter, Executive Director

RE: **UPDATED PURCHASING AND PROCUREMENT POLICIES AND PROCEDURES**

RECOMMENDED ACTION

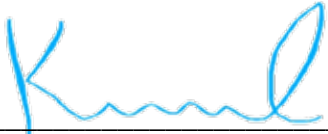
For information only.

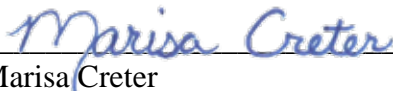
BACKGROUND

As a component of the SGVCOG's integration with the ACE Project, staff has undertaken an effort to consolidate the Purchasing and Procurement Policies and Procedures. Attachment A contains a complete draft of the updated and consolidated Purchasing and Procurement Policies and Procedures. The consolidated manual primarily draws from the existing ACE Procurement Policy, as it is significantly more detailed and more applicable than the existing SGVCOG Procurement Policy. The significant changes of note include the following:

- **Contract Authority:** The polices/procedures have been updated to clarify that the Executive Director is the only authorized SGVCOG staff member to approve and enter into contracts and contract modifications (including but not limited to change orders, amendments, and all other contract modifications) on behalf of the SGVCOG. Currently, the SGVCOG's Chief Engineer has assigned duties/authorities previously assigned to the ACE CEO, including contract execution authority that is governed by a previous resolution and will remain in effect until his departure.
- **Contract Cancellation:** A section has been added to address the cancellation of any service contract by the Executive Director, as appropriate, without approval by the Board if such contract was executed by an employee not designated to execute such contracts.
- **Prohibition of Bidder Working with SGVCOG:** A section has been added to outline that any contract award or with any action on a contract, a bidder may be prohibited from bidding on future contracts by finding, upon substantial evidence, non-responsibility which arises from any one of the following: (1) commission of fraud or a criminal offense in connection with soliciting, obtaining or preparing a public contract; (2) violation of federal or state antitrust statutes in relation to a bid on a public contract; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (4) commission of any other offense that indicates a lack of business integrity or business honesty; (5) present prohibition by another public entity; (6) breach of a statutory or contract provision which specifies or requires exclusion as a remedy; or (7) any other cause so serious it substantially affects the contractor's present responsibility.
- **Bid Protest Procedures:** The bid protest procedures have been updated to reflect the current ACE Project procedures.

- **Addition of a Revolving Door Prohibition:** In order to prevent the appearance of impropriety, an unfair competitive advantage to companies hiring former SGVCOG employees, and the potential to compromise the loyalty of the SGVCOG employees who may be desirous of future employment with a SGVCOG contractor, a section has been added on restrictions for post-employment of SGVCOG employees.
- **Formatting/Updates to Manual:** Adjustments to formatting have been made to reflect formatting of other SGVCOG policies and procedures. Additionally, language has been added to allow for modifications to the manual that occur as a result of needing to conform to updated laws/regulations and to allow for modifications that reflect operating practices/formatting.

Prepared by: 
Katie Ward
Senior Management Analyst

Approved by: 
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Updated SGVCOG Purchasing and Procurement Policies and Procedures



**SAN GABRIEL VALLEY COUNCIL OF
GOVERNMENTS**

**Purchasing and Procurement
Policies and Procedures Manual**

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INTRODUCTION

The following manual is intended to provide an overview of the purchasing and procurement policies and procedures for San Gabriel Valley Council of Governments, which will be referred to as “SGVCOG” or “the Organization” throughout this manual.

Effective January 2018, the SGVCOG Governing Board approved restructuring its construction entity, the former Alameda Corridor-East (ACE) Construction Authority into the SGVCOG. As a result of this restructure, the policies and procedures and administration of the ACE project will now reside within the administration and oversight of SGVCOG. All policies and procedures documented in this manual will cover both existing policies of SGVCOG as well as the former ACE project policies and procedures. Existing staff of the ACE project report to SGVCOG administration with oversight from the Capital Projects Construction Committee of the SGVCOG Governing Board.

SGVCOG is a government entity incorporated in the State of California that was formed by a Joint Powers Agreement on March 17, 1994.

In 2020, the San Gabriel Valley Regional Housing Trust (SGVRHT) was established to fund and finance the planning and construction of homeless housing, and extremely low, very low, and low-income housing projects. The SGVRHT Board of Directors approved an Agreement with the SGVCOG for core staffing services. As part of this Agreement, the SGVCOG provides administrative support, which includes financial management and contract support. Therefore, the purchasing and procurement policies and procedures set forth herein shall apply to the SGVRHT.

Mission

“The SGVCOG is a sub-regional government that serves as a unified voice to maximize resources and advocate for regional and member interests to improve the quality of life in the San Gabriel Valley.”

Purpose and Scope

This manual will document the purchasing and procurement procedures for the purchase of goods and services used for the operation of the SGVCOG. These procedures enable the SGVCOG to effectively manage and coordinate the purchasing and procurement process, to ensure the process subscribes to sound business practices and legal requirements, to establish a system of financial controls for the efficient use and expenditure of public funds, to ensure the process is conducted in a manner that serves the best interests of the SGVCOG and the public, and to ensure fair competition.

If a particular grant or award has provisions that are more restrictive than those in this manual, the more restrictive provisions will be followed only for that grant or award.

Definitions

- **Amendment:** A modification considered outside the original contract scope and formalized with a bilateral contract change document only. Both parties are required to execute the document.
- **Bid:** A complete, properly signed response to an invitation for bid, which if accepted, would bind the Bidder to perform the resultant Contract.
- **Bid Protest:** A protest of a procurement decision made strictly pursuant to the procedure outlined in this manual.
- **Change Orders:** represent the commercial and technical resolution of a contract modification that is within the original scope of contract. The change order document can be unilateral or bilateral in execution.
- **Claim:** Differences that have developed during the contract, under protest or under notice of potential claim, which are not resolved at the time the contractor returns the proposed final pay estimate.
- **Consultant:** The person, firm or entity selling goods or services to SGVCOG under a Contract.
- **Eligible Protestor:** An Eligible Protestor is one who would be immediately eligible for contract award if all of its arguments are upheld. For example, in a competitive bid situation, the third lowest bidder is an Eligible Protestor only if its Bid Protest would, if upheld, cause the rejection of the low bidder and the second low bidder.
- **Executive Director:** Administrative head of the SGVCOG and responsible to the Governing Board for the efficient operation of the organization.
- **Governing Board:** Governing Board of the SGVCOG may also be designated as "Board." The Governing Board is designated to review bid protests pursuant to this procedure for Governing Board awarded contracts.
- **Hearing Officer:** The Executive Director of the SGVCOG is the designated Hearing Officer to review bid protests pursuant to this procedure for Executive Director awarded contracts.
- **Interested Party:** Any bidder whom a protestor seeks to exclude from contract award consideration in order for it to be considered for award.
- **Options:** Provision for additional work that is separately defined and individually priced/scheduled within the original agreement. The SGVCOG's decision to exercise/not exercise the option can be delayed for a specified time limit.
- **Potential Claim:** Written notice provided to the SGVCOG by the contractor when the:
 - Parties are unable to reach bilateral agreement on a change and the contractor is provided a unilateral change order ("protest"); or,
 - Contractor perceives that it is entitled to additional compensation (time or money) for something it believes to constitute extra work performed or to be performed.
- **Project Manager:** SGVCOG staff responsible for overseeing a consultant contract.

- **Small Business Enterprise:** A business that meets that meets specific race-neutral ownership and economic criteria established by State and Federal guidelines. SBE eligibility requirements vary among contracting agencies depending on the funding. Projects that are federally funded require SBE certification standards as defined by the United States Small Business Administration (SBA) and those that are State funded require SBE certification standards as defined by the California Department of General Services (DGS).
- **Solicitation:** As applicable, an Invitation for Bid, Request for Proposal, Request for Qualifications or a Request for Quotation.
- **Technical Evaluation Committee (TEC):** Individuals approved by Contracts staff to evaluate a solicitation.

Authority to Procure

- (1) No purchase of personal property, services or commodities by any person other than the Executive Director shall be binding upon SGVCOG, or constitute a lawful charge against any funds, except in emergencies and as may be otherwise provided through action by the Board.
- (2) Employees responsible for procuring personal property, services and commodities on behalf of the SGVCOG cannot also be responsible for approving requisitions for purchases, receiving the goods purchased, or the approval/processing of invoices for payment for their department.
 - a. In such instances, the Administrative Services Manager is authorized to approve such requisitions.
- (3) Except as otherwise provided for in this manual or as directed by the Executive Director, only those employees who are trained, deputized and authorized by their department head, have the authority to procure services and commodities for the organization.
- (4) Employees designated by the Executive Director are authorized to approve the purchase of office supplies necessary for routine operations. Designated employees are staff tasked with office management, which may include the Administrative Services Manager, and assigned Senior/Principal Management Analysts. Routine operations includes but not limited to materials, supplies, equipment or services in accordance with the provisions of this purchasing and procurement policy.

Cancellation

Any service contract may be canceled or terminated by the Executive Director, as appropriate, without approval by the Board if such contract was executed by an employee not designated to execute such contracts.

Effective Date(s) of Procurement Policies

The effective date of the purchasing and procurement policies described in this manual is October 15, 2020. If a policy is added or modified subsequent to this date, the effective date of the new/revised policy will be indicated parenthetically immediately following the policy heading.

The contents of this manual were approved as official policy and documented procedures of the Organization by the Governing Board, and Executive Director. All SGVCOG staff members are bound by the policies and procedures herein, and any deviation from established policy and procedure is prohibited. Modifications of this manual to reflect changes to updated laws do not require approval of the Governing Board. Similarly, revisions to provide clarification or reflect operating practices do not require Governing Board approval.

PURCHASING AND PROCUREMENT POLICIES AND PROCEDURES

Overview of Purchasing

THE POLICIES DESCRIBED IN THIS SECTION APPLY TO ALL PURCHASES MADE BY SGVCOG.

SGVCOG requires the practice of ethical, responsible, and reasonable procedures related to purchasing, agreements and contracts, and related forms of commitment. The policies in this section describe the principles and procedures that all staff must adhere to in the completion of their designated responsibilities.

The goal of these procurement policies is to ensure that materials and services are obtained in an effective manner and in compliance with the provisions of applicable local, state or federal statutes and grant requirements.

Responsibility for Purchasing

Final authority for purchasing / contracting actions and decisions rests with the Governing Board. The Board will act on recommendations from the Executive Director to award contracts in excess of \$250,000 and to increase contract contingency.

The Executive Director is authorized to approve and enter into contracts and contract modifications (including but not limited to change orders, amendments, and all other contract modifications) on behalf of the SGVCOG, as follows:

- (1) Contracts with a contract price that does not exceed \$250,000;
- (2) Modifications to contracts approved by the Executive Director that, cumulatively with the initial contract price and prior contract modifications, do not result in a total contract price in excess of \$250,000;
- (3) Modifications to Board approved contracts that, cumulatively, do not increase the Board approved contract price by more than ten percent (10%), or such lesser amount as the Board may establish. In the event that the amount of the contract award is reduced due to a post-award or interim audit, the 10% authorization for amendments applies to the lower amount. The Executive Director shall not delegate this authority under (1) or (2) without express Board authorization. However, the Executive Director may delegate the authorization for contract modifications to the Board-approved construction contracts that cumulatively, do not increase the Board-approved contract price by more than five percent (5%). The powers of the Executive Director pursuant to this Paragraph are subject to: (i) the existence and provisions of a Board approved Budget; (ii) the provisions of this Purchasing and Procurement Manual; and (iii) the Applicable Laws.

The Executive Director may conduct a procurement not to exceed \$500,000 in response to emergency conditions. The requirements and process are provided in the Emergency Procedures section of this Manual. The Executive Director shall report to the Board at its next regularly scheduled meeting each new contract awarded on an emergency basis and shall report monthly to the Board all other new contracts and contract modifications entered into by the Executive Director without express Board approval.

The Executive Director has primary responsibility to ensure that the Procurement Manual is followed and that all actions are in accordance with applicable laws and codes as interpreted by the General Counsel. The Executive Director may carry out this responsibility through use of SGVCOG staff and consultants.

Code of Conduct in Purchasing - MUST

In accordance with 2 CFR Part 200.318(c)(1), ethical conduct in managing the Organization's purchasing activities is essential. Staff must always be mindful that they represent SGVCOG and share a professional trust with other staff and funding sources.

- Officers, Board members, employees, and agents will not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The Governing Board may establish standards to evaluate when a financial interest is not substantial or the value of an unsolicited gift is of nominal value. Substantial financial interest and nominal value, as approved by the Governing Board, is defined as follows:
 - Substantial financial interest means all interest in real property, investments, and business positions.
 - Unsolicited gifts with a nominal value of \$50 or less may be accepted with the approval of the Executive Director.
- Staff will discourage the offer of and decline individual gifts, favors, or gratuities that might influence the purchase of supplies, equipment, and/or services. Staff will notify their immediate supervisor if they are offered such gifts.
- No officer, Board member, employee, or agent will participate in the selection or administration of a contractor if a real or apparent conflict of interest would be involved. See the SGVCOG's adopted policy on Conflict of Interest Code.

Competition

In accordance with 2 CFR Part 200.319, as a means to promote open and full competition, purchasers will:

- Be alert to any internal potential conflicts of interest.
- Be alert to any noncompetitive practices among contractors that may restrict, eliminate, or restrain trade.
- Not permit contractors who develop specifications, requirements, or proposals to bid or propose on such procurements.

- Award contracts to bidders or proposers whose product or service is most advantageous in terms of price, quality, and other factors.
- Issue solicitations that clearly set forth all requirements to be evaluated.
- Reserve the right to reject any and all bids when it is in the Organization's best interest and properly documented
- Not give preference to state or local geographical areas unless such preference is mandated by federal statute.
- Only use "name brand or equivalent" description as a means to define the performance or requirements.

Nondiscrimination Policy

Contractors who are the recipients of Organization funds, or who bid or propose to perform any work or furnish any goods under agreements with SGVCOG, will agree to these important principles:

- Contractors will not discriminate against any employee or applicant for employment because of race, religion, color, sexual orientation, national origin, handicap, gender, age, or any other category protected by state or federal law, except where it is a bona fide occupational qualification reasonably necessary to the normal operation of the contractors.
- Contractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation will be deemed sufficient for meeting the intent of this section.

Advertising Procedures for Procurement

The public advertising plan is designed to encourage maximum participation in solicitation for selected procurement methods. SGVCOG will publicly advertise requests for sealed bids and proposals using a plan designed to reach the maximum potential bidders and proposers.

Examples of public advertising that may be used include:

- SGVCOG's public website
- SGVCOG's social media accounts
- Sealed bid or request for proposal databases, if available
- Print and electronic advertisements (newspapers, emails)
- Audio advertisements (radio station, Pandora©, Spotify©)
- Direct solicitation of recommended or previously used contractors
- Direct solicitation of minority, small, women-owned, and veteran-owned businesses or businesses in labor surplus areas
- Professional associations

Public advertisements will include, at a minimum:

- SGVCOG's legal name and address, including contact name and phone number
- Date, time and location, including address, of bid/proposal meeting, as applicable
- Notice that participation in the meeting is mandatory for the bidder's or proposer's solicitation to be considered, as applicable
- Sealed bid requests will include any specifications and pertinent attachments and will define the items or services in order for the bidder to properly respond
- Proposal requests will identify all evaluation factors and their relative importance
- Sealed bid requests will identify the time and place sealed bids will be opened (for local governments and tribal governments, bids will be opened publicly)
- Notice to bidders/proposers that incomplete bid/proposal packages will not be considered.

Announcements of pending procurements will be undertaken to ensure that the firms that are most likely to be interested in providing the services are provided adequate notice to obtain the Request for Proposals (RFP), Request for Qualifications (RFQ) or Invitation for Bids (IFB). Advertisements will not coincide with a holiday period unless specifically approved by the Executive Director for extenuating situations.

All SGVCOG procurement actions will be advertised, with the exception of the following situations:

- A. Small purchases (under \$25,000) or service agreements (under \$100,000);
- B. An emergency situation, as defined in Emergency Procedures, exists;
- C. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contract for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment; or
- D. The SGVCOG's need is of a unique and compelling urgency.

Procurement Thresholds and Authorization Limits

Purchases are classified into four (4) purchasing categories. These categories are based on the dollar amount and type of purchase. Each category establishes a separate purchasing limit, authorization level and procedure. The following table summarizes the required approval levels, solicitation, and documentation:

Amount of Purchase	Required Approvals	Required Solicitation	Required Documentation
<ul style="list-style-type: none"> • Micro Purchases (\$10,000 or Less) 	<ul style="list-style-type: none"> • Executive Director 	<ul style="list-style-type: none"> • Price must be considered reasonable based on current market • Purchase can be made from a contractor successfully used in the past, with reasonable pricing • As much as possible, micro-purchases will be rotated among qualified suppliers, provided pricing is comparable 	<ul style="list-style-type: none"> • Receipt or invoice approved by individual(s) in Required Approvals column
<ul style="list-style-type: none"> • Small Purchases (\$25,000 or less or \$100,000 or less for technical agreements or professional services agreements) 	<ul style="list-style-type: none"> • Executive Director 	<ul style="list-style-type: none"> • 3 quotes (catalogue, Internet, written, etc.) • Or select a contractor from pre-qualified contractor list • Written proposals from at least 3 firms; letter proposals acceptable • Evaluation criteria 	<ul style="list-style-type: none"> • Documentation of quotes obtained • Procurement documentation Scope of work • Procurement documentation (proposals, evaluations, record of negotiation). • Executed contract • Correspondence
<ul style="list-style-type: none"> • Intermediate Purchases (\$250,000 or less) 	<ul style="list-style-type: none"> • Executive Director 	<ul style="list-style-type: none"> • Competitive Request for Proposals • Or select a contractor from pre-qualified contractor bench • Evaluation criteria 	<ul style="list-style-type: none"> • Procurement documentation • Procurement documentation (proposals, evaluations, record of negotiation). • Executed contract • Correspondence

Amount of Purchase	Required Approvals	Required Solicitation	Required Documentation
<ul style="list-style-type: none"> Major Purchases (\$250,000 or more) 	<ul style="list-style-type: none"> Executive Director Governing Board 	<ul style="list-style-type: none"> Competitive Request for Proposals or Sealed Bid Method of Procurement Scope of work Evaluation Criteria 	<ul style="list-style-type: none"> Copy of RFB/RFP Proposal scoring grids, including who participated in the scoring Proposal and contract of winning bidder/proposer Procurement checklist

The Executive Director is authorized to enter into any contract on behalf of SGVCOG. These policies will also apply to renewals of existing contracts.

Solicitation for Procurements - MUST

To help ensure full and open competition, solicitations for goods and services, requests for proposals (RFPs), and invitation for bid (IFBs or sealed bids) will provide for all of the following:

1. A clear and accurate description of the technical requirements for the material, product, or service to be procured. Descriptions will not contain features which unduly restrict competition in accordance with *2 CFR Part 200.319(c)(1)*. Description may also include the following:
 - Technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - Preference for products and services that conserve natural resources, protect the environment, and are energy efficient, to the extent practicable and economically feasible
2. Requirements which the offeror must fulfill and all other factors to be used in evaluating bids or proposals in accordance with *2 CFR Part 200.319(c)(2)*.
3. Description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible to avoid impeding competition in accordance with *2 CFR Part 200.319(c)(1)*.
4. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met will be clearly stated in accordance with *2 CFR Part 200.319(c)(1)*.
5. Required delivery or performance dates/schedules.
6. Clear indications of the quantity(ies) requested and unit(s) of measure, if applicable.

7. A description of the format, if any, in which the requested information, proposals, or bids must be submitted, including the name of the person to whom it should be sent.
8. The date by which information, proposals, or bids are due.

Prohibition of Bidder working with SGVCOG

In conjunction with any contract award or with any action on a contract, SGVCOG may prohibit a contractor from bidding on future contracts by finding, upon substantial evidence, nonresponsibility which arises from any one of the following: (1) commission of fraud or a criminal offense in connection with soliciting, obtaining or preparing a public contract; (2) violation of federal or state antitrust statutes in relation to a bid on a public contract; (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (4) commission of any other offense that indicates a lack of business integrity or business honesty; (5) present prohibition by another public entity; (6) breach of a statutory or contract provision which specifies or requires exclusion as a remedy; or (7) any other cause so serious it substantially affects the contractor's present responsibility.

Before a finding of nonresponsibility is made, and before a contract requiring competitive bidding is awarded to other than the lowest bidder, a bidder must have been notified of any evidence of its nonresponsibility, must have been afforded an opportunity to rebut such evidence and must have been permitted the opportunity to present evidence of responsibility to perform the contract. Any finding of nonresponsibility shall focus on present non-responsibility, shall be for the purpose of protecting the interests of the public and is not intended to punish a bidder.

The duration of any prohibition shall be the period of time SGVCOG finds shall best protect the interests of the public but shall not exceed two years. However, in the event of prohibition for breach of a statutory or contract provision which specifies or requires prohibition as a remedy, the duration shall be the period specified in said statutory or contract provision.

Procurement Procedures - MUST

The following are SGVCOG's general procurement procedures:

1. SGVCOG will avoid purchasing unnecessary or duplicative items for the performance of the activities required by a federal award in accordance with *2 CFR Part 200.318(d)*.
2. For procurements exceeding \$10,000 an analysis will be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the federal government. This analysis will only be made when both lease and purchase alternatives are available to the program.

3. SGVCOG will enter into state and local intergovernmental or inter-entity agreements where appropriate for procurement or use of common or shared goods and services in accordance with *2 CFR Part 200.318(e)*.
4. SGVCOG will use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs in accordance with *2 CFR Part 200.318(f)*.
5. Documentation of the cost and price analysis associated with each procurement decision, including contract modifications, in excess of \$10,000, will be retained in the procurement files pertaining to each federal award in accordance with *2 CFR Part 200.323*.
6. All pre-qualified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and full competition in accordance with *2 CFR Part 200.319(d)*.
7. SGVCOG will maintain records sufficient to detail the history of procurement, including, but not limited to:
 - a. Rationale for the method of procurement;
 - b. Selection of contract type;
 - c. Contractor selection or rejection; and
 - d. The basis for the contract price.
8. SGVCOG will make all procurement files available for inspection upon request by a federal or pass-through awarding agency.
9. SGVCOG will not utilize the cost-plus-a-percentage-of-costs or percentage of construction cost methods of contracting in accordance with *2 CFR Part 200.323(d)*.
10. Consideration will be given to dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, and labor surplus area firms.
11. Purchases will be made in accordance with the thresholds, required approvals, required solicitation methods, and documentation requirements indicated in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMITS section of this manual.

Determining Procurement Method and Contract Type

1. Sealed Bid Contracts will be used when:
 - a. A complete, adequate and realistic definition of the work, typically a combination of specifications and detailed design, can be developed;
 - b. Allowed by law or regulation;
 - c. Two or more responsible bidders are willing to compete for the work;
 - d. The procurement lends itself to a firm, fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and,
 - e. There is time to complete the necessary procedures.

2. Competitive Negotiated Procurements are appropriate under one or more of the following conditions:
 - a. The procurement is for a non-standard item or a complex service;
 - b. The item or services to be procured do not allow for the formulation of specifications upon which the basis for award can be price; or,
 - c. The selection of the best qualified firm is based upon evaluation of several factors.
3. Small Purchases will be used when:
 - a. The procurement is less than \$25,000, except in the case of professional and technical services where the upper limit is one hundred thousand dollars (\$100,000); and
 - b. The Contracts Department determines that this process will be the most efficient and economical method.
4. Non-Competitive Procurements will be used when the Contracts Department has prepared written justification documenting the conditions that preclude competition, including:
 - a. An emergency situation, as defined in Emergency Procedures, exists;
 - b. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contract for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment; or
 - c. The SGVCOG's need is of a unique and compelling urgency.
5. Force Account Work will be used when agreements with the local agency, railroad or public utility provide for self-performance of construction work. Payment under the force account is based upon the actual cost of labor, equipment, and materials furnished, with consideration for overhead.

Sealed Bid Method of Procurement

The sealed bid procurement process will be used for the award of all major construction projects contracts. Through this process it is anticipated that awards will be made to technically and commercially qualified responsive contractors, at the lowest cost to the project.

Under this method of procurement bids are publicly opened and firm fixed price contracts are awarded to the lowest responsive conforming bidder.

A Project Manager will be assigned and designated as the person in charge of the work.

The open competitive sealed bidding process requires:

- A complete technical documentation (i.e. scope of work, plans, specifications, estimates etc.) that is adequate for potential bidders to establish quantities, productivity rates, and pricing data necessary to prepare firm fixed priced bids.
- Bids will be opened at the time and place specified in the bid package.
- Bids will be opened publicly and read aloud.

Bid Package Preparation

The Contracts Department in coordination with the assigned Project Manager shall:

1. Establish the procurement schedule.
2. Designate the members of the contract formation team, including role of counsel.
3. Assure adequate funds are available for the anticipated procurement and if not, take necessary action to obtain required funding.
4. Ensure the final Plans, Specifications and Estimate (PS&E) package complies with all applicable Federal and State regulations and procedures.
5. Ensure the final PS&E package has been reviewed and approved by the city in which the construction activity will occur.
6. Confirm that SBE goals have been set in accordance with the SGVCOG's program.
7. Develop the advertisement in accordance with the applicable section of this Manual and obtain Executive Director approval to initiate the procurement by releasing the advertisement.
8. Provide support during advertising, pre-bid and bid opening stages of the solicitation.
9. Conduct contractor pre-bid site visits if required.

The Contracts Division shall lead the contract formation process by:

1. Reviewing technical specifications and the scope of work for clarity and completeness to assure the ability to attract firm price bids.
2. Developing contract Terms and Conditions and commercial requirements for the bid package, with support from the team and legal counsel, as appropriate.
3. Developing instructions to bidders, including required forms, with input from team.
4. Consolidating and preparing the final bid package for team review and agreement.
5. Assuring bid packages are in compliance with SGVCOG policies and procedures.
6. Moderating and documenting the pre-bid conference with the assistance of the team. Determine if the material covered in the pre-bid conference warrants issuance of an addendum.
7. Creating bidders mailing list of contractors who have obtained packages.

All addendum to bid packages will be reviewed and approved in a manner identical to the original bid document.

The assigned Project Manager is responsible for concurring with content of the addendum and Contracts Department will obtain Executive Director approval to issue the addendum.

In order to facilitate the safeguarding of bids, the Contracts Division shall:

- Receive log date/time stamp all bids.
- Maintain security of all bid packages until designated time and place for public opening.
- Return late bids unopened to the bidder with a letter of explanation.

Sealed Bid Opening Process

The bid opening process will be as follows:

1. The Contracts Department will publicly open all bids and announce each bid either item by item or by total amount.
2. Non-responsive bids will not be read, but the bidder's identity and reason for not announcing the bid will be announced. The contract specifications govern what constitutes a non-responsive bid and includes the following:
 - Failure to sign bid and required forms
 - Failure to furnish required bid bond
 - Failure to include a unit bid price for each item
 - Failure to include a total amount for the bid
 - Failure to prepare the bid in ink
 - Failure to submit a completed addenda certification statement
 - Failure to submit a non-collusion affidavit
 - Failure to commit to the achievement of the SBE contract goals or to demonstrate good faith efforts to do so
 - Inclusion of conditions or qualifications not provided for in the specifications
 - Submission of a materially unbalanced bid
3. After the bids are opened, the Contracts Department will review all bids to determine the responsible bidder submitting the lowest responsive bid.
 - A responsive bid meets all requirements of the advertisement.
 - A responsible bidder is physically organized and equipped with the financial ability to undertake and complete the contract.
 - A bidder may be deemed not responsible because of a State or Federal suspension or debarment action.
4. Negotiations with contractors during the period following the opening of bids and before contract award are prohibited.

Sealed Bid Award Process

The Contracts Department in coordination with the assigned Project Manager will lead the Bid Analysis process to review the unit bid prices for reasonable conformance with the engineer's estimated prices. The analysis may also consider the following in determining reasonableness of pricing and adequacy of competition:

- Number of bids
- Distribution or range of bids
- Mathematically or materially unbalanced bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Justification for significant bid price differences
- Reasonableness or errors in the engineer's estimate

The Contract Division will prepare an award recommendation package consisting of the Bid Tabulation Summary Sheet, Bid Analysis, SBE certifications, and the partially completed Local Agency Contract Award Checklist. The recommendation is submitted to the Executive Director for Board approval.

The SGVCOG reserves the right to reject all bids and not award the contract if awarding the contract is determined not to be in the best interest of the public.

Contract Files

The SGVCOG will retain the following completed documents for the successful bidder in the project files:

- Bidder SBE Information.
- A list of bidders and total amounts bid with an item-by-item breakdown, "Bid Tabulation Summary Sheet" of the three lowest bidders.
- "Good Faith Effort Statement of SBE Participation" form is to be retained if the commitment level does not meet SBE goals.
- Non-collusion Affidavit form
- Bid Opening Checklist form
- Executed contract
- Pre-construction conference minutes
- Original Bid Documents (IFB and addendums)

Rejection of Bids

SGVCOG may reject all bids at its discretion. If a successful bidder fails to enter into a contract awarded to him, or if a contract is not commenced by the contractor or his surety, SGVCOG may abandon the matter or may re-advertise the original proposal or modification thereof, or the unfinished portion thereof as herein provided, or may award the contract to the next lowest and best bidder with the consent of such bidder.

Competitive Proposal Method of Procurement

The SGVCOG will use competitive proposal procedures as an alternative to the formal advertised procedure, when it is determined that the services or items to be procured do not allow for the formulation of specifications upon which the basis for award can be strictly priced.

This policy and procedure is always followed for the procurement of professional and technical services in excess of \$100,000 and may be used in other instances with the approval of the Governing Board when deemed appropriate.

Procurement by competitive proposals involves the solicitation of offers through a publicly advertised RFP. The RFP may solicit either a technical proposal or both technical and cost proposal and any other relevant information such as schedule dates and deadlines for the completion of the work.

An RFP usually involves non-standard items or complex services. The RFP contains the following information:

- Description of work
- Program and approach
- Detail of tasks
- Experience and resumes of key personnel.

All of this information must be presented to the SGVCOG in the form of a technical proposal.

The SGVCOG reserves the right to make a selection and award based on the original proposals, without negotiation with any offerors. If negotiations are conducted, SGVCOG will negotiate with all offerors deemed to fall within the competitive range, defined as having a reasonable chance of being selected for the award.

Procedures and Preparation for Competitive Proposal

Contracts staff and assigned Project Manager should prepare a Request for Proposal or Qualification (RFP or RFQ) using the most current standard format and “boilerplate” language. The contents of the RFP/RFQ must be kept confidential until the document is released to prospective proposers. The RFP should contain the following:

1. A scope of work, which describes accurately in clear and concise language the technical requirements to be met by a consultant. The scope of work should describe in logical steps the complete service or item to be delivered from inception to 100 percent completion.
2. A work schedule should be included if applicable to the assignment.
3. An evaluation criteria against which the proposals can be evaluated.

The assigned Project Manager of the RFP/RFQ should also:

1. Prepare a cost estimate in the same format that the consultant's cost proposal will be required to follow;
2. Identify and later provide support to a Technical Evaluation Committee (TEC) which should consist of 4-6 members with relevant technical qualifications; for design or construction management assignments, the TEC should include representative(s) of the local jurisdiction(s) in which the project is located;
3. Ensure the estimated cost of the contract is included the SGVCOG annual budget;
4. Determine whether or not a "two-step" selection process using an Expressions of Interest for pre-qualifications should be used;

Depending on the complexity of the work to be performed, each RFP will be unique. Nevertheless, certain terms or concepts are standard and must be included in each RFP package outlined below:

1. Introductory Letter/Cover Letters: The introductory letter should briefly explain what services are being sought, and under what parameters they are being procured. At a minimum, the letter should include:
 - a. The Title of the Project
 - b. Listing of the documents included in the RFP
 - c. Schedule of dates proposals are due and pre-proposal conferences and/or oral presentation will be held
 - d. SGVCOG address and identification of responsible contracts staff
 - e. Instructions regarding how proposals should be submitted (hard copy, electronic, etc).
2. Project Description: The project description portion of the RFP/RFQ explains the technical and professional services being procured. Depending on the complexity of the project it should contain:
 - a. Background Information/Project History.
 - b. General Scope of Services.
 - c. Detailed Scope of Services.
 - d. Schedule Information.
 - e. References, Project Specific Data; where SGVCOG has compiled a listing of reference information, arrangements for viewing and copying the data should be set forth in this section.
3. Proposal Requirements: Proposal requirements should be clearly enumerated and at a minimum include:
 - a. Instructions regarding SBE participation goals.
 - b. Guidance regarding proposal format including amount and type of information required and any limits placed on submittal information (including page limits).
 - c. Forms that must be filled out.
 - d. Time requirements.
4. Method of Selection: All RFP/RFQ's issued by SGVCOG must identify evaluation factors and their relative importance. These factors are usually enumerated either in descending order of importance or weighted individually.
 - a. Cost cannot be an evaluation factor for architectural and engineering

procurements.

5. General Provisions: This section should contain a copy of the anticipated contract, including all clauses and provisions that are mandated by law or regulation (including state or federally required clauses or provisions).
6. Documents and Attachments: This section should contain any pertinent special documents, exhibits or information relating to this procurement.

Small Purchases and Service Agreements Method of Procurement

Small purchases and entering into service agreements will be made on a competitive basis except where it is clearly in the best interest of the project to accomplish such procurements non-competitively.

Small procurements shall utilize simplified procurement procedures and shall only be used for purchases that do not exceed \$25,000 and for technical or professional service agreements that do not exceed \$100,000.

Procurement packages shall not be split or procured over a period of time in order to use the small procurement procedures.

The Executive Director must approve the request to procure equipment or contracts for services. Once the procurement requisition has been approved by the Executive Director, and if the requirement is under \$25,000 for purchases or \$100,000 for service agreements, the purchase is completed following these guidelines.

The Contracts Department will develop the appropriate terms and conditions for small procurements.

Purchasing Office Supplies

1. The Executive Director may establish lines of credit at office supply stores.
2. The Administrative Services Manager is authorized to approve the purchase of office supplies necessary for routine operations.
3. Office supplies may be ordered on the basis of pricing data in current vendor catalogs.
4. A procurement file will be established for each vendor used by the SGVCOG to provide office supplies. These files will retain the invoice with billed price, signed by the person verifying receipt of all material billed.

Small Procurement Procedure

A small purchase file will be established for each procurement. The file for small purchases will include the following information:

1. Purchase requisition;
2. Small Purchase Bid Tabulation Sheet which includes the Contracts Manager's determination that the price is fair and reasonable;
3. Copy of each vendor's quotation (if required);

4. Copy of terms and conditions (if required);
5. Copy of signed small purchase agreement/order;
6. Receipt for equipment/services; and,
7. Any correspondence regarding the procurement.

Price reasonableness will be determined based on:

- Comparison to recent previous purchases;
- Current price lists;
- Catalogues; or
- Similar items or billing rates from a related industry (competitors).

For items/services under \$5,000, the purchase or contract can be awarded after receipt of one price quote (oral or written) and a written determination by the Contracts Manager that the price is fair and reasonable, and forwarded to the Executive Director for approval.

For purchases between \$5,000 and \$25,000, a minimum of three written quotations shall be solicited and a decision to purchase will be made on the basis of lowest price, except for the two following conditions:

- In the event that only one price quotation is received, the Contracts Manager shall provide a written statement giving the basis for the determination that the price is fair and reasonable, and forwarded to the Executive Director for approval.
- In the event the price variance between multiple responses reflects a lack of adequate competition (i.e., erroneous pricing, different materials, mathematical errors, etc.), the Contracts Manager shall provide a written statement giving the basis for the determination that the price is fair and reasonable, and forwarded to the Executive Director for approval.

The procurement of technical or professional services between \$5,000 and \$100,000 differs from purchases of supplies or equipment in that selection is not based solely on price. These procurements will follow the following process:

1. The SGVCOG will solicit written proposals from at least three prospective firms. Due to the relative straightforward nature of the services, letter proposals are acceptable.
2. The firms will be evaluated on the basis of their qualifications, understanding of the task, and other relevant factors. The basis for selection of the most qualified firm will be documented and the recommendation forwarded to the Executive Director for approval.
3. The Executive Director will review the selection recommendation and if appropriate, authorize negotiations, and approve the award of the contract.
4. Contract files will include:
 - a. Scope of work;
 - b. Proposal letters;
 - c. Basis of selection;
 - d. Record of negotiation;

- e. Executed contract with terms and conditions; and,
- f. Correspondence.

Informal Competitive Procurement

Informal competitive procurement procedures will generally be used for purchases in excess of \$10,000, but not exceeding \$25,000 and involves an invitation for selected providers of a product or service to bid on the right to supply that product or service to the SGVCOG. A minimum of three (3) proposals shall be sought on each occasion that this option is used. The purchase will generally be made from the lowest bidder whose bid conforms to the requirements. If the purchase is not made from the lowest bidder, the reason the purchase was made from a higher bidder will be documented in writing.

The SGVCOG may contract with the vendor or supplier of any federal, state or local governmental department or agency (Public Agency) that has selected the vendor or supplier after complying with the Public Agency's competitive procurement requirements, and it is in the best interest of the SGVCOG to do so. The SGVCOG's Executive Director will determine whether the purchase of goods and services directly from the vendor or supplier of a Public Agency is in the best interest of the SGVCOG based upon price, quality and whether the terms and conditions of the cooperative procurement contract meet the SGVCOG's requirements.

Extension of Due Dates and Receipt of Late Offers

Solicitations should provide for sufficient time to permit the preparation and submission of offers (quotes, bids, proposals) before the specified due date. However, an extension may be granted if a prospective proposer so requests and is approved by the Contracts Manager. Approval of extensions will be documented in the procurement file.

Contractor offers are considered late if received after the due date and time specified in the solicitation. Late offers will be so marked on the outside of the envelope and retained, unopened, in the procurement file. Contractors that submit late offers will be sent a letter notifying them that their offer was late and could not be considered for award.

Affirmative Consideration of Minority, Small Business, Women-Owned Businesses, and Labor Surplus Area Firms

Positive efforts will be made by SGVCOG to utilize small businesses, minority-owned firms, women's business enterprises, veteran owned businesses, and labor surplus area firms whenever possible. Therefore, the following steps will be taken:

1. Ensure that small business, minority-owned firms, women's business enterprises, and labor surplus area firms are used to the fullest extent practicable in accordance with *2 CFR Part 200.321*.

2. SGVCOG will directly solicit bids or proposals from small business, minority-owned firms, women's business enterprises, and labor surplus area firms. These businesses will be solicited whenever they are a potential source. SGVCOG will ensure these businesses are included in solicitations, when practicable.
3. SGVCOG will evaluate procurements to determine if it is practical to separate purchases or projects into smaller components in order to encourage solicitation responses from these businesses.
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small business, minority-owned firms, women's business enterprises, and labor surplus area firms.
5. Utilize organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency to determine validity of, assistance with, or location of the businesses addressed in this section, as appropriate.
6. Consider in the contract process whether firms competing for larger contracts should subcontract with small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms.

Non Competitive Method of Procurement (Sole Source) and Emergency Procurements

Procurement of supplies and services without competition is authorized under limited conditions and subject to written justification documenting the conditions, which have precluded the competition.

Procurement by noncompetitive negotiation may be used only when approved by the Board and at least one of the following circumstances applies:

- A. An emergency situation, as defined in Emergency Procedures, exists;
- B. Situations in which there is only one responsible source of supply including, but not limited to: (a) when the public interest requires the standardization of equipment or the interchangeability of parts; (b) there is a follow on contract for continued development of specialized equipment; (c) the goods or equipment to be procured will be used for testing or experimental purposes; (d) there is only one source of the goods or equipment.
- C. The SGVCOG's need is of a unique and compelling urgency;

Emergency Situations

The SGVCOG may conduct a procurement on an emergency basis if the procurement is essential to an SGVCOG requirement to deal with an existing emergency condition, as defined in the next paragraph. The emergency procurement of supplies or services

shall be limited to quantities and time periods sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

An "emergency condition" is defined as a situation (such as a flood, epidemic, riot, equipment failure, or other reason declared by the Executive Director) that creates an immediate threat to the SGVCOG construction sites or to the public's health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one or more of the following:

- A. The health or safety of any person;
- B. The preservation or protection of property;
- C. There is a substantial disruption of public service; or
- D. The continuation of necessary SGVCOG functions.

Due to the need for quick response under these emergency conditions, the Executive Director has been authorized to expend funds, in an amount not to exceed \$500,000, without prior Board action. Any funds in excess of that amount shall require Board approval.

At the next regularly scheduled Board meeting, the Executive Director will submit a full report explaining the necessity for an emergency expenditure.

Procedures for Emergency and Other Non-Competitive Procurements

The Executive Director will evaluate staff recommendations and validate the need to make a procurement by non-competitive means.

The Executive Director will designate a Project Manager who will establish initial contact with firms, individual or other public agencies to determine if they have the resources/technical ability to respond in the timeframe required. The Project Manager will oversee the preparation of a cost estimate to serve as the basis for negotiation.

The Executive Director will approve the recommendation for the firm proposed to accomplish the work and authorize the assigned Project Manager and Contracts Manager to enter into negotiations.

If circumstances warrant, the Executive Director may authorize the firm/individual to proceed as soon as there is sound basis that the SGVCOG will be able to obtain a fair and reasonable price. Such approval will be in writing and will include dates by which the procurement will be finalized.

In each instance where these procedures are used, the Contracts Department shall do the following:

- A. Prepare a written scope of work, including a schedule for the delivery/performance of work and the basis for acceptance.
- B. Develop the appropriate terms and conditions for the agreement/contract.

- C. Prepare a written statement of determinations and findings (D&F) recording all the facts that provide justification to negotiate the noncompetitive or emergency procurement.

Except for emergency procurement situations, the Executive Director shall sign the D&F and obtain Board approval before the procurement can be awarded.

Contract files will be established for each procurement action. Documents to be kept in the files include, but are not limited to:

- A. Detailed scope of services and, if available, design and technical documents.
- B. Cost estimate.
- C. Approved D&F.
- D. Commercial terms and conditions.
- E. Documentation of contact with prospective firms.
- F. Record of negotiation.
- G. Executed contract.
- H. Contract correspondence.
- I. Claims and changes files.
- J. Payment files.
- K. The Contracts Manager will maintain files regarding progress, acceptance of work, and other appropriate material.

Single Distributor/Sole Source

Sole source procurements are authorized when requirements are so critical, or call for such specialized expertise, that only one source is capable of satisfying those requirements.

Sole source refers to the source, not the product or service. Justification for a sole source purchase depends on a needed item being available from only a single supplier. Sole source purchases may arise from a number of circumstances, such as the purchase of equipment for which there is no comparable, competitive equivalent; the replacement of parts available from the manufacturer only; and the purchase of equipment and supplies that will be used in the design of a custom product.

Detailed documentation justifying the sole source purchase and ensuring that the cost charged by the vendor is reasonable and customary is required. Documentation shall include the following:

- Is this a sole source (available from only one vendor; one-of-a-kind and is not sold through distributors)? Or is this a sole brand (various vendors are able to supply the specified model and brand name) and competitive bids (informal or formal) will be solicited for the requested brand only?
- Detailed description of the unique performance features of the product or brand requested that are not available in another product or brand
- Unique qualifications that this vendor possesses
- Analysis as to the reason the unique features and qualifications are required

- Description (brand names, model numbers, vendor names and contact information) of the other items and brands that were evaluated and rejected and reasons for the rejection
- A proprietary product is manufactured by only one company but may be sold through distributors and competition between them may be able to be obtained.

Sole source justification based solely on a vendor's capability to deliver in the least amount of time is not sufficient.

Sole source justification based on personal preference or an established relationship with a supplier is not a valid basis for a sole source selection.

Prior Written Approval

The awarding agency expressly authorizes a noncompetitive proposal in response to a written request from SGVCOG.

Authorized Purchasing Alternatives

SGVCOG encourages departments to develop lists of pre-approved contractors that can be used throughout the year. Acquisition of brand name or compatible products and furnishings to assure compatibility with other SGVCOG products, equipment, or offices or because the brand name or compatible product has superior performance results as determined through either SGVCOG or other reliable testing.

The Executive Director may require a pre-qualification process for bidders, suppliers, or professionals (hereinafter collectively referred to as "bidder(s)"). The SGVCOG may, at its discretion, select bidders for pre-qualification. The pre-qualification questionnaire may include questions pertaining to the following criteria:

- The familiarity and experience of the prospective bidder with the particular type of purchase or contract designated.
- The sufficiency and availability of personnel, equipment, materials, and other facilities or resources of the prospective bidder to accomplish the designated work or provide the construction or contract supplies, materials, or reports and opinions.
- The ability of the prospective bidder to provide required bonds and insurance, including indemnity.
- The financial ability/condition of the prospective bidder to accomplish the work designated.
- The experience of the prospective bidder to perform the designated work as well as the experience in performing similar work.
- The safety record of the prospective bidder.
- The record of the prospective bidder within the preceding 5 years regarding performance, claims, arbitration, mediation, or litigation filed by or against the prospective bidder regarding public or private construction contracts or other

contracts where the prospective bidder provided services, supplies, materials, opinions or reports.

- Such other information as is deemed appropriate for the particular purchase or contract.
- The Executive Director shall apply a uniform rating system to the prospective bidders for each purchase or contract. Bidders that are deemed qualified shall be provided the opportunity to submit bids or proposals; no other bids are required to be sought, although the SGVCOG may solicit additional bids if in the exercise of its discretion, it determines it to be in the organization's best interest.

Bonding Requirements

SGVCOG will require bonding when deemed necessary to help ensure the interests of the organization and the funding source is protected. In accordance with 2 CFR Part 200.325, Minimum bonding requirements will include the following:

- A bid guarantee in the form of a bid bond, certified check, or other negotiable instrument from each bidder equivalent to five percent of the bid price assuring that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price, to be executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.
- A payment bond for 100 percent of the contract price, executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in execution of the work provided for in the contract.

Insurance Requirements

Certificates of insurance will be required by the successful contractor to confirm that the insurance policies required by the contract have been obtained. These certificates of insurance or other documentation of insurance are required from the contractor following award of the contract but no later than contractor's site mobilization. No work will be authorized until the required insurance documentation is received by the SGVCOG's Contracts Department. The SGVCOG will have an expert in insurance matters review the policies for adequacy.

Insurance policies will be monitored to ensure that contractors extend the policies prior to the expiration dates.

Typical required insurance coverages include, but are not limited to:

- A. General Liability Insurance
 - a. Bodily injury
 - b. Property damage
 - c. Personal injury
- B. Excess Liability Coverage

- C. Worker's Compensation and Employer's Liability Insurance
- D. Builder's Risk
- E. Automotive Liability
 - a. Bodily injury
 - b. Property damage
- F. Contractor's Equipment
- G. Professional Liability Insurance
- H. Railroad Protective Insurance

Contractor Files and Required Documentation

The Contracts Department, in coordination with Document Control, will create a contractor file for each new contractor or re-activated contractor from whom SGVCOG purchases goods or services.

The Finance Department will mail (or email) a blank Form W-9 to the contractor and request completion of the Form W-9 and the return of the signed document before procuring goods or services from the contractor or making any payment to the contractor. Completed, signed Form W-9 or substitute documentation will be retained in each contractor's file.

Contractors will be issued a Form 1099 at the end of each calendar year in accordance with the SGVCOG's Accounting and Financial Policies & Procedures.

Contractor files will have the following information:

1. Completed and signed Form W-9. Contractors being reactivated are required to complete a new Form W-9 to verify current name, address, and tax ID number.
2. Contractors with a post office (PO) box will provide a physical location address for the master file. The PO Box number may be used for postal purposes.

The following procedures will be performed prior to creating or re-activating all contractor files to help ensure that each contractor only has one master file:

1. Search for existence of the tax ID number in the master file
2. Search for name variations and name standardization (entity resolution) (e.g. Doe, John; J Doe; John Doe)
3. Search for matching or similar addresses
4. Perform an online search of the contractor and the physical address to determine validity
5. Search for matches against the employee master file

Contractor Master File Maintenance

SGVCOG will monitor the contractor master file on a regular basis, with a full review of the master listing completed every year prior to year-end.

The Contracts Department will review the master file for:

1. Duplicate contractors. Contractors with the same or similar tax ID number, name, address, email, contact, and other information. Duplicate contractors will be merged, or inactivated.
2. Contractors with a post office (PO) box address. Contractors with only a PO Box will be required to provide a physical location address for the master file.
3. Contractors without activity in the past three years will be inactivated. Inactivated contractors must go through the contractor creation process before being re-activated.
4. The Organization will utilize the Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) On-line Matching service to match name and TIN with IRS records.

Procurement Grievance Procedures/Protest to Solicitations/Contract Awards

The SGVCOG will ensure to the fullest extent possible to conduct all of its solicitations and award all of its contracts in a fair and open manner. To avoid protests to its solicitations or its contract awards, the SGVCOG will use its best efforts to resolve concerns raised concerning solicitations and awards by encouraging frank and open discussions. Moreover, any member of the public or a representative of any entity, public or private, is always able to address the SGVCOG's Governing Board about any topic during the public comment period at each regularly scheduled Governing Board Meeting.

Should a protest occur, it is the policy of the SGVCOG to handle such a protest in an expeditious, cost effective and procedurally simple manner that allows for a proper and thorough evaluation of the basis of the protest.

Filing of Protests

Bid Protests based on the bid documents must be delivered to the SGVCOG's Contracts Manager no later than the close of business on the tenth calendar day before the bid opening date. All Bid Protests based on bid documents that are not timely raised are waived.

Bid Protests based on bids or the award process must be delivered to the SGVCOG's Contracts Manager no later than the close of business the fifth business day after notice of intent to award is issued by the SGVCOG.

All Bid Protests are to be in writing. A protestor must submit four (4) copies of any Bid Protest to the SGVCOG. All Bid Protests must be delivered to the SGVCOG at 4900 Rivergrade Road, Suite A120, Irwindale, CA 91706, attention Contracts Manager. In addition, a protestor must submit one (1) copy of the Bid Protest to each individual Interested Party. Timeliness of a submission will be determined based on the SGVCOG's time stamp clock, which will be used to confirm receipt of a bid or Bid Protest. The risk of timely delivery of a Bid Protest by mail or other delivery service is

on the protestor. The protestor must maintain a proof of service, showing service of the Bid Protest to the SGVCOG. The Bid Protest deadline will be strictly enforced.

Bid Protests must contain the following information:

1. Name, address, telephone, fax (if applicable) and e-mail address of the protestor;
2. Procurement identifier (e.g. RFP/IFB number);
3. The name of all Interested Parties;
4. A clear statement of the legal and factual basis for the Bid Protest, with specific references to the relevant language from the bid documents or relevant statutes and codes. Each argument must be identified specifically and argued in separate sections of the Bid Protest. A protestor must include copies of relevant materials, including any cases cited which are not issued by California courts. Any argument not raised in the Bid Protest will be deemed waived;
5. A clear statement of the relief requested and the statutory or case law basis for such relief;
6. Information establishing that the protestor is an Eligible Protestor as defined above; and
7. All protests must be verified by an officer or authorized partner of the protestor.

Review of Protests

1. Executive Director Awarded Contracts (contracts valued up to \$250,000):
 - a. All Bid Protests will be submitted to the SGVCOG's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in the appropriate sections of this manual.
 - b. Upon determination that a Bid Protest is valid, the Contracts Manager will submit the Bid Protest to the Executive Director, who serves as the SGVCOG's Hearing Officer. The Hearing Officer shall request in writing that staff and all Interested Parties respond to the Bid Protest and shall set forth the time in which they have to respond.
 - c. Upon consideration of the Bid Protest and any oppositions, and any specific requests for a hearing, the Hearing Officer will determine, at his or her sole discretion, whether a hearing is warranted.
 - d. If there is no reasonable basis for the Bid Protest in law or fact on the face of the Bid Protest, the Hearing Officer, may, in his or her own discretion, dismiss the Bid Protest without receipt of oppositions and without a hearing. The Hearing Officer may make a final decision on a Bid Protest without the benefit of a hearing. All decisions of the Hearing Officer will be in writing and will explain the reasons for any action that is taken.
 - e. If there is a hearing, the Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the

requesting party must permit any person the right to order and pay for a copy of the resulting transcript.

- f. The Hearing Officer shall issue his or her decision as soon as reasonably possible, but in no event more than 14 calendar days after receipt of oppositions, unless there is a hearing. In the event of a hearing, the Hearing Officer's decision shall be issued not later than 10 calendar days after the hearing. The Hearing Officer can accept information in both oral and written form at the hearing. At the hearing, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation. The Hearing Officer may ask questions of staff, the Eligible Protestor and any Interested Parties.
 - g. The Hearing Officer shall issue his or her decision in writing to the Eligible Protestor, and all Interested Parties. The Hearing Officer shall set forth the reasons for the decision in this writing. However, the Hearing Officer is not required to issue detailed findings of fact or law. The decision will be served by fax or e-mail, and by certified mail.
 - h. The Hearing Officer's decision shall be final and there shall be no further administrative recourse.
2. Governing Board Awarded Contracts:
- a. All Bid Protests will be submitted to the SGVCOG's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in the appropriate sections of this manual.
 - b. Upon determination that a Bid Protest is valid, the Executive Director will, as soon as reasonably possible, schedule a hearing of the Bid Protest for a regular or special Governing Board meeting.
 - c. The Executive Director will include the Bid Protest, along with staff's written evaluation of the Bid Protest, and information received concerning the Bid Protest from any Interested Parties in the agenda materials for the meeting.
 - d. The Contracts Manager shall notify the Eligible Protestor and all Interested Parties in writing of the scheduled date of the hearing before the Governing Board. The Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the requesting party must permit any person the right to order and pay for a copy of the resulting transcript.
 - e. At the Governing Board meeting, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation. The Governing

Board may ask questions of staff, the Eligible Protestor and any Interested Parties. At the conclusion of the hearing, the Governing Board shall make a determination regarding the Bid Protest. The decision of the Governing Board is final and there shall be no further administrative recourse.

Regardless of whether a Bid Protest is outstanding, the SGVCOG may proceed with issuance of a contract if it determines that doing so is in the best interests of the SGVCOG. That determination will be made by the SGVCOG in its sole discretion.

Each party or bidder for SGVCOG contracts is deemed to have specifically waived its rights to challenge the SGVCOG's actions in court, until and unless it has first exhausted its rights and obligations pursuant to this procedure.

If the SGVCOG prevails in any action regarding a Bid Protest in any venue, the SGVCOG reserves the right to seek reimbursement of its costs to the fullest extent allowed by law.

Contract Administration

SGVCOG must maintain oversight to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase order. SGVCOG adopts the following policies and procedures on contract administration in accordance with *2 CFR Part 200.318(b)*.

1. Contract administration files will be maintained:
 - a. For each contract greater than \$10,000 a separate file will be maintained.
 - b. For contracts less than \$10,000, contract records may be combined in a single file by grant or other funding source.
2. Contract administration files will contain:
 - a. The required documentation specified in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMIT chart for the original scope of work and for all amendments.
 - b. Where the contract work is identified in the grant award or budget, the identification and scope of the work contained in the award or budget, and all approved changes.
3. Authorization of work:
 - a. No work will be authorized until the contract for the work has been approved and fully executed.
 - b. No change in the work will be authorized until an amendment to the contract for the work has been approved and fully executed.
 - c. No amendment of a contract for work will be executed until it has been approved and authorized as required in the PROCUREMENT THRESHOLDS AND AUTHORIZATIONS LIMIT chart and, where required by the terms of the grant award or budget, approval by the funding source.

4. Conformance of work:
 - a. For each grant award, based on applicable laws, regulations and grant provisions, the designated Project Manager will establish and maintain a system to reasonably assure that the contractor:
 - i. Is in conformance with the terms, conditions, and specifications of the contract, and
 - ii. Provides timely follow-up of all purchases to assure such conformance and adequate documentation.
5. The Project Manager, in coordination with the Executive Director, will authorize payment of invoices to contracts after final approval of work products.
6. SGVCOG reserved the right to revise, delete, clarify, amend and/or supplement the information contained in Contract Amendments as it deems appropriate, in its sole and absolute discretion. SGVCOG will inform Contractor, in advance, in writing, when any such deletions, changes, etc. occur. Modifications to reflect changes to employment laws do not require approval of the Governing Board. Similarly, revisions to provide clarification or reflect operating practices do not require Governing Board approval.

Contract Provisions

In accordance with 2 CFR Part 200 Appendix II, the SGVCOG includes provisions for the following items, as applicable, in all contracts charged to federal awards, at the amounts indicated and as determined by the regulation or SGVCOG, with contractors and subgrants to grantees:

1. Contracts for more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by SGVCOG including the manner by which it will be affected and the basis for settlement.
3. Equal Employment Opportunity
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)
5. Copeland "Anti-Kickback" Act (40 U.S.C. 3145)
6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
7. Rights to Inventions Made Under a Contract or Agreement
8. Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended
9. Debarment and Suspension (E.O.s 12549 and 12689)
10. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
11. Bonding requirements: See BONDING REQUIREMENTS section of this manual.
12. Nondiscrimination Policy: See NONDISCRIMINATION POLICY section of this manual.
13. Right to Audit Clause. See RIGHT TO AUDIT CLAUSE section of this manual.
14. Workers' Compensation. See INSURANCE section of this manual.

Right to Audit Clause

SGVCOG requires a “Right to Audit” clause in all contracts between the Organization and contractors that either:

1. Take any form of temporary possession of assets directed for the Organization,
or
2. Process data that will be used in any financial function of the Organization.

This Right to Audit clause will permit access to, and review of, all documentation and processes relating to the contractor’s operations that apply to SGVCOG, as well as all documents maintained or processed on behalf of SGVCOG, for a period of three years. The clause will state that such audit procedures may be performed by SGVCOG employees or any outside auditor or contractor designated by the Organization.

Procurement Records

In accordance with 2 CFR Part 200.324(b), SGVCOG will, on request, make available for the federal awarding agency, pre-award review and procurement documents, such as requests for proposals, when any of the following conditions apply:

- The procurement process does not comply with the procurement standards in 2 CFR Part 200.
- The procurement is expected to exceed the federally-defined simplified acquisition threshold and is to be awarded without competition or only one bid is received.
- The procurement exceeds the simplified acquisition threshold and specifies a “name brand” product.
- The proposed award exceeds the federally-defined simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed-bid procurement.
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the federally-defined simplified acquisition threshold.

Procurement Records

In accordance with 2 CFR Part 318(i), the SGVCOG will maintain records sufficient to detail the history of procurement including, but not limited to, the following

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for contract price

Revolving Door Prohibition

In order to prevent the appearance of impropriety, an unfair competitive advantage to companies hiring former SGVCOG employees, and the potential to compromise the loyalty of the SGVCOG employees who may be desirous of future employment with a SGVCOG contractor, all SGVCOG employees and contractors are subject to post-employment restrictions set forth in this Section:

1. The SGVCOG shall not contract with a former SGVCOG employee for one (1) year after leaving SGVCOG employment if that former employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.
2. The SGVCOG shall not contract with a business where a person who left SGVCOG employment within the preceding one (1) year serves as an officer, principal, partner, or major shareholder, or has been identified as key personnel, if the former SGVCOG employee held a position of substantial responsibility in the area of developing the contract or its specifications.
3. The SGVCOG shall not contract with a business which has a subcontractor which employs a person who left employment with SGVCOG in the preceding one (1) year and where the former SGVCOG employee has been identified as key personnel, in the area of services to be performed by the contract or participated in any way in developing the contract or its specifications.
4. No SGVCOG employee shall accept employment with a company which is performing services under contract with the SGVCOG at any time after leaving SGVCOG employment where the employee was engaged in control, inspection, oversight, review, audit or management of the SGVCOG project on which the company is performing services.

Appendix

- Appendix A – Sample Professional Services Agreement
- Appendix B – Sample IFB Contract Agreement
- Appendix C – Sample IFB Instructions
- Appendix D – Sample Pro Forma Agreement
- Appendix E – Sample Proposal Evaluation Criteria
- Appendix F – Sample RFP Boilerplate

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

APPENDIX "A"

PROFESSIONAL SERVICES AGREEMENT

FOR

ON-CALL CONSULTANT SERVICES

**PROFESSIONAL SERVICES AGREEMENT
SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
AGREEMENT FOR CONSULTANT SERVICES
WITH**

This Agreement for Consultant Services (“Agreement”) is made and entered into this ___ day of _____, 20XX, by and between the San Gabriel Valley Council of Governments (“SGVCOG”) and _____ (“Consultant”).

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. Scope of Services.

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the reasonable satisfaction of the SGVCOG, the services set forth in the attached Exhibit "A", which is incorporated herein by this reference. As a material inducement to the SGVCOG to enter into this Agreement, Consultant represents and warrants that it has thoroughly investigated the work and fully understands the difficulties and restrictions in performing the work. Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

Exhibit “A” describes the total Scope of Services that the SGVCOG anticipates it may assign to Consultant over the term of the Agreement. Individual Task Orders, each covering some portion of the total Scope of Services, will be issued to Consultant based on the adopted annual budget prior to Consultant performing work hereunder. 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 ultimately required of Consultant through individual Task orders may be less than the Scope of Services. Further, it is understood and agreed that the SGVCOG makes no guarantee, either express or implied, as to the actual services that will be authorized under this Agreement.

Dawn Petschauer (herein referred to as the “ULAR WMG Lead”), shall be the person to whom the Consultant will report to for the performance of services hereunder. It is understood that Consultant shall coordinate its services hereunder with the ULAR WMG Lead to the extent required by the ULAR WMG Lead, and that all performances required hereunder by Consultant shall be performed to the satisfaction of the ULAR WMG Lead and Executive Director.

2. Term of Agreement.

This Agreement shall take effect _____, 20XX, and shall continue until _____, 20XX ("Term"), unless earlier terminated pursuant to the provisions herein. SGVCOG's Executive Director shall have the option to extend this Agreement for *two (2) additional one (1) year terms*, subject to the same terms and conditions contained herein, by giving Consultant written notice of the exercise of this option at least thirty (30) days prior to the expiration of the initial Term.

3. Compensation and Method of Payment.

(a) Consultant shall be paid for its services in accordance with the hourly rates set forth in Exhibit "B". Exhibit "B" identifies billing rates by specific individuals. Consultant may add or delete named individuals from Exhibit "B" only by written agreement by both parties to this agreement. Except as shown in Exhibit "B", Consultant shall be reimbursed without markup for the cost of all reasonable business expenses that have incurred in performing the services covered by this Agreement and that can be supported by documentation acceptable to the SGVCOG.

(b) The total not-to-exceed budget for all services associated with a specific Task Order shall be identified in said Task Order ("Task Order budget"). Notwithstanding a Task Order budget, Consultant shall only incur such costs as are reasonable and necessary in performing this Agreement in the best interests of the SGVCOG. If at any time Consultant estimates the cost of performing the services described in any Task Order budget will be exceeded, Consultant shall immediately notify the SGVCOG in writing, stating the estimated amount necessary to complete the services in the Task Order. SGVCOG has no obligation to pay any costs incurred by Consultant in excess of any Task Order budget without the prior written consent of the SGVCOG.

(c) Each month Consultant shall furnish to SGVCOG an original invoice for all work performed and expenses incurred during the preceding month. SGVCOG shall independently review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in accordance with the rates contained in Exhibit "B". The invoice shall include the following columns: Project Task, Labor Category, Date, Detailed Comments of Worked Performed, Hourly Rate and Hours. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to this Section. In the event any charges or expenses are disputed by SGVCOG, SGVCOG shall withhold that portion of the invoice that is in dispute and remit the remainder.

(d) Except as to any charges or expenses disputed by SGVCOG, SGVCOG will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's invoice meeting the requirements herein.

4. Priority of Documents.

This Agreement and any attached Exhibits or documents incorporated herein by reference are intended to describe the Parties complete agreement, however, in the event of any conflict with the provisions of this Agreement shall control.

5. Consultant's Books and Records.

Consultant shall maintain all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. Consultant shall maintain 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. 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. All such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of SGVCOG and its expenditures.

6. Ownership of Documents.

Consultant agrees and acknowledges that all original maps, models, designs, drawings, photographs, studies, survey, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement are for the ultimate use and benefit of the Upper Los Angeles River Watershed Management Group ("ULAR WMG") and as such, shall be the sole property of the ULAR WMG and may be used, reused or otherwise disposed of by the ULAR WMG without the permission of the Consultant. Upon satisfactory completion of, or in the event of expiration, termination, suspension, or abandonment of this Agreement, Consultant shall turn over to the ULAR WMG Lead and/or the SGVCOG all such maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents which Consultant may have prepared for use in performing services hereunder. With respect to computer files, Consultant shall make available to the ULAR WMG Lead and the SGVCOG, upon reasonable written request by the ULAR WMG Lead and/or SGVCOG, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

Consultant shall have not liability for the ULAR WMG's or SGVCOG's reuse of maps, models, designs, drawings, photographs, studies, survey, reports, data, notes, computer files, files and other documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

7. Status of Consultant.

Consultant is and shall at all times remain a wholly independent contractor 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.

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, members 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, members or agents of SGVCOG.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by SGVCOG, including but not limited to eligibility to enroll in the Public Employees Retirement System as an employee of SGVCOG.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by an authority having jurisdiction over SGVCOG, to not be a wholly independent contractor, then Consultant shall indemnify and reimburse SGVCOG for any costs, including attorneys' fees, that SGVCOG incurs arising out of such claim or determination including, but not limited to, any benefits SGVCOG is required to provide, or payroll taxes or Workers' Compensation claims it is required to pay, as well as for the payment of any penalties and interest on such contributions.

8. Deficient Services.

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully and competently, 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 persons 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 shall endeavor to notify Consultant in writing of the existence of such deficient services in a timely manner, although its failure to do so shall not affect any remedy it may have under this Agreement or at law with respect to such deficient services. No approval, disapproval, or omission to provide approval or disapproval shall release Consultant from any responsibility under this Agreement.

9. 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, members 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.

10. Nondiscrimination.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of SGVCOG relating thereto. Such nondiscrimination shall include, but not be limited to, the following: employment; upgrading; demotion; transfers; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant in performing this Agreement, state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. 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 employ such unauthorized aliens for the performance of 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 reasonable attorney fees, incurred by SGVCOG.

12. Conflicts of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, (but not including ownership of stock in a publicly traded company), which would conflict in any manner with the interests of SGVCOG or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the SGVCOG. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of SGVCOG in the performance of this Agreement.

13. 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 who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In

recognition of that interest, Consultant shall not assign or transfer any of its duties or obligations under this Agreement or any portion thereof, without the prior written consent of the SGVCOG. Any attempted assignment shall be ineffective, null and void, and 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.

14. Indemnification.

To the greatest extent permitted by California Civil Code section 2782.8, Consultant shall indemnify, defend with counsel approved by SGVCOG, and hold harmless SGVCOG, its officers, officials, employees and volunteers ("Indemnitees") from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with:

(1) Any and all claims under Workers' Compensation Act and other employee benefit acts with respect to Consultant's employees or Consultant's contractor's employees arising out of Consultant's work under this Agreement; and

(2) Any and all claims arising out of Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of SGVCOG's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the SGVCOG. Should SGVCOG in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the SGVCOG its costs of defense, including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation. The SGVCOG shall promptly pay any final judgment rendered against the Indemnitees. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement. Except for the Indemnitees, this Agreement shall not be construed to extend to any third-party indemnification rights of any kind.

(3) The Consultant's obligations to indemnify, defend and hold harmless the Indemnitees shall survive termination of this Agreement.

15. Insurance.

Without limiting its obligations pursuant to this Agreement, Consultant shall procure and maintain, at Consultant's own cost and expense and for the duration of this Agreement, the insurance coverage as set forth herein. All insurance policies shall be subject to approval by SGVCOG as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the SGVCOG. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. Consultant shall provide the following scope and limits of insurance:

15.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the SGVCOG.

Workers' Compensation insurance if and as required by the California Labor Code and Employer's Liability insurance covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

Professional liability insurance appropriate to the Consultant's profession.

15.2 Limits of Insurance. Consultant shall maintain limits of insurance no less than:

General Liability: \$1,000,000 minimum limit written on an occurrence basis for bodily injury, death and property damage.

Automobile Liability: \$1,000,000 minimum limit written on an occurrence basis for bodily injury, death and property damage.

Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

Professional Liability: \$1,000,000 minimum limit per claim. If such insurance is on a claims-made basis, Consultant agrees to keep such insurance in full force and effect for at least three years after termination or date of completion of this Agreement.

15.3 Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

15.4 All Policies. Each insurance policy required herein, other than professional liability shall provide that the coverage shall not be non-renewed, cancelled or reduced by the insurer or Consultant except after at least ten (10) days' prior written notice by Certified mail, return receipt requested, has been given to SGVCOG. As soon as Consultant becomes aware, it shall provide to SGVCOG notice of suspension or voiding of any coverage or reduction in coverage which results in Consultant not meeting the minimum requirements set forth in this Agreement.

15.5 General Liability and Automobile Liability Coverages. SGVCOG, and its respective elected and appointed officers, members, employees, and agents ("Additional Insureds"), shall be named as additional insureds on all policies of general liability, property damage, and automotive liability insurance for all work performed by Consultant under this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

Consultant's insurance coverage shall be primary insurance with respect to the Additional Insureds.

Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SGVCOG, and its respective elected and appointed officers, officials, members or employees.

15.6 Workers' Compensation and Employer's Liability Coverage. Unless the SGVCOG otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against the Additional Insureds for losses arising from services performed by Consultant.

15.7 Other Requirements. Consultant agrees to deposit with SGVCOG, at or before the performance of any services under this Agreement, certificates of insurance and additional insured endorsements or a copy of the policy evidencing same, necessary to satisfy SGVCOG that Consultant has complied with the insurance provisions of this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. SGVCOG reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

Consultant shall include all subcontractors, if any, as insureds under its policies or furnish separate certificates and endorsements from each subcontractor evidencing the same minimum coverage requirements that Consultant must provide.

Any deductibles or self-insured retentions must be declared to and approved by SGVCOG, such approval not to be unreasonably withheld.

All policies of insurance, except professional liability insurance, shall be issued by an insurance company which is authorized to do business in the State of California or is otherwise approved in writing by SGVCOG.

16. Termination of Agreement.

Notwithstanding anything to the contrary herein, 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 notice provides otherwise, except those services necessary to effectuate the termination. Upon termination of this Agreement, Consultant shall furnish to SGVCOG a final invoice for work performed and expenses incurred by Consultant, as required by this Agreement. SGVCOG shall not be liable for any claim of lost profits.

17. Default.

In the event either party defaults in its obligations hereunder, the non-defaulting party may declare a default by written notice to the defaulting party. The notice shall specify the basis for the default and the cure, which cure shall be implemented within thirty (30) days of the date of the notice or such longer time as may be provided in the notice. If cure is not made within the time

provided in the notice, then this Agreement shall terminate and the non-defaulting party shall have all remedies available under this Agreement and the law.

18. 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 certified mail, postage prepaid and return receipt requested, addressed as follows:

To SGVCOG: Marisa Creter, Executive Director
San Gabriel Valley Council of Governments
1000 S. Fremont Avenue
Suite 10-210
Alhambra, CA 91803

with a copy to: David DeBerry, SGVCOG General Counsel
Woodruff, Spradlin & Smart
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626

To Consultant: _____

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

19. Binding Effect.

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

20. 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 breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach 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.

21. 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. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

22. Entire Agreement.

This Agreement, including the exhibits attached hereto, which are incorporated herein by this reference, 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 are 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. Any attempt to waive the requirement for a written amendment shall be void.

23. Section Headings.

The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

24. 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 provision(s).

25. Time is of the Essence.

Time is of the essence in the performance of this Agreement. As Task Orders are issued, Consultant agrees to commence the work provided therein and to diligently prosecute the work in the time provided in the Task Order, if any.

26. Delays.

Neither Party shall 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 such Party. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. Consultant's sole remedy for delays outside its control shall be an extension of time. Consultant must document any delay and request an extension of time in writing at that the time of the delay to the satisfaction of SGVCOG.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

“CONSULTANT”

By _____

Title: _____

Date: _____

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

By _____

MARISA CRETER

Executive Director

Date: _____

APPROVED AS TO FORM:

DAVID DeBERRY

General Counsel

Appendix B

IFB

CONTRACT AGREEMENT

PART D - CONTRACT AGREEMENT

FOR

IFB-2

STATE PROJECT NO.

SGVCOG CONTRACT NO.

Located in: the County of Los Angeles

This Contract Agreement is made and entered into for the above-stated project this ____ day of _____, BY AND BETWEEN the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, as AGENCY, and _____, as CONTRACTOR.

WITNESSETH that AGENCY and CONTRACTOR have mutually agreed to as follows:

ARTICLE I

The Contract Documents for the aforesaid project shall consist of those documents listed in Exhibit "A", which include, but are not limited to, the Notice Inviting Sealed Bids, Instructions to Bidders, Bid Proposal, General Provisions, and its Attachments, Special Provisions, Technical Specifications, Project Plans and all referenced specifications, details, standard drawings, and appendices; together with this Contract Agreement and all required bonds, insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, or extending the work contemplated as may be required to ensure its completion (cumulatively hereinafter the "Contract Documents"). All of the provisions of said Contract Documents are made a part hereof as though fully set forth herein.

ARTICLE II

For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to furnish all materials and perform all work required for the above-stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

ARTICLE III

CONTRACTOR agrees to receive and accept the price of _____ and ____/100 cents (\$ _____) as set forth in the Bid Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance, including those for completing the work and the whole thereof in the manner and time specified in the aforesaid Contract Documents; and also including those arising from reasonably foreseeable actions of the elements, difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.

ARTICLE IV

AGENCY hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work and fulfill the obligations according to the Contract Documents.

ARTICLE V

CONTRACTOR acknowledges the provisions of Section 3700 et seq. of the California Labor Code requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code and certifies compliance with such provisions.

ARTICLE VI

CONTRACTOR affirms that the signatures, titles and seals set forth hereinafter in execution of this Contract Agreement represent all individuals, firm members, partners, joint ventures, and/or corporate officers having principal interest herein.

ARTICLE VII

CONTRACTOR shall not employ any consultant, architect or engineer which has performed more than twenty-five thousand dollars (\$25,000) of design services, construction management or construction management related services on this Project. AGENCY may terminate this AGREEMENT for default if Contractor employs any such consultant, architect or engineer.

ARTICLE VIII

AGENCY may, in its sole discretion and without notice, assign AGENCY's obligations and responsibilities pursuant to this Agreement, in whole or in part, to a successor entity.

ARTICLE IX

All notices to be given by either party to the other pursuant to this Contract, shall be made by United States first class mail to the address identified below for that party, and that address may be changed from time to time in writing. In addition, both parties will make a good faith effort to give additional notice to the other party by facsimile or by e-mail, retaining proof of the facsimile or e-mail having been sent.

FOR AGENCY:

San Gabriel Valley Council of Governments
4900 Rivergrade Road, Suite A120
Irwindale, CA 91706
Attention:

Telephone: (626) 962-9292
Facsimile: (626) 962-9393
Email:

FOR CONTRACTOR:

FIRM
ADDRESS
CITY< STATE ZIP
Attention: NAME
TITLE
Telephone: () ___ - ___
Facsimile: () ___ - ___
Email: [EMAIL](#)

ARTICLE X

It is to be made known that the improvement contemplated in the performance of this Contract Agreement is a State-funded improvement over which the State of California shall exercise general supervision; the State of California, therefore, shall have the right to assume full and direct control over this Contract Agreement whenever the State of California, at its sole discretion, shall determine that its responsibility to the United States so requires.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract Agreement to be executed in duplicate by setting hereunto their names, titles, hands, and seals on the date noted above.

AGENCY:

**San Gabriel Valley Council
of Governments (SGVCOG)**

CONTRACTOR:

[Print Name & Title]

Attest:

Secretary or Other Title
(Signature Must Be Notarized)

Approved as to form:

SGVCOG

Attachment:

1. Instructions for Execution of Instruments (Page D-5)
2. Performance Bond Form (Page D-6)
3. Material and Labor Bond (Payment Bond) form (Page D-7)
4. Insurance Requirements form (Sample) (Page D-8)
5. Exhibit "A" (Pages D-9)

END OF PART D – CONTRACT AGREEMENT

Appendix C

PART B

INSTRUCTIONS TO BIDDERS

PART B - INSTRUCTIONS TO BIDDERS

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PART B - INSTRUCTIONS TO BIDDERS

PLEASE READ THESE REQUIREMENTS/INSTRUCTIONS CAREFULLY. THE BIDDER'S FAILURE TO SUBMIT A COMPLETE RESPONSE MAY RESULT IN A DETERMINATION THAT SUBMITTED BID IS NON-RESPONSIVE, IN WHICH CASE THE SUBMITTED BID WILL BE REJECTED FROM FURTHER CONSIDERATION.

1. BID PROPOSAL FORMS

Bids shall be submitted in writing on the Bid Proposal forms (Part C) provided by the AGENCY herein. Any bid using a form not approved by the AGENCY will be deemed non-responsive. All information requested therein must be clearly and legibly set forth in the manner and form indicated. The AGENCY will not consider any Bid Proposal not meeting these requirements. ALL bid forms indicated in the Bid Document Submittal Checklist (Part B) should be submitted with the Bid Proposal, unless otherwise specified. If any form is not applicable, it will be identified as such and submitted with the Bid. Bidders are advised to review Part E (General Provisions): Attachment 3, Federal & Other Requirements: Section FR-1, DBE Provisions: **Subpart 1-3: "DBE Goal and Submission Requirements"** for DBE submittal information.

2. SIGNATURES

All bid forms shall be executed by an individual duly authorized to execute the same on behalf of the Bidder.

3. BID GUARANTEE (BID BOND)

Bid Proposals must be accompanied by a Bid Guarantee consisting of cash, or a certified or cashier's check or Bidder's bond payable to the AGENCY in an amount of ten percent (10%) of the Total Bid Amount. Any Bid Proposal not accompanied by such a guarantee is non-responsive and will not be considered.

3.1 Bid Guarantee Return. The Proposal Guarantees of all Bidders will be retained until the successful bidder has properly executed all contract documents, posting of bonds, required certificates of insurance & endorsement and return of executed copies of the Agreement, whichever first occurs, at which time the Bid Guarantee will be returned.

3.2 Forfeiture of Bid Guarantee. If the Bidder to whom a contract is awarded the Contract fails or refuses to execute the Agreement within **ten (10) days** from the date of receiving notification that it is the Bidder to whom the Contract has been awarded or furnish the required insurance certificates, endorsements and bonds as set forth in the bid documents, the AGENCY may declare the Bidder's Bid Guarantee forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next lowest responsive Bid Proposal or AGENCY may call for new bids, in AGENCY's sole and exclusive discretion, at which time the entire amount of the Bid Guarantee will be paid to the AGENCY.

4. CONTRACTOR'S LICENSE

The successful Bidder must be licensed in accordance with provisions of the Business and Professions Code and shall possess a California Contractor's License **Class "A"** from bid opening through contract acceptance in accordance with Public Contract Code §10164 . Joint Venture bidders must obtain a joint venture license before contract award. The successful Contractor and its subcontractors will be required to possess appropriate business licenses as required.

5. CONFLICT OF INTEREST

Bidder shall not employ any consultant, architect or engineer which has performed or has agreed to perform more than twenty five thousand dollars (\$25,000) of construction management services or construction management related services for the AGENCY on this Project. The bid of any Contractor which employs any such consultant, architect or engineer prior to award of a contract pursuant to this procurement will be deemed non-responsive.

6. DELIVERY OF BID PROPOSAL

Bid Proposals shall be submitted at the place designated in the Notice Inviting Sealed Bids (Part A) in a sealed envelope bearing on the outside the Bidder's name and address along with an identification of the Work for which the Bid Proposal is submitted; as shown below:

**"SGVCOG CONTRACT NO. XX-XX;
FEDERAL PROJECT NO. XXXXX;
ATTENTION: FINANCE DIRECTOR
DO NOT OPEN WITH REGULAR MAIL"**

7. LISTING OF SUBCONTRACTORS

7.1 Designation of Subcontractors; Subcontractors List. Each Bidder shall submit a list of its proposed Subcontractors for the proposed Work as required by the Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100 et seq.). The AGENCY may request that one or more apparent low Bidders provide to the AGENCY within **twenty four (24) hours** of bid opening the value of work for each listed subcontractor submitted by Bidder. Any Bidder's failure to comply with the AGENCY's request may deem such Bidder's bid as non-responsive and subject to rejection by the AGENCY.

7.2 Work of Subcontractors. The organization or arrangements of the Specifications and Drawings does not limit the extent of the Work of the Contract Documents. Accordingly, all Bidders are encouraged to disseminate all of the Specifications, Drawings and other Contract Documents to all persons or entities submitting sub-bids to the Bidder. The omission of any portion or item of Work from the Bid Proposal or from the sub-bidders' sub-bids which is reasonably inferable from the

Contract Documents is not a basis for adjustment of the Contract Price or the Contract Time.

8. LATE BIDS

It is the Bidder's sole responsibility to ensure that its bid is received prior to the scheduled closing time for receipt of bids as specified in the Notice Inviting Sealed Bids (Part A). A Bid Proposal is considered submitted only if the outer envelope containing the Bid Proposal is stamped by the AGENCY's date/time stamp machine at the place designated for submittal of the Bid Proposal. The date/time stamp is controlling and determinative as to the date and time of the Bidder's submittal of its Bid Proposal.

Any Bid Proposal received after the scheduled closing time for the receipt of bids will not be considered, regardless of whether or not the bids are opened at the time specified in the Notice Inviting Sealed Bids (Part A).

9. ADDENDA

Bidder is on notice of all addenda posted on the AGENCY's online bidding system. The AGENCY will post any issued addenda or modification at the AGENCY's online bidding system at www.theaceproject.org/contract.php and it is the Bidder's responsibility to determine what addenda or modifications are issued. All addenda or modifications to this solicitation must be individually acknowledged, in writing, on the appropriate bid form, included hereto. That form must be included with Bidder's Bid proposal. Any bid which fails to acknowledge all written amendments or modifications to this solicitation will be deemed non-responsive.

10. WITHDRAWAL OF BID PROPOSAL

Any Bidder may withdraw its Bid Proposal without penalty by written request received by the AGENCY **prior** to the scheduled closing time for the receipt of Bid Proposals, as stipulated in the Notice Inviting Sealed Bids (Part A). Bid Proposals may not be withdrawn after said time without forfeiture of the Bid Guarantee. Bid Proposals shall remain valid for **one hundred twenty (120) days** from the date bids are publicly opened. Any request for withdrawal of Bid Proposals **after** the scheduled closing time shall be in accordance with Public Contract Code §5100 et seq. The withdrawal of the Bid Proposal will not prejudice the right of the Bidder to submit a new Bid Proposal, providing there is time to do so.

11. IRREGULAR BID PROPOSALS

Unauthorized conditions, limitations, or provisions attached to a Bid Proposal, which are other than a minor irregularity, as determined in the sole discretion of the AGENCY, will render the Bid non-responsive. The completed Bid Proposal forms shall be without interlineations, alterations or erasures. Alternative proposals will not be considered unless specifically requested by the AGENCY in this Invitation for Bids package. No oral, telegraphic, telephonic, or electronic mail proposal, modification, or withdrawal will be considered.

12. PRE-BID CONFERENCE AND DBE/SMALL BUSINESS NETWORKING EVENT

It is mandatory that all Prime Contractors attend the (a) Pre Bid Conference, and (b) Small Business Networking Event at the place and time indicated in the Notice Inviting Sealed Bids (Part A).

Bidder's attendance will be documented through sign-in sheets available at each of these events. The sign-in sheet will be the basis of determining attendance at the Pre-Bid Conference, and at the Small Business Networking event.

The Small Business Networking Event will provide an opportunity for subcontractors, including DBE and small business firms to network with the Prime Contractors and to foster teaming possibilities.

13. JOB-SITE WALK THROUGH

A Job-Site Walk-through **WILL NOT BE** conducted for this Project.

A Job-Site Walk-through **WILL BE** conducted on DATE

Attendance is Mandatory

Attendance is Non Mandatory

Bidder's attendance will be documented through sign-in sheets available at this event. The sign-in sheet will be the sole basis of determining attendance at the Job-Site Walk Through.

14. TAXES

No mention shall be made in the Bid Proposal of Sales Tax, Use Tax, or any other tax, as all amounts bid will be deemed and held to include any such taxes.

15. ESCALATION

Bidders are aware of the risk of cost escalation for all material to be delivered to the AGENCY pursuant to this Contract and understand the benefits of securing prices in or about the time of its bid. In the event the cost of materials should be subject to a catastrophic increase, as defined in Part E - General Provisions, Section 6-7.6 "Escalation" of this Invitation for Bids, Bidders are advised as follows:

To be entitled to an escalation increase, Bidders must submit a separate sealed envelope with its bid containing material bid unit prices. This envelope shall contain the material bid unit prices, including a listing of both the specific materials and the unit prices used in Bidder's bid. Failure to include material prices at the time of bid will not make the bid non-responsive, but it will disqualify Bidder from recovering escalation costs and constitutes a waiver of any right Bidder may have to recover escalation, should the Contract be awarded to Bidder.

16. DISCREPANCIES AND MISUNDERSTANDINGS

Bidders must satisfy themselves by personal examination of the work site, Plans, Specifications and other contract documents, and by any other means as they may believe necessary, as to the actual physical conditions, requirements and difficulties under which the work must be performed.

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Plans, Specifications or other contract documents, or finds discrepancies in or omissions from the Plans and Specifications, or desires to address issues regarding the physical site, he/she may submit to the AGENCY a written request for an interpretation or correction. Said request shall be received by the AGENCY **no later than DATE** via the AGENCY's online bidding system (www.theaceproject.org/contract.php). No other questions will be received after the deadline. Only written inquiries transmitted online will be considered. The AGENCY will determine the extent of any response in its complete and sole discretion. All questions and answers will then be posted on the AGENCY's online bidding system page. Any interpretation or correction of the contract document will be made only by an Addendum duly issued. AGENCY will respond to inquiries at its sole discretion. No oral interpretation of any provision in the contract documents shall be binding.

If Bidder fails to raise any such issue or if the AGENCY fails to respond to a request for clarification, Bidder will be deemed to have accepted all risks associated with that issue. Bidder specifically waives the right to request a change order, equitable adjustment, request additional time or recovery in quantum meruit in conjunction with any such issue. Bidder further waives the right to assert arguments of estoppel or implied or express warranty of design with regard to any such issue.

17. PREVAILING WAGE AND EMPLOYMENT OF APPRENTICES

The Contract will be subject to the requirements of the California Labor Code and the Davis-Bacon Act, which stipulates that not less than the prevailing wage rate of per diem wages for each craft or type of work or mechanic needed to execute the contract in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as determined by the Director of Industrial Relations of the State of California (DIR) shall be paid to all workers employed. Applicable rates are set forth in Section FR-6 & FR-7 of Part E (General Provisions). A copy of the Prevailing Wage Determinations are available on the DIR's website at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The Bidder is responsible for determining the appropriate labor rate for the work it seeks to perform. The contractor and its subcontractors will be required to maintain and provide to the AGENCY all documentation to comply with the AGENCY's Labor Compliance Program.

A. Agency's Labor Compliance Program (LCP)

Contractor and all subcontractors must comply with the requirements of the AGENCY's LCP. The LCP includes, without limitation, provisions requiring the Contractor to comply with prevailing wage rates, maintenance and submission of weekly certified payroll records, employment of apprentices, and compliance with

legal hours of work, as well as provisions set forth in Part E – FR-3 Labor Compliance Program of the General Provisions.

Such requirement shall not result in an increase to the contract time or the contract amount. Contractor and all subcontractors, of every tier, are required to comply with the requirements set forth in the AGENCY’S LCP, at no additional cost to the AGENCY.

B. Department of Industrial Relations’ Public Works Reforms Senate Bill (SB) 854

1. Contractor Registration Program

Contractor and subcontractors must register with the Department of Industrial Relations (DIR) in order to bid on this Contract (www.dir.ca.gov/Public-Works/Contractor-Registration.html).

The Labor Commissioner may assess penalties of up to \$8,000 – in addition to any penalty or registration fee – for failure to register.

2. Subcontractors

Contractor shall include, and shall require all subcontractors, of every tier, to include contractual provisions in all contracts entered into for the performance of the Work requiring each subcontractor, of every tier, who furnishes any labor for the performance of Work to comply with those provisions of this Section at the Contractor’s/Subcontractor’s own expense.

Pursuant to AB219, Ready-mix haulers and companies that deliver ready-mixed concrete for public works projects are considered subcontractors under Labor Code Section 17221.1.

3. Electronic Certified Payroll Records

Contractor and subcontractors are required to submit electronic certified payroll records (eCPR) directly to the Labor Commissioner’s Division of Labor Standards Enforcement in its eCPR data system (www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html).

4. Davis Bacon and Related Acts

This contract is partially funded with U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA) funds. As such, this contract is also subject to federal prevailing wage requirements. Therefore, Contractor shall also furnish certified payroll records to the AGENCY for compliance with Davis Bacon and Related Acts.

5. Job Site Posting

Pursuant to Labor Code Section 1773.2, the prime contractor must post a copy of the determination of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract.

Additionally, the prime contractor performing work covered by the Davis Bacon and Related Acts shall post Davis-Bacon Poster, WH-1321 (Government Construction) and any applicable federal wage determinations.

The WH-1321 poster is available to be downloaded at:

www.dol.gov/whd/programs/dbra/wh1321.htm

18. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

Bidders are advised that, as required by federal regulation, the AGENCY is implementing the Disadvantaged Business Enterprise (DBE) program, which is subject to Title 49 Code of Federal Regulations Part 26, entitled “*Participation by DBEs in Department of Transportation Financial Assistance Programs*”. The Regulations, in their entirety, are incorporated herein by this reference. In the event of any conflicts or inconsistencies between the Regulations and the AGENCY’s DBE Program through Caltrans, the Regulations shall prevail. In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the AGENCY encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with Federal funds. The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

The AGENCY has established a DBE goal of **NUMBER** for this Contract. The established DBE goal percentage is based on the Total Bid Amount (total Contract dollar value). The AGENCY advises potential Bidders that the DBE participation, which the Bidder commits to in its Bid, shall become the DBE goal of record. The percentage of DBE achievement toward the DBE Goal shall be calculated as described in Part E (General Provisions): Attachment 3, Federal & Other Requirements: Section FR-1, DBE Provisions: Subpart 1-4: “Calculation and Crediting of DBE Participation Towards Goal” of the IFB.

In accordance with 49 CFR Part 26.39 to subpart B, the AGENCY, actively fosters the participation of small businesses on its DOT-assisted contracts and encourages small businesses to compete for and perform as prime and subcontractors. It is further emphasized that Bidders are to actively foster, outreach, and encourage the participation of small businesses on this project.

Only legitimate DBEs are eligible to participate in the AGENCY contracts as DBEs. The Bidder certifies that it has not knowingly and willfully used “fronts” to meet the DBE goal. The use of “fronts” and “pass-through” subcontracts to non-disadvantaged firms constitute criminal violations.¹

19. LEGAL RESPONSIBILITIES

¹ Any indication of fraud, waste or abuse should be immediately reported to the Metro Inspector General at (213) 922-7300, or the toll free hotline at (800) 221-1142, or to the Office of Inspector General, U.S. Department of Transportation at the toll free hotline number (800) 424-9071.

Any Bidder submitting a Bid Proposal shall by such action agree to each and all of the terms, conditions, provisions and requirements set forth, contemplated, and referred to in the Plans, Specifications and other contract documents, and to full compliance therewith. Bidders also agree to comply with all applicable local, State and Federal laws, whether the same or expressly referred to herein or not.

20. AWARD OF CONTRACT

20.1 Award to Lowest Responsive Responsible Bidder. The award of Contract, if made, will be to the lowest responsive and responsible Bidder as determined solely by the AGENCY. The low bidder will be determined by the figure identified on Form C.02 Bid Schedule as Total Bid Amount in Figures.

This Invitation for Bids package contains Schedule A, and Schedule B. Bidders are required to bid on all bid items.

The **TOTAL BID AMOUNT IN FIGURES [Total Schedule A Bid + Total Schedule B Bid]** on Bid Form **C.02 BID SCHEDULE** shall be the basis for evaluation of bids and determination of the lowest responsive, responsible Bidder.

20.2 Waiver of Irregularities or Informalities. The AGENCY reserves the right to reject any or all Bid Proposals, to waive any irregularity which may properly be waived under California laws.

21. NOTICE OF INTENT TO AWARD CONTRACT

Following the public opening and reading of Bid Proposals, the AGENCY will issue a Notice of Intent to Award the Contract, identifying the Bidder to whom the AGENCY intends to award the Contract and the date/time/place of the AGENCY's Committee meeting; at which award of the Contract will be considered.

22. EXECUTION OF AGREEMENT

The Bidder to whom award is made shall execute a written contract with the AGENCY in the Contract Agreement form (Part D) included in these Contract Documents and shall deliver to the AGENCY all insurance certificates, endorsements and bonds (other than the Bid Guarantee which must be part of the Bid Proposal) as herein provided within fourteen (14) calendar days from the date of the written Notice of Award.

Failure or refusal to enter into an agreement or to conform to any of the stipulated requirements shall be just cause for the annulment of the award and forfeiture of the Bidder's Bid Guarantee. In the event the Bidder to whom an award is made fails or refuses to execute the agreement within said time, the AGENCY may cancel the procurement, declare the Bidder's Bid Guarantee forfeited, may award the work to the next lowest responsive and responsible Bidder or to subsequent lowest responsive and responsible Bidder(s) until an agreement is executed or call for new bids.

Failure or refusal of the next lowest responsive and responsive bidder or subsequent lowest responsive and responsible bidder(s) to enter into an agreement or to conform to any of the stipulated requirements (if an award is made) shall also be just cause for the annulment of the award and forfeiture of its Bid Guarantee.

23. TIME OF COMPLETION

The Contractor shall complete the Work in a timely manner according to the milestone completion dates, as indicated in the Special Provisions, if applicable, after the date for commencement of the Work; as set forth in the Notice to Proceed issued by the AGENCY. Failure to achieve Completion within the Contract Time will result in the assessment of Liquidated Damages as specified in the Special Provisions.

24. INSURANCE AND BONDS

The Contractor shall not begin work under the agreement until it has given the AGENCY adequate evidence of all insurance required by this solicitation, including, but not limited to, General Liability, Automobile Liability, Workers' Compensation and Builder's Risk insurance coverage; railroad protective liability insurance coverage, as provided herein, and provided Faithful Performance and Labor and Material Bonds, as described herein.

Except for worker's compensation insurance, the policy shall not be amended or modified and the coverage amounts shall not be reduced without the AGENCY's prior written consent. **The AGENCY and other parties stated in the General Provisions and/or Special Provisions shall be named and endorsed as an "additional insured"**. Contractor agrees that it will direct its insurers to provide the AGENCY with thirty (30) days written notice of any partial or total cancellation of any of Contractor's policies.

The Contractor shall not allow any Subcontractors or employee to commence work on this contract or any subcontract until the insurance required of the Contractor, subcontractor, or agent has been obtained.

25. RETENTION FOR PROGRESS PAYMENT

The AGENCY will deduct a ten percent (10%) retention from all progress payments as specified in Section 9-3 Payment of Part E - General Provisions.

26. SUBSTITUTE SECURITY FOR RETENTION

In accordance with the provisions of California Public Contract Code §22300, substitution of eligible and equivalent securities for any monies withheld by the AGENCY to ensure the Contractor's performance under the Contract will be permitted at the request and expense of the Contractor. The foregoing notwithstanding, the Bidder to whom the Contract is awarded shall have thirty (30) calendar days following action by the AGENCY's Board to award the Contract to such Bidder to submit its written request to the AGENCY to permit the substitution of securities for retention. The failure of the Bidder to make such written request to the AGENCY within said thirty (30) calendar day period shall be deemed a waiver of the

Bidder's rights under California Public Contract Code §22300 (See Section 9-3.3.2(C.) of Part E - General Provision "Substitution of Securities for Retention").

27. FAIR EMPLOYMENT PRACTICES

The Bidder shall complete and include within his Bid Proposal the enclosed "Certification of Non Discrimination and Affirmative Action" form identified in Part C.

28. TELEPHONES

Bidders are hereby notified that the AGENCY will not provide telephones for their use at the time prior to bid opening. Use of the AGENCY phones is only permitted as provided by Contract.

29. USE OF PUBLIC FUNDS

The AGENCY is committed using public funds (federal, state and local) appropriately and efficiently. Any indication of improper practices, unsafe conditions or illegal activities should be reported to the MTA Office of Inspector General's hotline number at (800) 221-1142. The service is available Monday through Friday, during business hours and is confidential and anonymous.

30. BID OPENING DETERMINATION

In order to expedite the Bid Opening process, the AGENCY has determined that it will not read bids that are affected by one or more of the following non-responsiveness bid factors:

A. Late Bids, will not be acceptable nor read at the Bid Opening:

Bids must be received by the AGENCY's office on or before the time and date set forth in the Notice Inviting Sealed Bids (Part A) herein.

B. Unsealed Bids, will not be read at the Bid Opening:

Bids must be received by the AGENCY sealed and unopened.

C. Missing Acknowledgment of Addendum, will not be read at the Bid Opening:

Addenda issued to the IFB package, if any, must be acknowledged.

D. Missing Bid Proposal Signature Page (Refer to Part C, Section C.03), will not be read at the Bid Opening:

The Bid Proposal Form must be duly signed.

E. Missing Bid Guarantee (Bid Bond), will not be read at the Bid Opening:

The Bid Guarantee must be included with the Bid Proposal in one of the following forms: cash, certified or cashier's check, or Bidder's Bond.

All the bids read aloud by the AGENCY will be subject to further evaluation with respect to:

- Responsiveness of the Bid, and
- Determination of responsible Bidders.

31. REVIEW OF BIDS

Bid submittals will not be available for review at the Bid Opening. After bid evaluation, official bid results will be posted online via the AGENCY's online Bidding System (www.theaceproject.org/contract.php). At that point, arrangements can be made to review bid submittals.

32. PROTEST TO SOLICITATIONS AND CONTRACT AWARDS

32.1 General

It is the policy of the AGENCY to conduct all of its solicitations and award all of its contracts in a fair and open manner. To avoid protests to its solicitations or its contract awards, the AGENCY will use its best efforts to resolve concerns regarding the solicitation and award process by encouraging frank and open discussions. Moreover, any member of the public or a representative of any entity, public or private, is always able to address the AGENCY's Committee about any topic during the public comment period at each regularly scheduled Committee Meeting.

Should a protest occur, it is the policy of the AGENCY to handle such a protest in an expeditious, cost effective and procedurally simple manner that allows for a proper and thorough evaluation of the basis of the protest in accordance with Californian law.

32.2 Definitions

- A. Bid Protest - A protest of a procurement decision made strictly pursuant to this procedure.
- B. Eligible Protestor - An Eligible Protestor is one who would be immediately eligible for contract award if all of its arguments are upheld. For example, in a competitive bid situation, the third lowest bidder is an Eligible Protestor only if its Bid Protest would, if upheld, cause the rejection of the low bidder and the second low bidder.
- C. Interested Party - Any Bidder whom a protestor seeks to exclude from contract award consideration in order for it to be considered for award is an Interested Party.

- D. Hearing Officer - The Chief Engineer of the AGENCY is the designated Hearing Officer to review bid protests pursuant to this procedure for Chief Engineer awarded contracts.
- E. SGVCOG Capital Projects & Construction Committee. The Committee is designated to review bid protests pursuant to this procedure for Committee awarded contracts.

32.3 Filing of Protests

- A. Bid Protests based on the bid documents must be delivered to the AGENCY's Contracts Manager **no later** than the close of business on the tenth (10th) calendar day before the bid opening date. All Bid Protests based on bid documents that are not timely raised are waived. This deadline is absolute and is not subject to any other event, date or deadline.
- B. Bid Protests based on bids or the award process must be delivered to the AGENCY's Contracts Manager **no later** than the close of the AGENCY's business on the fifth (5th) business day after notice of intent to award is issued by the AGENCY. This deadline is absolute and is not subject to any other event, date or deadline.
- C. All Bid Protests shall be in writing. A protestor must submit and deliver four (4) copies of any Bid Protest to the AGENCY at 4900 Rivergrade Road, Suite A120, Irwindale, CA 91706, Attention: Contracts Manager. In addition, a protestor must deliver one (1) copy of the Bid Protest to each individual Interested Party by overnight delivery. Timeliness of a submission to the AGENCY will be solely determined based on the AGENCY's time stamp clock, which will be used to confirm receipt of a Bid or Bid Protest. The risk of timely delivery of a Bid Protest by mail or other delivery service is on the protestor. The protestor must maintain a proof of service, showing service of the Bid Protest to the AGENCY and the Interested Parties. The Bid Protest deadline will be strictly enforced.
- D. Bid Protests must contain the following information:
 - 1. Name, address, telephone, fax and e-mail address of the protestor;
 - 2. Procurement identifier (e.g. RFP/IFB number);
 - 3. The name of all Interested Parties;
 - 4. A clear statement of the legal and factual basis for the Bid Protest, with specific references to the relevant language from the bid documents or relevant statutes and codes. Each argument must be identified specifically and argued in separate sections of the Bid Protest. A protestor must include copies of relevant materials, including any cases cited which are not issued by California courts. Any argument not raised in the Bid Protest will be deemed waived.
 - 5. A clear statement of the relief requested and the statutory or case law basis for such relief.

6. Information establishing that the protestor is an Eligible Protestor as defined above.
7. All protests must be verified and signed under penalty of perjury by an officer or authorized partner of the protestor.

32.4 Review of Protests

A. Chief Engineer or Authorized Designee Assigned by Committee or SGVCOG Board Awarded Contracts (Low Bid Amount up to \$250,000):

1. All Bid Protests will be submitted to the AGENCY's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in Section 32 .3(D) above.
2. Upon determination that a Bid Protest is valid, the Contracts Manager will submit the Bid Protest to the Chief Engineer or Designee, who serves as the AGENCY's Hearing Officer. The Hearing Officer shall request in writing that staff and all Interested Parties respond to the Bid Protest and shall set forth the time in which they have to respond.
3. Upon consideration of the Bid Protest and any opposition(s), and any specific requests for a hearing, the Hearing Officer will determine, at his or her sole discretion, whether a hearing is warranted.
4. If there is no reasonable basis for the Bid Protest in law or fact on the face of the Bid Protest, the Hearing Officer, may, in his or her own discretion, dismiss the Bid Protest without receipt of oppositions and without a hearing. The Hearing Officer may make a final decision on a Bid Protest without the benefit of a hearing. All decisions of the Hearing Officer will be in writing and will explain the reasons for any action that is taken.
5. If there is a hearing, the Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the requesting party must permit any person the right to order and pay for a copy of the resulting transcript.
6. The Hearing Officer shall issue his or her decision as soon as reasonably possible, but in no event more than ten (10) calendar days after receipt of oppositions, unless there is a hearing. In the event of a hearing, the Hearing Officer's decision shall be issued not later than ten (10) calendar days after the hearing. The Hearing Officer can accept information in both oral and written form at the hearing. At the hearing, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation, if there is a hearing. The Hearing Officer may ask questions of staff, the Eligible Protestor and any Interested Parties.
7. The Hearing Officer shall issue his or her decision in writing to the Eligible Protestor, and all Interested Parties. The Hearing Officer shall set forth the reasons for the decision in this writing. However, the Hearing Officer is

not required to issue detailed findings of fact or law. The decision will be served by fax or e-mail, and by certified mail.

8. The Hearing Officer's decision shall be final and there shall be no further administrative recourse.

B. Committee Awarded Contracts (Bid Amounts over \$250,000):

1. All Bid Protests will be submitted to the AGENCY's Contracts Manager. The Contracts Manager will conduct an administrative review to determine if the Bid Protest is timely and meets the criteria for a valid Bid Protest as identified in Section 32.3 (D) above.
2. Upon determination that a Bid Protest is valid the Chief Engineer or Designee will, as soon as reasonably possible, schedule a hearing of the Bid Protest for a regular or special Committee meeting.
3. The Chief Engineer or Designee will include the Bid Protest, along with staff's written evaluation of the Bid Protest, and information received concerning the Bid Protest from any Interested Parties in the agenda materials for the meeting.
4. The Contracts Manager shall notify the Eligible Protestor and all Interested Parties in writing of the scheduled date of the hearing before the Committee. The Eligible Protestor or an Interested Party can arrange for the attendance of a court reporter. The requesting party shall be solely responsible for the cost of a court reporter. However, the requesting party must permit any person the right to order and pay for a copy of the resulting transcript.
5. At the Committee meeting, the Eligible Protestor will be provided the opportunity to make an oral presentation based on the information previously submitted by the Eligible Protestor in writing. Staff will present its response to the Bid Protest. Interested Parties will also be afforded the opportunity to make an oral presentation. The Committee may ask questions of staff, the Eligible Protestor and any Interested Parties. At the conclusion of the hearing, the Committee shall make a determination regarding the Bid Protest. The decision of the Committee is final and there shall be no further administrative recourse.

32.5 Miscellaneous

- A. Regardless of whether a Bid Protest has been made, the AGENCY may proceed with issuance of a contract if it determines that doing so is in the best interests of the AGENCY. That determination will be made by the AGENCY in its sole discretion.
- B. Each party or bidder for AGENCY contracts is deemed to have specifically waived its rights to challenge the AGENCY's actions in court, until and unless it has first exhausted its rights and obligations pursuant to this procedure.
- C. If the AGENCY prevails in any action regarding a Bid Protest in any judicial venue, the AGENCY reserves the right to seek reimbursement of its administrative costs, legal fees and legal costs.

33. JUDICIAL PROCEEDING

In the event that any Bidder elects to contest, in a judicial proceeding, any decision by the AGENCY to award a contract, or to deem a Bidder non-responsible or non-responsive, the prevailing party will be entitled to its reasonable attorney fees, costs and expert witness costs. A judicial proceeding includes, but is not limited to, a petition for writ of mandate or mandamus, a motion or petition for a temporary restraining order or preliminary injunction or a request for declaratory relief. The AGENCY will be deemed to have prevailed if it is not required by the court to reverse its decision. This requirement with regard to prevailing party relates solely to the procurement process and is not part of the contract.

34. INQUIRIES AND CLARIFICATIONS

This document is for informational purposes and shall not relieve the Bidder of the requirements to fully familiarize itself with all the factors affecting the Project and his/her Bid. The Bidder is advised that all inquiries and clarifications about the Bid Documents, Drawings, Specifications, etc., shall be submitted to the AGENCY in writing **no later than DATE** online via the AGENCY's online bidding system (www.theaceproject.org/contract.php). No other questions will be received after the deadline. Only written inquiries transmitted online will be considered. The AGENCY will determine the extent of any response in its complete and sole discretion. All questions and answers will then be posted on the AGENCY's online bidding system page. Verbal communication by either party with regard to this matter is invalid.

35. DOCUMENTS

All documents included in Bid Proposals shall become the exclusive property of the AGENCY upon submittal. All Bid Proposals and other documents submitted in response to the Notice Inviting Sealed Bids (Part A) become a matter of public record, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1). However, a Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid Proposal non-responsive and rejected. The AGENCY is not liable or responsible for the disclosure of such records, including those exempt from disclosure, if disclosure is required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the AGENCY or its officers, employees or agents.

36. ASSIGNMENT

In entering into a public works contract, or a subcontract, to supply goods, services, or materials pursuant to a public works contract, the Contractor, or subcontractor, offers and agrees to assign to the awarding body all rights, title and interest in, and to, all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or

materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

37. BID RIGGING

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

38. DOCUMENT SUBMITTAL CHECKLISTS

A copy of the below listed document submittal checklists are shown in the following pages:

- 1) Bid Document Submittal Checklist
- 2) Contract Document Submittal Checklist

PART B - INSTRUCTIONS TO BIDDERS [Continuation]

The following documents are required to be completed and submitted by the Bidders and the Contractor at the time specified by a checkmark “Ü” opposite each title. If no column is marked, documents will not be required.

(1) BID DOCUMENT SUBMITTAL CHECKLIST:		
With Bid Proposals (All Bidders)	With Contract Agreement (Awardee)	Title of Documents
Ü		C.01 Brief Description
Ü		C.02 Bid Schedule
Ü		C.03 Acknowledgment of Addenda & Bid Proposal Signature Page
Ü		C.04 Noncollusion Affidavit Certification
Ü		C.05 Prevailing Wage Certification
Ü		C.06 Debarment and Suspension Certification
Ü		C.07 Certification of Non-Discrimination and Affirmative Action
Ü		C.08 Undocumented Aliens Employment Certification
Ü		C.09 Whistleblower Requirements Certification
Ü		C.10 Equal Employment Opportunity Certification
Ü		C.11 Non-lobbying Certification for Federal-Aid Contracts
Ü		C.12 Disclosure of Lobbying Activities
Ü		C.13 Instructions for Completion of Disclosure of Lobbying Activities
Ü		C.14 2-1.015 – Federal Lobbying Restrictions
Ü		C.15 Information Required of Bidder
Ü		C.16 Listing of Subcontractors
Ü		C.17 Listing of Public Work Experience
Ü		C.18 Listing of Suppliers and Vendors
Ü		C.19 Listing of Contract Defaults
Ü		C.20 Listing of Litigation Involvement
Ü*		C.21 Bidders List [<i>*Optional with bid submission, however, it must be completed and submitted within 24 hours upon the Agency’s written request. Refer to Part E, FR-1 DBE Provisions for instructions.</i>]
Ü*		C.22 Construction Contract DBE Commitment, including written confirmations (i.e. quotes, commitment letters detailing associated costs, etc.) are required from each proposed DBE, stating that it is participating in the contract. [<i>*Optional with bid submission, however, it must be completed and submitted within 24 hours upon the Agency’s written request. Refer to Part E, FR-1 DBE Provisions for instructions.</i>]

(1) BID DOCUMENT SUBMITTAL CHECKLIST: [continued]

With Bid Proposals (All Bidders)	With Contract Agreement (Awardee)	Title of Documents
ü**		C.23 DBE Information – Good Faith Efforts [**Optional with bid submission, however, it must be completed and submitted within 48 hours upon the Agency’s written request. Refer to Part E, FR-1 DBE Provisions for instructions.]
ü		C.24 Bidder’s Bond to Accompany Bid Proposal or [Cash, Certified or Cashier's Check] for not less than ten percent (10%) of the Total Bid Amount
BIDDER IS NOT REQUIRED TO SUBMIT. HOWEVER, IN ORDER TO BE ELIGIBLE FOR ESCALATION, BIDDER IS REQUIRED TO SUBMIT.		Sealed envelope containing material Bid Unit Prices, in accordance with Part B – INSTRUCTIONS TO BIDDERS, paragraph entitled ESCALATION, and PART E – GENERAL PROVISIONS, Subsection 6-7.6.

.....

(2) CONTRACT DOCUMENT SUBMITTAL CHECKLIST:

With Bid Proposals (All Bidders)	With Contract Agreement (Awardee)	Title of Documents
	ü	Contract Agreement in its entirety as follows:
	ü	Agreement & Signature Page
	ü	Instructions for Execution of Instruments
	ü	Performance Bond (100% of Total Bid Amount)
	ü	Material and Labor Bond (Payment Bond) (100% of Total Bid Amount)
	ü	“SAMPLE” Contractor Certificate of Insurance <i>Note: Contractor must submit Certificate(s) of Insurance along with the associated endorsement documents in accordance with Section 7-4, Insurance of General Provisions (Part E).</i>
	ü	Buy America Certification
	ü	FHWA Form 1273
	ü	Exhibit “A”, List of Contract Documents

End of Part B - Instructions to Bidders

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

APPENDIX D

SAMPLE PRO FORMA AGREEMENT

CONSTRUCTION MANAGEMENT SERVICES

FOR

AGREEMENT NO.
AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR

BY AND BETWEEN
SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
AND

_____, 2020

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
 AGREEMENT FOR
 CONSTRUCTION MANAGEMENT SERVICES
 FOR**

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SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

**AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR**

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AGREEMENT NO. 20-08

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
FOR**

BY AND BETWEEN

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
AND**

This AGREEMENT FOR **CONSTRUCTION MANAGEMENT SERVICES FOR** _____ BY AND BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND _____ (the "AGREEMENT"), is made and entered into effective as of the ____ day of _____, 2020 by and between the San Gabriel Valley Council of Governments, a California Joint Powers Authority (the "SGVCOG") and _____ (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 upon completion and acceptance of the **Construction Management Services for** _____. 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. 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 (10th) 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 15th 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 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 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:

(Contact Name)
(Position)
(Company Name)
(Company Address)
(Telephone:)
(Facsimile:)

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 _____

By _____

Title _____

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

By _____

Title _____

APPROVED AS TO FORM:

General Counsel to SAN GABRIEL VALLEY COUNCIL
OF GOVERNMENTS

APPENDIX E - SAMPLE EVALUATION CRITERIA

PROPOSAL EVALUATION CRITERIA

PROPOSAL EVALUATION CRITERIA	POINTS
<p>1. <u>Qualification of the Consultant</u></p> <ul style="list-style-type: none"> · Financial strength and stability of the firm; strength, stability, experience and technical competence of subcontractors. · Technical experience in performing similar studies · Demonstrated history of working together and cooperation amongst team members, including proposed subconsultants. · Demonstrated record of meeting budget and schedule. 	25 Points
<p>2. <u>Staffing and Project Organization</u></p> <ul style="list-style-type: none"> · Qualifications of project team, including “key personnel” especially the Project Manager and Task Leaders, including their relevant past experience in projects of a similar nature. · Key personnel’s level of involvement in performing related work; adequacy of labor commitment and availability; references from past projects; and logic of project organization. 	40 Points
<p>3. <u>Work Approach</u></p> <ul style="list-style-type: none"> · Depth of how Proposer understands the Project. · Thoughtfulness of approach and clear understanding of what is required to implement SB 743 · Identification of issues/problems likely to be encountered and solutions. · Innovative approaches/enhancements to similar projects. 	35 Points
TOTAL POINTS	100 Points

Appendix F

REQUEST FOR PROPOSALS



SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS REQUEST FOR PROPOSALS NO. 20-XX FOR SAN GABRIEL VALLEY TRANSIT STUDY

PROJECT SCHEDULE	
November 2, 2020	Request for Proposals (RFP) Issued
	Non-Mandatory Pre-Proposal Conference
	Deadline for Written Questions
	Proposals Due
	Notice of Intent to Award
	Anticipated Contract Commencement

RFP NO. 20-xx
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APPENDIX A – FACT SHEET

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SECTION I. INSTRUCTIONS TO PROPOSERS

1. INTRODUCTION/PURPOSE

2. BACKGROUND AND PROJECT DESCRIPTION

3. SCHEDULE OF WORK

4. REQUIREMENTS FOR PROPOSER SERVICES

Please refer to Appendix B, Scope of Work.

5. RFP TIMELINES

It is the goal of SGVCOG to select the Proposer by **DATE**. In support of such a selection effort, the following schedule of events has been prepared:

RFP EVENT	DATE/TIME*
Issuance of Request for Proposals	
Deadline for submission of written questions to SGVCOG	
Submittal of Proposals to SGVCOG	
Notification of Intent to Award	

* The above dates are subject to change depending on the number of proposals received. SGVCOG reserves the right to alter the dates shown above by written notice.

6. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve SGVCOG's objectives. Proposer is prepared to comply with all statutes and regulations applicable to the work to be performed.

7. ADDENDA

SGVCOG reserves the right to revise the RFP documents. Any changes to the requirements of this RFP will be made by written addendum. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. Addenda will be posted on SGVCOG's online bidding system, Planet Bids, and will be available for downloading. It is the responsibility of Proposers and other interested parties to check the online bidding system regularly during the solicitation period for updated information.

SGVCOG will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals. Failure to acknowledge receipt of Addenda may cause the proposal to be deemed non-responsive to this RFP, and be rejected.

8. SGVCOG CONTACT

All communication and/or contact with SGVCOG staff regarding this RFP are to be directed to the following:

**Contracts Manager
San Gabriel Valley Council of Governments
Alameda Corridor-East Project
4900 Rivergrade Road, Suite A120
Irwindale, California 91706
Email:**

Commencing on the date of the issuance of this RFP, and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this RFP with and SGVCOG staff; member of the Technical Evaluation Committee (TEC) for this RFP; or any contractor on Proposer involved with the procurement, other than the Contracts Manager named above, or unless expressly permitted by this RFP. Contact includes telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of SGVCOG.

9. QUESTIONS AND REQUESTS FOR CLARIFICATIONS

A. Examination of Documents

Proposers and other interested Proposers are encouraged to promptly notify SGVCOG of any apparent errors or inconsistencies in the RFP, inclusive of all attachments, exhibits and appendices. Should a Proposer require clarifications to this RFP, the Proposer shall notify SGVCOG in writing in accordance with Subsection 10.B below. Should it be found that the point in question is not clearly and fully set forth in the RFP, SGVCOG will issue a written addendum clarifying the matter, which will be posted on SGVCOG's online bidding system, Planet Bids.

B. Submitting Requests

All questions regarding this RFP must be submitted in writing via SGVCOG's online bidding system, PlanetBids on **DATE** at or **before 5:00 pm**. No other questions will be received after the deadline. Only written inquiries transmitted online will be considered. All questions and answers, including questions that

could not be specifically answered at the Pre-Proposal Conference event will then be posted on SGVCOG's online bidding system, Planet Bids.

Under no circumstances should prospective Proposers, discuss with, or inquire of any SGVCOG Proposers, employees (except for SGVCOG contact as identified in Section 8), city and county employees or elected officials including SGVCOG Governing Board and Committee on any matter relating to this solicitation.

10. SUBMISSION OF PROPOSALS

A. Date and Time

Proposals must be submitted to and received in SGVCOG's office on **DATE on or before 11:00 am**. Proposals received after the above-specified date and time will be returned to Proposer(s) unopened.

B. Address

Proposals shall be delivered to the following address:

**San Gabriel Valley Council of Governments
Alameda Corridor-East Project
4900 Rivergrade Road, Suite A120
Irwindale, California 91706
Attention:**

Proposers delivering proposals in person should be aware that they may have to check in with security (Gate 3 – Visitor) on Rivergrade Road, and should allow an additional fifteen (15) minutes for entry & parking into the facility.

C. Identification of Proposals

Proposer shall submit one (1) original (unbound) and five (5) copies (bounded) and one (1) copy on a flash drive in a sealed envelope/package, addressed as shown above, bearing the Proposer's name and address clearly marked as follows:

**“RFP NO. 20-xx:
THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS
DO NOT OPEN WITH REGULAR MAIL”**

D. Acceptance of Proposals

- (1) SGVCOG reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in any proposals.
- (2) SGVCOG reserves the right to amend, withdraw or cancel this RFP at any time without prior notice and it makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- (3) SGVCOG reserves the right at its sole discretion to modify this RFP should the SGVCOG deem that it is in the best interests to do so.
- (4) Proposals received by SGVCOG are public information and will be made available to any person upon request, after the entire proposal evaluation process has been completed.
- (5) Submitted proposals are not to be copyrighted.

11. PRE-CONTRACTUAL EXPENSES

- A. SGVCOG shall not, under any circumstances, be liable for any pre-contractual expenses incurred by any Proposer in preparation of its proposals.
- B. Pre-contractual expenses are defined as expenses incurred by the Proposer in:
- (1) Preparing its proposal and related information in response to this RFP;
 - (2) Submitting that proposal to SGVCOG;
 - (3) Negotiating with SGVCOG any matter related to this proposal;
 - (4) Cost associated with interviews, meetings, travel or presentations; and
 - (5) Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement, and a formal notice to proceed.

12. JOINT PROPOSALS

Where two or more Proposers desire to submit a single response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. SGVCOG intends to contract with a single Proposer and not with multiple Proposers doing business as a joint venture.

13. PROHIBITION

The Proposer awarded the contract for preliminary engineering and final design services based on a response to this RFP will be ineligible to perform as a prime contractor, subcontractor (at any tier) or joint venture partner associated with the construction management services and construction contracts on this project.

The Proposer's subcontractors (at any tier) and any Proposer affiliated with the Proposer or subcontractors on a contract for preliminary engineering and final design services with subcontract revenue in excess of twenty-five thousand dollars (\$25,000) will be ineligible to perform as a prime contractor, subcontractor (at any tier) or joint venture partner associated with construction management services and construction contracts on this project. Any affiliated Proposer is one which is subject to the control of the same persons through joint ownerships, or otherwise.

14. CONFLICT OF INTEREST

Proposer agrees to avoid organizational conflicts of interest. An organizational conflict of interest mean that due to other activities, relationships or contracts, the Proposer is unable, or potentially unable to render impartial assistance or advise SGVCOG; Proposer's objectivity in performing the work identified in the specifications is, or might be, otherwise impaired; or the Proposer has an unfair competitive advantage. Proposer is obligated to fully disclose to SGVCOG in writing of any Conflict of Interest issues as soon as they are known to the Proposer. All disclosures must be disclosed at the time of Proposal submittal.

Proposer agrees to comply with SGVCOG's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Proposer agrees to include these requirements in all of its subcontracts.

15. SMALL BUSINESS ENTERPRISE PROGRAM PARTICIPATION

SGVCOG is the recipient of non-federal funds from state and local funding resources. As a condition of assistance and in compliance with Prohibition against Discrimination or Preferential Treatment by the State of California (Proposition 209), SGVCOG has implemented a race and gender neutral small business program.

This program sets forth the policies and procedures to be implemented by SGVCOG to ensure that all small businesses shall have the maximum opportunity to participate in all SGVCOG non-federally funded contracts.

SGVCOG has established a Small Business Enterprise (SBE) goal of eight percent (8%) for this project.

Consultant is required to demonstrate compliance with the established goal in accordance with the requirements and materials contained in Appendices D and E of this RFP. Consultants are to be fully informed with respect to the SBE requirements delineated in Appendix D, Small Business Enterprise Program Participation, of this RFP and all applicable regulations.

16. PERIOD OF PERFORMANCE

Performance under a contract awarded pursuant to this RFP is estimated to commence in accordance with Section 3 "SCHEDULE OF WORK".

17. CONTRACT TYPE AND COMPENSATION

- A.** The Proposer's compensation for the work as identified in Appendix B, Scope of Work, will be on a Lump Sum basis.
- B.** The Task Order issued under Lump Sum should include compensation for all work and deliverables, including travel, equipment and all project-related costs. Even though the method of payment to Proposer will be on a Lump Sum basis, a detailed labor cost breakdown shall be provided identifying hourly rates for each professional and administrative staff person, who will be committed to this Project (prime and subconsultants), including fringe and overhead costs. This information will be used to determine the reasonableness of Proposer's estimate and for pre/post-award audit purposes when appropriate.

18. TAXES

The Proposer's work activities are subject to applicable State and Local Taxes. However, SGVCOG is exempt from the payment of Federal Excise and Transportation Taxes.

19. GENERAL TERMS AND CONDITIONS

- (1) Appendix C contains a copy of the anticipated professional services agreement including the general terms and conditions of an agreement to provide Services for this Project.
- B. SGVCOG reserves the right to modify the professional services agreement to the extent that it deems necessary either before or during any negotiations with the selected Proposer.
- C. The Proposer is expected to review the general terms and conditions and acknowledge their acceptance of Appendix C in the Proposal Cover letter (or their objections to specific parts of Appendix C) as a mechanism to expedite the contract negotiation process.
- D. The intent of SGVCOG is to negotiate and enter into agreement with a Proposer for the identified project as soon as possible after the SGVCOG's Capital Projects and Construction Committee ("Construction Committee") has approved the recommendations of the selection committee as later described in **SECTION II "EVALUATION CRITERIA"** below.
- E. To accommodate a possible delay in reaching a contract agreement, all parts of the Proposal and especially the offer of key personnel as described in the RFP shall be valid for one hundred eighty (180) days after submittal of the Proposal.

20. KEY PERSONNEL

It is imperative that the key personnel providing the services have the background, experience, and qualifications to prepare a complete the Project. SGVCOG reserves the right to approve all key personnel individually for work on the contract. The Proposer must identify all proposed key personnel.

All key personnel shall be named in the SOQ. After a contract is signed, the Proposer may not replace key personnel without written agreement of SGVCOG. SGVCOG must approve replacement staff before a substitute person is assigned to the Project. SGVCOG reserves the right to request that the Proposer replace a staff person assigned to the contract should SGVCOG consider such a replacement to be for the good of the project. Replacement staff would be subject to SGVCOG written approval prior to assignment to the team.

21. OFFICE LOCATION/TRAVEL

It is not the intent of SGVCOG to provide office space for Proposer's personnel at the SGVCOG office. SGVCOG does not intend to reimburse the Proposer for personnel relocation under a contract on this solicitation. Specialty staff identified in the SOQ that are needed for specific assignments on the contract may, with SGVCOG written approval in advance, be eligible for reimbursement for all reasonable, normal costs associated with travel outside their home office.

22. EVALUATION PROCEDURE

The SGVCOG will appoint a selection panel to evaluate the proposals and cost proposals. Each member of the selection panel will evaluate each proposal using a 100-point scale and the evaluation criteria to calculate a "Statement of Qualification score" for each consultant. Each member will then rank the consultants by their respective proposal for each firm. The selection panel will convene to discuss their rankings, and to select the top-ranked consultant teams based upon the rankings (not scores) of the proposing firms.

23. AWARD

At the conclusion of this process, SGVCOG staff will submit the recommendation of the evaluation committee to the SGVCOG's Construction Committee for approval and award of contract. SGVCOG reserves the right to award this contract to one (1) Proposer, and to award without discussions.

24. PROTEST PROCEDURES

SGVCOG has prepared written protest procedures that are applicable to its solicitations and a copy of the procedures may be obtained by contacting the SGVCOG Contracts Manager identified in this RFP.

25. NOTIFICATION OF AWARD AND DEBRIEFING

Proposers who submit a proposal in response to this RFP shall be notified via PlanetBids of the contract award. Such notification shall be made no later than the close of business the fifth (5th) business day after the notice of intent to award is issued by SGVCOG.

Proposers who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Proposers, who wish to be debriefed, must request the debriefing in writing or electronic mail. Debriefings will not be scheduled until the SGVCOG Construction and Capital Projects Committee has acted on the recommendation of the selection panel.

END INSTRUCTIONS TO PROPOSERS

SECTION II. EVALUATION CRITERIA

PROPOSAL EVALUATION CRITERIA

PROPOSAL EVALUATION CRITERIA	POINTS
<p>1. <u>Qualification of the Consultant</u></p> <ul style="list-style-type: none"> · Financial strength and stability of the firm; strength, stability, experience and technical competence of subcontractors. · Technical experience in performing similar studies · Demonstrated history of working together and cooperation amongst team members, including proposed subconsultants. · Demonstrated record of meeting budget and schedule. 	25 Points
<p>2. <u>Staffing and Project Organization</u></p> <ul style="list-style-type: none"> · Qualifications of project team, including “key personnel” especially the Project Manager and Task Leaders, including their relevant past experience in projects of a similar nature. · Key personnel’s level of involvement in performing related work; adequacy of labor commitment and availability; references from past projects; and logic of project organization. 	40 Points
<p>3. <u>Work Approach</u></p> <ul style="list-style-type: none"> · Depth of how Proposer understands the Project. · Thoughtfulness of approach and clear understanding of what is required to implement SB 743 · Identification of issues/problems likely to be encountered and solutions. · Innovative approaches/enhancements to similar projects. 	35 Points
TOTAL POINTS	100 Points

INTERVIEW EVALUATION CRITERIA

SECTION III. SUBMITTAL REQUIREMENTS

PROPOSAL CONTENT

1. PROPOSAL FORMAT AND CONTENT

A. Format

Proposals should be typed with a standard 12-point font, double-spaced and submitted on 8 1/2" x 11" size paper, one-inch margins, and using a single method of fastening. Charts and schedules may be included in 11"x17" format. Graphics font shall be a minimum of 8 point. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed twenty (20) pages in length, excluding any appendices, dividers used to separate sections, cover letters, resumes, or forms.

Pages from one section may be substituted in another section. Any pages over the total (20), excluding appendices, will not be included in the scoring. Dividers used to separate sections will not be counted.

B. Cover Letter

Cover letter shall be limited to two (2) pages maximum and shall be addressed to _____, Contracts Manager, and at a minimum, must contain the following:

- (1) Identification of person that has authority to negotiate with SGVCOG and to execute on behalf of the Proposer any agreement that may result from such negotiations. Identification shall include SBE status, legal name of company, corporate address and telephone number. Include name, title, address, telephone number and email address of the individual who will be responsible for any negotiations with SGVCOG and any contact person for the Proposer during the period of proposal evaluation.
- (2) Acknowledgement that The Proposer is obligated by any and all RFP addenda.
- (3) A statement to the effect that the proposal submitted shall remain valid for a period of not less than one hundred eighty (180) days from the date of submittal.

- (4) A statement to the effect that the Proposer is committed to meeting or exceeding the established SBE goal.
- (5) Acknowledge acceptance of the terms and conditions contained in Appendix C – Sample Services Agreement or state objections to specific parts of Appendix C.
- (6) Signature of a person authorized to bind The Proposer to the terms of the RFP.
- (7) Signed statement attesting that all information submitted with the proposal is true and correct.

C. Technical Proposal

Qualifications, Related Experience and References of the Proposer

This section of the SOQ should explain the ability of Proposer to satisfactorily perform the required work as a result of: experience in performing work of a similar nature to that identified in the RFP; demonstrated knowledge of the San Gabriel Valley, staffing capability and proven record of meeting schedules on similar type projects.

In this section, the Proposer should:

- (1) Provide a profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.
- (2) Provide a detailed description of the firm's financial condition, including any bankruptcy, pending litigation, outstanding claims in excess of twenty-five thousand (\$25,000) for or against the firm; planned office closures, impending mergers and acquisitions.
- (3) Describe the firm's experience in performing similar studies.
- (4) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Proposer may also supply references from other work not cited in this section as related experience.

Proposed Staffing and Project Organization

This section of the Proposal should establish the method that will be used by the proposer to organize and provide the services and manage the project. In addition, this section should also identify key personnel to be assigned and their qualifications and experience; availability and current work load.

Proposer should:

- (1) Provide education, experience and applicable professional credentials of project staff.
- (2) Include brief resumes (not more than two [2] pages each) for key staff.
- (3) Identify key personnel proposed to perform the work in the specified tasks. Include the person's name, current location, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the Proposer.
- (4) Include a project organization chart that clearly delineates communication/reporting relationships among the project staff, including subconsultants. The organization chart must include the name, title and Proposer affiliation for all persons listed.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the design services and an acknowledgement that no person designated as key personnel shall be removed or replaced without the prior written concurrence of SGVCOG.

Work Approach

Proposer shall provide a narrative that addresses the Scope of Work for this Project that demonstrates that Proposer understands SGVCOG's needs and requirements.

Proposer should:

- (1) Describe the Proposer's general approach for completing the activities specified in the Scope of Work. The work plan shall be of sufficient detail to demonstrate the Proposer's ability to accomplish project objectives and that Proposer understands SGVCOG goals and objectives.
- (2) Outline the activities that would be undertaken in completing the Scope of Work and specify who in the firm would perform them.
- (3) Identify methods that Proposer will use to ensure quality control as well as budget and schedule control for the project.

- (4) Identify any special issues or problems that are likely to be encountered in a project of this type and how the Proposer would propose to address them.
- (5) Proposer is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate for the objectives.

2. COST AND PRICE PROPOSAL (REFER TO APPENDIX E OF THIS RFP)

Proposer are asked to submit an SOQ and a cost proposal.

3. PROPOSAL FORMS (REFER TO APPENDIX E OF THIS RFP)

This section shall include the Forms contained in Appendix E to this RFP. Consultant shall completely fill out and sign, where applicable, the forms contained in Appendix E. If a form is not applicable, Proposer shall submit the form, clearly marked as "Not Applicable". The forms shall not be counted towards the proposal page limit. These forms should be submitted with the SOQ.

REPORT

DATE: October 5, 2020

TO: Executive Committee
Governing Board

FROM: Marisa Creter, Executive Director

RE: **EMPLOYMENT CONTRACT WITH MARK CHRISTOFFELS FOR SPECIAL PROJECTS MANAGER**

RECOMMENDED ACTION

Adopt Resolution 20-19 for a 180-Day Wait Period Exception and approve Employment Contract with Mark Christoffels for Special Projects Manager.

BACKGROUND

The current Director of Capital Projects/Chief Engineer, Mark Christoffels, is set to retire on December 30, 2020. Recruitment for the next Director of Capital Projects commenced in late, with a deadline for potential applicants to submit applications on October 5th. While recruitment is expected to be concluded by the end of the year, given the magnitude of responsibilities of the current Chief Engineer, staff recommends hiring Mark Christoffels as a part time retired annuitant, to provide comprehensive training to the new staff and help transition his responsibilities as Chief Engineer.

Under CalPERS guidelines, Mark may be hired as “extra help” to provide training and transition responsibilities, but his title and pay rate must be in a current, Board adopted posted salary schedule. Therefore, staff recommends hiring Mark Christoffels as Special Projects Manager. In his current position, as Chief Engineer he currently provides oversight of all elements of the SGVCOG’s capital projects program that includes the three active construction projects, three in design nearly ready to begin construction, in addition to other responsibilities, so having his expertise and adequate time to provide training is crucial to the continued success of the capital projects program.

Given the complexity of the responsibilities of this position, staff finds it necessary that Mark Christoffels be provided an opportunity to fully train his replacement. In addition to training the new Director of Capital Projects, some other responsibilities will include:

- Complete pending right of way matters;
- Complete pending legal matters and/or represent the agency on any scheduled court proceedings;
- Complete project close-outs currently in process.
- Train staff on grant funding policies and procedures, and required grant funding reporting and;
- Provide guidance and assistance to other staff as part of this transition.

REPORT

Government Code Section 7522.56, requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is December 30, 2020. An exception to this 180-day wait period applies if the following conditions are met:

- The retiree has not received any retirement-related incentive;
- The retiree has not and will not receive a Golden Handshake or any other retirement-related incentive; and
- The presence of an active, publicly posted recruitment for a permanent replacement.

This appointment will start January 1, 2021 and will be limited to 32 hours per two-week pay period. The funding for this position is included in the existing ACE and SGVCOG budget. The appointment will be through June 30, 2021. Attachment A provides a copy of the draft resolution, which outlines the exemption to the 180-day waiting period. In addition, see Attachment B for a draft employment agreement. This agreement is being sent to CalPERS for review to ensure compliance with the 180-day waiting period exemption. Additionally, to be in compliance with this waiting period requires an active, publicly posted recruitment for a permanent replacement. This job recruitment is posted on both the ACE and SGVCOG websites.

Prepared by:



Katie Ward
Senior Management Analyst

Approved by:



Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Resolution 20-19

Attachment B – Draft Employment Agreement

Attachment A

RESOLUTION NO. 20-19

RESOLUTION FOR 180-DAY WAIT PERIOD EXCEPTION AS SET FORTH IN GOVERNMENT CODE SECTIONS 7522.56 AND 21221(h)

WHEREAS, in compliance with Government Code section 7522.56 the San Gabriel Valley Council of Governments must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Mark Christoffels, CalPERS ID 7030079678 retires from the San Gabriel Valley Council of Governments in the position of Director of Capital Projects/Chief Engineer, effective December 30, 2020 and

WHEREAS, Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is December 30, 2020 without this certification resolution; and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the San Gabriel Valley Council of Governments and Mark Christoffels certify that Mark Christoffels has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the San Gabriel Valley Council of Governments hereby appoints Mark Christoffels as an interim appointment retired annuitant to the position of Special Projects Manager for the San Gabriel Valley Council of Governments under Government Code section 21221(h), effective January 1, 2021; and

WHEREAS, an appointment under Government Code Section 21221(h) requires and active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the current status of this recruitment is active, with the position publicly posted on the San Gabriel Valley Council of Governments website, as well as the website for the ACE Project; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on June 30, 2021; and

WHEREAS, the entire employment agreement, contract or appointment document between Mark Christoffels and the San Gabriel Valley Council of Governments has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

Attachment A

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for this position is \$18,046 monthly and the hourly equivalent is \$104.11, and the minimum base salary for this position is \$12,690 monthly and the hourly equivalent is \$73.21; and

WHEREAS, the hourly rate paid to Mark Christoffels will be at the hourly rate of \$100.00; and

WHEREAS, Mark Christoffels has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, BE IT RESOLVED THAT the San Gabriel Valley Council of Governments hereby certifies the nature of the employment of Mark Christoffels as described herein and detailed in the attached employment agreement and that this appointment is necessary to train the Director of Capital Projects for the San Gabriel Valley Council of Governments and fully transition his current responsibilities.

PASSED AND ADOPTED by the Governing Board of San Gabriel Valley Council of Governments, County of Los Angeles, in the County of Los Angeles, State of California, on the 15 day of October, 2020.

San Gabriel Valley Council of Governments

Margaret Clark, President

Attachment A

Attest:

I, Marisa Creter, Executive Director and Secretary of the Governing Board of the San Gabriel Valley Council of Governments, do hereby certify that Resolution 20-19 was adopted at a regular meeting of the Governing Board held on the 15 day of October 2020 by the following vote:

AYES:	
NOES:	
ABSTAIN:	
ABSENT:	

Marisa Creter, Secretary

Attachment B

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

AGREEMENT FOR EXTRA HELP LIMITED DURATION EMPLOYMENT

This Agreement for Extra Help Employment (“Agreement”) is effective as of the 1st day of January, 2021 (the “Effective Date”), by and between the San Gabriel Valley Council of Governments (hereinafter referred to as the “COG”) and Mark Christoffels (hereinafter referred to as “Christoffels”) for Mark Christoffels to assist on an extra help basis as Special Projects Manager for Capital Projects by training, transitioning of responsibilities and provide support for a permanent Director of Capital Project. The COG and Christoffels are sometimes individually referred to in this Agreement as “Party” and collectively as “Parties.” The Parties hereby mutually agree and promise as follows:

Recitals

- A.** The COG has a number of projects under construction that are of significant importance to the safety and mobility of motorists, train traffic and pedestrians within the San Gabriel Valley and is in need of services with respect to these projects that are of a critical nature that Christoffels is qualified to perform.
- B.** At the time this Agreement was entered into, the COVID-19 pandemic continues to impose burdens on the State of California and the COG.
- C.** The Parties desire to enter into this Agreement for the provision of critical services under the terms and conditions set forth below.

1. Term.

This Agreement shall be deemed effective for a term beginning January 1, 2021 and continuing until June 29, 2021, (“Term”). This Agreement shall remain in effect during this Term unless terminated earlier in accordance with Section 10.

2. Salary.

The hourly rate paid to Christoffels will be \$100.00. This rate is not less than the minimum, nor in excess of the maximum, paid by the COG to other employees performing comparable duties. Christoffels will not receive any other benefit, incentive, and compensation in lieu of benefit or other form of compensation in addition to this hourly rate. Christoffels shall be paid at the same time as COG pays its other employees.

3. Duties.

As Special Projects Manager, Christoffels shall provide assistance and training to COG staff in order to transition the work performed by Christoffels in his role as Chief Engineer and set forth fully in Exhibit A which is incorporated herein by reference. Said duties shall not be substantively modified without prior written agreement by the Parties. Christoffels shall devote necessary time, within and outside normal business hours, to performing said duties. However,

Attachment B

in compliance with Government Code sections 7522.56 and 21221, Christoffels shall be limited to 960 hours of service per fiscal year.

4. Termination.

4.1 At-Will Employment

Christoffels shall serve at the will and pleasure of the Governing Board and may be removed from office (terminated) at any time for any reason or no reason. Nothing in this Agreement shall prevent the Governing Board from terminating this Agreement and the services of Christoffels at its sole discretion.

4.2 Resignation.

If Christoffels desires to resign his position during the term of this Agreement, he will provide the Governing Board with at least thirty (30) calendar days' notice, in writing.

5. General Provisions.

5.1 This Agreement supersedes any and all other rules of civil service or agreements, either oral or written, between the parties hereto with respect to the employment of Christoffels by the COG and contains all of the covenants and agreements between the Parties with respect to the employment of Christoffels by the COG.

5.2 Each Party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

5.3 Any modification of this Agreement will be effective only if made in writing and signed by both Parties.

5.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

5.5 This Agreement shall be governed by and construed in accordance with the law of the State of California.

5.6 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Agreement.

5.7 Christoffels acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own

Attachment B

judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the _____ day of _____ 2020.

Mark Christoffels

San Gabriel Valley Council of Governments

Margaret Clark
President

APPROVED AS TO FORM:

General Counsel

Attachment B

Exhibit A – Job Duties and Responsibilities

The Special Projects Manager duties will include, but are not limited to:

1. Provide training to the new Director of Capital Projects for the oversight of the COG Capital Projects Program;
2. Provide training and direction to COG staff on grant funding, status, funding agreements and policies and procedures for required reporting;
3. Provide guidance to Director of Capital Projects and Director of Finance for development of various reports including budgets;
4. Serve as agency representative on current ACE capital project litigation including eminent domain;
5. Coordinate, oversee and transition of current project assignments;
6. Initiate and participate in transition/introduction meetings with outside third parties, jurisdictional agencies and stakeholders (i.e. Metro, utilities, city staff, elected officials etc.);
7. Coordinate completion of disposition of excess property currently in process;
8. Complete project close outs currently in process;
9. Ensure written processes and procedures are in place and
10. Provide general assistance and guidance to staff as necessary.

DRAFT



AGENDA AND NOTICE OF THE MEETING OF THE
SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS GOVERNING BOARD
THURSDAY, OCTOBER 15, 2020 - 4:00 P.M.*
Teleconference Meeting
Livestream Available at:

SGVCOG Officers

President
Margaret Clark

1st Vice President
Becky Shevlin

2nd Vice President
Tim Hepburn

3rd Vice President
Ed Reece

Members

Alhambra

Arcadia

Azusa

Baldwin Park

Bradbury

Claremont

Covina

Diamond Bar

Duarte

El Monte

Glendora

Industry

Irwindale

La Cañada Flintridge

La Puente

La Verne

Monrovia

Montebello

Monterey Park

Pomona

Rosemead

San Dimas

San Gabriel

San Marino

Sierra Madre

South El Monte

South Pasadena

Temple City

Walnut

West Covina

*First District, LA County
Unincorporated Communities*

*Fourth District, LA County
Unincorporated Communities*

*Fifth District, LA County
Unincorporated Communities*

SGV Water Districts

Thank you for participating in tonight's meeting. The Governing Board encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Governing Board are held on the third Thursday of each month at 4:00 PM at the Foothill Transit Office (100 South Vincent Avenue, West Covina, CA 91790).* The Governing Board agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvkog.org. Copies are available via email upon request (sgv@sgvkog.org). Documents distributed to a majority of the Board after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

PUBLIC PARTICIPATION: Your participation is welcomed and invited at all Governing Board meetings. Time is reserved at each regular meeting for those who wish to address the Board. SGVCOG requests that persons addressing the meeting refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE GOVERNING BOARD: At a regular meeting, the public may comment on any matter within the jurisdiction of the Board 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. There is a three-minute limit on all public comments. Proxies are not permitted, and individuals may not cede their comment time to other members of the public. **The Governing Board may not discuss or vote on items not on the agenda.**

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

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Board member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Governing Board.



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.



***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 Board Members and staff for the purpose of limiting the risk of COVID-19, in-person public participation at the Governing Board meeting scheduled for October 15, 2020 at 4:00 p.m. will not be allowed. Members of the public may view the meeting live on the SGVCOG's website. To access the meeting video, please see the link on the front page of the agenda.

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 Katie Ward (kward@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 Board.
- Phone: Please email your name and phone number to Katie Ward (kward@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 Katie Ward at least 48 hours prior to the meeting at (626) 457-1800 or at kward@sgvcog.org.

PRELIMINARY BUSINESS

5 MINUTES

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Comment (*If necessary, the President may place reasonable time limits on all comments*)
5. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting

CLOSED SESSION

15 MINUTES

6. Conference with Legal Counsel – Anticipated Litigation
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2), one potential case.
Recommended Action: Discuss and provide direction.

LIAISON REPORTS

7. Gold Line Foothill Extension Construction Authority
8. Foothill Transit
9. Los Angeles County Metropolitan Transportation Authority
10. San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy
11. San Gabriel Valley Mosquito & Vector Control District
12. Southern California Association of Governments
13. League of California Cities
14. San Gabriel Valley Economic Partnership
15. South Coast Air Quality Management District

PRESIDENT'S REPORT

5 MINUTES

EXECUTIVE DIRECTOR'S REPORT

10 MINUTES

GENERAL COUNSEL'S REPORT

5 MINUTES

COMMITTEE/BOARD REPORTS

10 MINUTES

16. Transportation Committee
17. Homelessness Committee
18. San Gabriel Valley Regional Housing Trust Board
19. Energy, Environment and Natural Resources Committee
20. Water Committee
21. Capital Projects and Construction Committee

CONSENT CALENDAR

5 MINUTES

(It is anticipated that the SGVCOG Governing Board may take action on the following matters)

22. Governing Board Meeting Minutes
Recommended Action: Adopt Governing Board minutes.
23. Monthly Cash Disbursements/Balances/Transfers
Recommended Action: Approve Monthly Cash Disbursements/Balances/Transfers.
24. Committee/TAC/Governing Board Attendance
Recommended Action: Receive and file.
25. 4th Quarter Financial and Treasurer Reports
Recommended Action: Receive and file.
26. San Gabriel Valley Transit Feasibility Study
Recommended Action: Authorize the Executive Director to execute an agreement with Metro to undertake a Transit Feasibility Study for the San Gabriel Valley and assign this

- project to the Capital Projects and Construction Committee.*
27. Updated SGVCOG Purchasing and Procurement Policies and Procedures
Recommended Action: Adopt Resolution 20-18 updating the SGVCOG Purchasing and Procurement Policies and Procedures.
28. Committee/TAC/Partnership Agency Appointments
Recommended Action: Appoint members to the following standing SGVCOG Policy Committees, Technical Advisory Committees, and other partnership agency appointments:
- *Planning Directors' Technical Advisory Committee: City of Pomona*
 - *Water TAC: City of South Pasadena*

ACTION ITEM

15 MINUTES

29. Employment Contract with Mark Christoffels for Special Projects Manager
Recommended Action: Adopt Resolution 20-19 for a 180-Day Wait Period Exception and approve Employment Contract with Mark Christoffels for Special Projects Manager.

PRESENTATION

30 MINUTES

30. California Department of Transportation (Caltrans) District 7 City Ambassador Program
Introduction: John Bulinski, District 7 Director, Caltrans
Recommended Action: For information only.
31. Recognition of Former SGVCOG President Cynthia Sternquist and SGVCOG Board Member John Fasana
Recommended Action: For information only.

ADJOURN

DATE: October 5, 2020

TO: Executive Committee

FROM: Marisa Creter, Executive Director

RE: **MULTI-UNIT HOUSING IN SINGLE-FAMILY RESIDENTIAL ZONES**

RECOMMENDED ACTION

Discuss and provide direction to staff regarding state legislation requiring approval of multi-unit developments in single-family residential neighborhoods. Staff recommends working with members of the Executive Committee and City Managers Committee to develop SGVCOG legislative goals in the area of housing to present to the Executive Committee for consideration and to discuss multi-unit housing legislation with Senator Rubio.

BACKGROUND

In response to housing shortages in fast-growing metro areas across the nation, recent policy debate has focused on measures to allow multi-unit developments in neighborhoods zoned for single-family homes. Advocates contend these measures increase housing options and affordability by permitting gradual and dispersed density in established residential neighborhoods. Oregon was the first state last year to require local governments to adopt zoning changes over the next two years allowing duplexes in towns of 10,000 to 25,000 residents and quadplexes in larger cities. Similarly, Minneapolis on January 1 became the first major city to allow triplexes in single-family neighborhoods. In August, the California Legislature approved a bill to unilaterally require cities and counties to rezone single-family neighborhoods to allow up to four units on an existing single family home parcel.

California Senate Bill 1120 would have required cities and counties to grant nondiscretionary approvals in R-1 zones, if certain conditions were met, of duplexes with rear and side setbacks of no more than 4 feet and applications to equally divide lots to as small as 1,200 square feet in size. The legislation got a 39-0 vote on the Senate floor but more narrowly passed the state Assembly with a 44-18 floor vote. (17 legislators did not cast a vote). Those voting in opposition included 13 Democrats and three Republicans representing urban/suburban districts in major metro areas who were joined by two Republicans representing rural districts. Bill opponents included individual cities, homeowner groups and the South Bay Cities COG. While the bill passed the Assembly on the last legislative day, time was insufficient for it to re-clear the Senate before adjournment.

SB 1120 was among a package of housing bills released by a Senate housing working group in lieu of Senate Bill 50 (Wiener), which attracted significant local opposition by requiring the granting of density bonuses to mid-rise apartments and similar housing in transit-close or “job-rich” residential neighborhoods. Consistent with this legislative compromise effort, the League of California Cities adopted a position of “support if amended” with the following provisions:

- Clarify that a property owner using SB 1120 is limited to constructing a duplex, and not a duplex and additional accessory dwelling unit (granny flat) on the same parcel. Outcome: Granny flats remain permitted unless the R-1 lot is split and duplexes are built on both lots.

REPORT

- Prohibit the recordation of a lot split until construction of the housing unit on the new lot is complete, so that speculators do not sell lots and never build homes. Outcome: Not included.
- Allow local governments to require adequate access for police, fire, and other public safety vehicles and equipment. Outcome: Not included.
- Allow local governments to continue to determine parking standards. Outcome: One parking spot per unit requirement waived if within one-half mile to transit or one block to car share.
- Prohibit developers from using SB 1120 in very high fire severity zones. Outcome: Included.

Given the strong likelihood that legislation similar to SB 1120 will be reintroduced, additional short- and long-term impacts of increased density that warrant consideration include:

- Population growth could strain city services, public schools and parks and open space.
- Existing infrastructure (roads, curbside parking space, storm drain, water and sanitary sewer lines, etc.) may prove inadequate and face higher life-cycle costs.
- Car use could unintentionally increase given the lack of transit in low density neighborhoods.
- Landscaping replaced with dwelling units will contribute to the urban “heat island” effect and increase storm water runoff.
- Eliminating single-family zoning will escalate land costs and foster possible speculation.

At your August meeting, this Committee recommended the Governing Board oppose the legislation. Following receipt of a September 16 letter outlining objections from Senator Susan Rubio as one of the lead authors of the bill, the Governing Board re-referred the matter to this Committee. Senator Rubio served on the Senate’s housing working group and SGVCOG has worked in close concert with her and her staff on our shared goal of increasing affordable housing in the San Gabriel Valley, notably through the San Gabriel Valley Regional Housing Trust. Staff recommends working with representatives of the Executive Committee and City Managers Committee to develop legislative goals in the area of housing to present to the Executive Committee and to meet with Senator Rubio to discuss multi-unit residential legislation.

Prepared by: Paul R Hubler
Paul Hubler
Director of Government and Community Relations

Approved by: Marisa Creter
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – SB 1120 Bill Language

Attachment B – Letter from Senator Rubio dated September 16, 2020

Attachment A

AMENDED IN ASSEMBLY AUGUST 12, 2020

AMENDED IN ASSEMBLY JULY 27, 2020

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE MAY 20, 2020

SENATE BILL

No. 1120

**Introduced by Senators Atkins, Caballero, Rubio, and Wiener
(Principal coauthor: Senator McGuire)
(Coauthors: Senators Lena Gonzalez, Hill, and Roth)**

February 19, 2020

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1120, as amended, Atkins. Subdivisions: tentative maps.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing 2 residential units *within a single-family residential zone* to be considered ministerially, without discretionary review or hearing, ~~within a single-family residential zone~~, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of

more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a city or county to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a city or county to ministerially approve a parcel map or tentative and final map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a city or county to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units on either of the resulting parcels, prohibiting the

imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65852.21 is added to the Government
2 Code, to read:
3 65852.21. (a) A proposed housing development containing
4 two residential units *within a single-family residential zone* shall
5 be considered ministerially, without discretionary review or a
6 hearing, ~~within a single-family residential zone~~, if the proposed
7 housing development meets all of the following requirements:
8 (1) The parcel subject to the proposed housing development is
9 located within a city the boundaries of which include some portion
10 of either an urbanized area or urban cluster, as designated by the
11 United States Census Bureau, or, for unincorporated areas, a legal

1 parcel wholly within the boundaries of an urbanized area or urban
2 cluster, as designated by the United States Census Bureau.

3 (2) The parcel satisfies the requirements specified in
4 subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision
5 (a) of Section 65913.4.

6 (3) Notwithstanding any provision of this section or any local
7 law, the proposed housing development would not require
8 demolition or alteration of any of the following types of housing:

9 (A) Housing that is subject to a recorded covenant, ordinance,
10 or law that restricts rents to levels affordable to persons and
11 families of moderate, low, or very low income.

12 (B) Housing that is subject to any form of rent or price control
13 through a public entity's valid exercise of its police power.

14 ~~(C) A parcel on which an owner of residential real property has~~
15 ~~exercised the owner's rights under Chapter 12.75 (commencing~~
16 ~~with Section 7060) of Division 7 of Title 1 to withdraw~~
17 ~~accommodations from rent or lease within 15 years before the date~~
18 ~~that the development proponent submits an application pursuant~~
19 ~~to Section 65913.4.~~

20 ~~(D)~~

21 (C) Housing that has been occupied by a tenant in the last three
22 years.

23 (4) *The parcel subject to the proposed housing development is*
24 *not a parcel on which an owner of residential real property has*
25 *exercised the owner's rights under Chapter 12.75 (commencing*
26 *with Section 7060) of Division 7 of Title 1 to withdraw*
27 *accommodations from rent or lease within 15 years before the*
28 *date that the development proponent submits an application.*

29 ~~(4)~~

30 (5) The proposed housing development does not allow the
31 demolition of more than 25 percent of the existing exterior
32 structural walls, unless the housing development meets at least
33 one of the following conditions:

34 (A) If a local ordinance so allows.

35 (B) The site has not been occupied by a tenant in the last three
36 years.

37 ~~(5)~~

38 (6) The development is not located within a historic district or
39 property included on the State Historic Resources Inventory, as
40 defined in Section 5020.1 of the Public Resources Code, or within

1 a site that is designated or listed as a city or county landmark or
2 historic property or district pursuant to a city or county ordinance.

3 (b) (1) Notwithstanding any local law and except as provided
4 in paragraph (2), a city or county may impose objective zoning
5 standards, objective subdivision standards, and objective design
6 review standards that do not conflict with this section.

7 (2) (A) The city or county shall not impose objective zoning
8 standards, objective subdivision standards, and objective design
9 standards that would have the effect of physically precluding the
10 construction of up to two units.

11 (B) (i) Notwithstanding subparagraph (A), no setback shall be
12 required for an existing structure or a structure constructed in the
13 same location and to the same dimensions as an existing structure.

14 (ii) Notwithstanding subparagraph (A), in all other circumstances
15 not described in clause (i), a local government may require a
16 setback of up to four feet from the side and rear lot lines.

17 (c) In addition to any conditions established in accordance with
18 subdivision (b), a local agency may require any of the following
19 conditions when considering an application for two residential
20 units as provided for in this section:

21 (1) Off-street parking of up to one space per unit, except that a
22 local agency shall not impose parking requirements in either of
23 the following instances:

24 (A) The parcel is located within one-half mile walking distance
25 of either a high-quality transit corridor, as defined in subdivision
26 (b) of Section 21155 of the Public Resources Code, or a major
27 transit stop, as defined in Section 21064.3 of the Public Resources
28 Code.

29 (B) There is a car share vehicle located within one block of the
30 parcel.

31 (2) For residential units connected to an onsite wastewater
32 treatment system, a percolation test completed within the last five
33 years, or, if the percolation test has been recertified, within the last
34 10 years.

35 (d) A local agency shall require that a rental of any unit created
36 pursuant to this section be for a term longer than 30 days.

37 (e) Notwithstanding Section 65852.2, a local agency shall not
38 be required to permit an accessory dwelling unit on parcels that
39 use both the authority contained within this section and the
40 authority contained in Section 66411.7.

1 (f) Notwithstanding subparagraph (B) of paragraph (2) of
2 subdivision (b), an application shall not be rejected solely because
3 it proposes adjacent or connected structures *provided that the*
4 *structures* meet building code safety standards and are sufficient
5 to allow separate conveyance.

6 (g) Local agencies shall include units constructed pursuant to
7 this section in the annual housing element report as required by
8 subparagraph (I) of paragraph (2) of subdivision (a) of Section
9 65400.

10 (h) For purposes of this section, all of the following apply:

11 (1) A housing development contains two residential units if the
12 development proposes two new units or if it proposes to add one
13 new unit to an existing unit.

14 (2) The terms “objective zoning standards,” “objective
15 subdivision standards,” and “objective design review standards”
16 mean standards that involve no personal or subjective judgment
17 by a public official and are uniformly verifiable by reference to
18 an external and uniform benchmark or criterion available and
19 knowable by both the development applicant or proponent and the
20 public official prior to submittal. These standards may be embodied
21 in alternative objective land use specifications adopted by a city
22 or county, and may include, but are not limited to, housing overlay
23 zones, specific plans, inclusionary zoning ordinances, and density
24 bonus ordinances.

25 (i) A local agency may adopt an ordinance to implement the
26 provisions of this section. An ordinance adopted to implement this
27 section shall not be considered a project under Division 13
28 (commencing with Section 21000) of the Public Resources Code.

29 SEC. 2. Section 66411.7 is added to the Government Code, to
30 read:

31 66411.7. (a) Notwithstanding any other provision of this
32 division and any local law, a city or county shall ministerially
33 approve, as set forth in this section, a parcel map or tentative and
34 final map for an urban lot split that meets all the following
35 requirements:

36 (1) The parcel map *or tentative and final map* subdivides an
37 existing parcel to create two new parcels of equal size.

38 (2) (A) Except as provided in subparagraph (B), both newly
39 created parcels are no smaller than 1,200 square feet.

- 1 (B) A local agency may by ordinance adopt a smaller minimum
- 2 lot size subject to ministerial approval under this subdivision.
- 3 (3) The parcel being subdivided meets all the following
- 4 requirements:
- 5 (A) The parcel is located within a residential zone.
- 6 (B) The parcel subject to the proposed urban lot split is located
- 7 within a city the boundaries of which include some portion of
- 8 either an urbanized area or urban cluster, as designated by the
- 9 United States Census Bureau, or, for unincorporated areas, a legal
- 10 parcel wholly within the boundaries of an urbanized area or urban
- 11 cluster, as designated by the United States Census Bureau.
- 12 (C) The parcel satisfies the requirements specified in
- 13 subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision
- 14 (a) of Section 65913.4.
- 15 (D) The proposed urban lot split would not require demolition
- 16 or alteration of any of the following types of housing:
- 17 (i) Housing that is subject to a recorded covenant, ordinance,
- 18 or law that restricts rents to levels affordable to persons and
- 19 families of moderate, low, or very low income.
- 20 (ii) Housing that is subject to any form of rent or price control
- 21 through a public entity's valid exercise of its police power.
- 22 (iii) A parcel or parcels on which an owner of residential real
- 23 property has exercised the owner's rights under Chapter 12.75
- 24 (commencing with Section 7060) of Division 7 of Title 1 to
- 25 withdraw accommodations from rent or lease within 15 years
- 26 before the date that the development proponent submits an
- 27 ~~application pursuant to Section 65913.4.~~ *application.*
- 28 (iv) Housing that has been occupied by a tenant in the last three
- 29 years.
- 30 (E) The parcel is not located within a historic district or property
- 31 included on the State Historic Resources Inventory, as defined in
- 32 Section 5020.1 of the Public Resources Code, or within a site that
- 33 is designated or listed as a city or county landmark or historic
- 34 property or district pursuant to a city or county ordinance.
- 35 (F) The parcel has not been established through prior exercise
- 36 of an urban lot split as provided for in this section.
- 37 (G) Neither the owner of the parcel being subdivided nor any
- 38 person acting in concert with the owner has previously subdivided
- 39 an adjacent parcel using an urban lot split as provided for in this
- 40 section.

1 (b) An application for an urban lot split shall be approved in
2 accordance with the following requirements:

3 (1) A local agency shall approve or deny an application for an
4 urban lot split ministerially without discretionary review.

5 (2) A local agency shall approve an urban lot split only if it
6 conforms to all applicable objective requirements of the
7 Subdivision Map Act (Division 2 (commencing with Section
8 66410)), except as otherwise expressly provided in this section.

9 (3) Notwithstanding Section 66411.1, a local agency shall not
10 impose regulations that require dedications of rights-of-way or the
11 construction of offsite improvements for the parcels being created
12 as a condition of issuing a parcel map or tentative and final map
13 for an urban lot split.

14 (c) (1) Except as provided in paragraph (2), notwithstanding
15 any local law, a city or county may impose objective zoning
16 standards, objective subdivision standards, and objective design
17 review standards applicable to a parcel created by an urban lot
18 split that do not conflict with this section.

19 (2) A local agency shall not impose objective zoning standards,
20 objective subdivision standards, and objective design review
21 standards that would have the effect of physically precluding the
22 construction of two units on either of the resulting parcels.

23 (3) (A) Notwithstanding paragraph (2), no setback shall be
24 required for an existing structure or a structure constructed in the
25 same location and to the same dimensions as an existing structure.

26 (B) Notwithstanding paragraph (2), in all other circumstances
27 not described in subparagraph (A), a local government may require
28 a setback of up to four feet from the side and rear lot lines.

29 (d) In addition to any conditions established in accordance with
30 subdivision (c), a local agency may require any of the following
31 conditions when considering an application for an urban lot split:

32 (1) Easements required for the provision of public services and
33 facilities.

34 (2) A requirement that the parcels have access to, provide access
35 to, or adjoin the public right-of-way.

36 (3) Off-street parking of up to one space per unit, except that a
37 local agency shall not impose parking requirements in either of
38 the following instances:

39 (A) The parcel is located within one-half mile walking distance
40 of either a high-quality transit corridor as defined in subdivision

1 (b) of Section 21155 of the Public Resources Code, or a major
2 transit stop as defined in Section 21064.3 of the Public Resources
3 Code.

4 (B) There is a car share vehicle located within one block of the
5 parcel.

6 (e) A local agency shall require that the uses allowed on a lot
7 created by this section be limited to residential uses.

8 (f) A local agency shall require that a rental of any unit created
9 pursuant to this section be for a term longer than 30 days.

10 (g) A local agency shall not require, as a condition for ministerial
11 approval of a permit application for the creation of an urban lot
12 split, the correction of nonconforming zoning conditions.

13 (h) Notwithstanding Section 65852.2, a local agency shall not
14 be required to permit an accessory dwelling unit on parcels that
15 use both the authority contained within this section and the
16 authority contained in Section 65852.21.

17 (i) Notwithstanding paragraph (3) of subdivision (c), an
18 application shall not be rejected solely because it proposes adjacent
19 or connected structures *provided that the structures* meet building
20 code safety standards and are sufficient to allow separate
21 conveyance.

22 (j) Local agencies shall include the number of applications for
23 urban lot splits pursuant to this section in the annual housing
24 element report as required by subparagraph (I) of paragraph (2)
25 of subdivision (a) of Section 65400.

26 (k) For purposes of this section, the terms “objective zoning
27 standards,” “objective subdivision standards,” and “objective
28 design review standards” mean standards that involve no personal
29 or subjective judgment by a public official and are uniformly
30 verifiable by reference to an external and uniform benchmark or
31 criterion available and knowable by both the development applicant
32 or proponent and the public official prior to submittal. These
33 standards may be embodied in alternative objective land use
34 specifications adopted by a city or county, and may include, but
35 are not limited to, housing overlay zones, specific plans,
36 inclusionary zoning ordinances, and density bonus ordinances.

37 (l) A local agency may adopt an ordinance to implement the
38 provisions of this section. An ordinance adopted to implement this
39 section shall not be considered a project under Division 13
40 (commencing with Section 21000) of the Public Resources Code.

1 SEC. 3. Section 66452.6 of the Government Code is amended
2 to read:

3 66452.6. (a) (1) An approved or conditionally approved
4 tentative map shall expire 24 months after its approval or
5 conditional approval, or after any additional period of time as may
6 be prescribed by local ordinance, not to exceed an additional 24
7 months. However, if the subdivider is required to expend two
8 hundred thirty-six thousand seven hundred ninety dollars
9 (\$236,790) or more to construct, improve, or finance the
10 construction or improvement of public improvements outside the
11 property boundaries of the tentative map, excluding improvements
12 of public rights-of-way which abut the boundary of the property
13 to be subdivided and which are reasonably related to the
14 development of that property, each filing of a final map authorized
15 by Section 66456.1 shall extend the expiration of the approved or
16 conditionally approved tentative map by 48 months from the date
17 of its expiration, as provided in this section, or the date of the
18 previously filed final map, whichever is later. The extensions shall
19 not extend the tentative map more than 10 years from its approval
20 or conditional approval. However, a tentative map on property
21 subject to a development agreement authorized by Article 2.5
22 (commencing with Section 65864) of Chapter 4 of Division 1 may
23 be extended for the period of time provided for in the agreement,
24 but not beyond the duration of the agreement. The number of
25 phased final maps that may be filed shall be determined by the
26 advisory agency at the time of the approval or conditional approval
27 of the tentative map.

28 (2) Commencing January 1, 2012, and each calendar year
29 thereafter, the amount of two hundred thirty-six thousand seven
30 hundred ninety dollars (\$236,790) shall be annually increased by
31 operation of law according to the adjustment for inflation set forth
32 in the statewide cost index for class B construction, as determined
33 by the State Allocation Board at its January meeting. The effective
34 date of each annual adjustment shall be March 1. The adjusted
35 amount shall apply to tentative and vesting tentative maps whose
36 applications were received after the effective date of the
37 adjustment.

38 (3) "Public improvements," as used in this subdivision, include
39 traffic controls, streets, roads, highways, freeways, bridges,

1 overcrossings, street interchanges, flood control or storm drain
2 facilities, sewer facilities, water facilities, and lighting facilities.

3 (b) (1) The period of time specified in subdivision (a), including
4 any extension thereof granted pursuant to subdivision (e), shall
5 not include any period of time during which a development
6 moratorium, imposed after approval of the tentative map, is in
7 existence. However, the length of the moratorium shall not exceed
8 five years.

9 (2) The length of time specified in paragraph (1) shall be
10 extended for up to three years, but in no event beyond January 1,
11 1992, during the pendency of any lawsuit in which the subdivider
12 asserts, and the local agency which approved or conditionally
13 approved the tentative map denies, the existence or application of
14 a development moratorium to the tentative map.

15 (3) Once a development moratorium is terminated, the map
16 shall be valid for the same period of time as was left to run on the
17 map at the time that the moratorium was imposed. However, if the
18 remaining time is less than 120 days, the map shall be valid for
19 120 days following the termination of the moratorium.

20 (c) The period of time specified in subdivision (a), including
21 any extension thereof granted pursuant to subdivision (e), shall
22 not include the period of time during which a lawsuit involving
23 the approval or conditional approval of the tentative map is or was
24 pending in a court of competent jurisdiction, if the stay of the time
25 period is approved by the local agency pursuant to this section.
26 After service of the initial petition or complaint in the lawsuit upon
27 the local agency, the subdivider may apply to the local agency for
28 a stay pursuant to the local agency's adopted procedures. Within
29 40 days after receiving the application, the local agency shall either
30 stay the time period for up to five years or deny the requested stay.
31 The local agency may, by ordinance, establish procedures for
32 reviewing the requests, including, but not limited to, notice and
33 hearing requirements, appeal procedures, and other administrative
34 requirements.

35 (d) The expiration of the approved or conditionally approved
36 tentative map shall terminate all proceedings and no final map or
37 parcel map of all or any portion of the real property included within
38 the tentative map shall be filed with the legislative body without
39 first processing a new tentative map. Once a timely filing is made,
40 subsequent actions of the local agency, including, but not limited

1 to, processing, approving, and recording, may lawfully occur after
2 the date of expiration of the tentative map. Delivery to the county
3 surveyor or city engineer shall be deemed a timely filing for
4 purposes of this section.

5 (e) Upon application of the subdivider filed before the expiration
6 of the approved or conditionally approved tentative map, the time
7 at which the map expires pursuant to subdivision (a) may be
8 extended by the legislative body or by an advisory agency
9 authorized to approve or conditionally approve tentative maps for
10 a period or periods not exceeding a total of six years. The period
11 of extension specified in this subdivision shall be in addition to
12 the period of time provided by subdivision (a). Before the
13 expiration of an approved or conditionally approved tentative map,
14 upon an application by the subdivider to extend that map, the map
15 shall automatically be extended for 60 days or until the application
16 for the extension is approved, conditionally approved, or denied,
17 whichever occurs first. If the advisory agency denies a subdivider's
18 application for an extension, the subdivider may appeal to the
19 legislative body within 15 days after the advisory agency has
20 denied the extension.

21 (f) For purposes of this section, a development moratorium
22 includes a water or sewer moratorium, or a water and sewer
23 moratorium, as well as other actions of public agencies which
24 regulate land use, development, or the provision of services to the
25 land, including the public agency with the authority to approve or
26 conditionally approve the tentative map, which thereafter prevents,
27 prohibits, or delays the approval of a final or parcel map. A
28 development moratorium shall also be deemed to exist for purposes
29 of this section for any period of time during which a condition
30 imposed by the city or county could not be satisfied because of
31 either of the following:

32 (1) The condition was one that, by its nature, necessitated action
33 by the city or county, and the city or county either did not take the
34 necessary action or by its own action or inaction was prevented or
35 delayed in taking the necessary action before expiration of the
36 tentative map.

37 (2) The condition necessitates acquisition of real property or
38 any interest in real property from a public agency, other than the
39 city or county that approved or conditionally approved the tentative
40 map, and that other public agency fails or refuses to convey the

1 property interest necessary to satisfy the condition. However,
2 nothing in this subdivision shall be construed to require any public
3 agency to convey any interest in real property owned by it. A
4 development moratorium specified in this paragraph shall be
5 deemed to have been imposed either on the date of approval or
6 conditional approval of the tentative map, if evidence was included
7 in the public record that the public agency which owns or controls
8 the real property or any interest therein may refuse to convey that
9 property or interest, or on the date that the public agency which
10 owns or controls the real property or any interest therein receives
11 an offer by the subdivider to purchase that property or interest for
12 fair market value, whichever is later. A development moratorium
13 specified in this paragraph shall extend the tentative map up to the
14 maximum period as set forth in subdivision (b), but not later than
15 January 1, 1992, so long as the public agency which owns or
16 controls the real property or any interest therein fails or refuses to
17 convey the necessary property interest, regardless of the reason
18 for the failure or refusal, except that the development moratorium
19 shall be deemed to terminate 60 days after the public agency has
20 officially made, and communicated to the subdivider, a written
21 offer or commitment binding on the agency to convey the necessary
22 property interest for a fair market value, paid in a reasonable time
23 and manner.

24 SEC. 4. The Legislature finds and declares that ensuring access
25 to affordable housing is a matter of statewide concern and not a
26 municipal affair as that term is used in Section 5 of Article XI of
27 the California Constitution. Therefore, Sections 1 and 2 of this act
28 adding Sections 65852.21 and 66411.7 to the Government Code
29 and Section 3 of this act amending Section 66452.6 of the
30 Government Code apply to all cities, including charter cities.

31 SEC. 5. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 a local agency or school district has the authority to levy service
34 charges, fees, or assessments sufficient to pay for the program or
35 level of service mandated by this act, within the meaning of Section
36 17556 of the Government Code.

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California State Senate

SENATOR
SUSAN RUBIO

TWENTY-SECOND SENATE DISTRICT



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STANDING COMMITTEES
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ENERGY, UTILITIES & COMMUNICATIONS
GOVERNMENTAL ORGANIZATION
HEALTH
TRANSPORTATION

SELECT COMMITTEE
CALIFORNIA-MEXICO COOPERATION

September 16, 2020

San Gabriel Valley Council of Governments
1000 S. Fremont Avenue, Unit 42
Building A-10N, Suite 10-210
Alhambra, CA 91803

Dear Members of the San Gabriel Valley Council of Governments Governing Board:

I write to you regarding the Senate Housing Package that was passed by the Senate earlier this year and ask members of the Governing Board to refrain from adopting an oppose in principle position on SB 1120.

As the State Senator representing Senate District 22, a member of the Housing Production Working Group, and a former councilwoman for the City of Baldwin Park, I was intimately aware of the proposals being discussed in the Senate and also understood what was important to our local cities. I believe this package, as currently constructed, struck the right balance between local control and unlocking desperately needed affordable housing equitably across all California communities.

In January, the Senate debated SB 50 by Senator Scott Wiener. This bill would have resulted in a significant loss of local control by requiring ministerial approval of fourplexes in single-family zones and taking away local control of density and height requirements in transit-rich and jobs-rich areas. I had many concerns with that bill, and after hosting a roundtable with Senator Wiener and 15 city managers from my district, I voted against SB 50.

Despite the failure of SB 50, addressing the lack of affordable housing and housing supply in California remains a top priority for both the California State Legislature and Governor Newsom. Senate leaders immediately created the Housing Production Working Group and invited me to join. I chose to participate because I understand that some version of housing production reform will ultimately be passed by the Legislature and signed by the Governor. By joining the conversation, I had the opportunity to share my concerns and the concerns of my local cities to strengthen the final language of any proposal that becomes law.

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It was very important to me that I stay in contact with my local cities throughout this process. That is why I met several times with city managers from my District to inform them about the policies discussed by the working group and received important feedback from them that I incorporated into our Senate conversations.

For months, our working group was guided by conversations with diverse stakeholders, including representatives from the League of California Cities. I also reached out on my own to hear directly from the Los Angeles County Division of the League of California Cities and from several of my local city leaders. These conversations shaped my perspective and helped me advocate for our local governments in the working group discussions.

I fought to protect meaningful local control and substantially improved the final version of the bills that were included in the Senate Housing Package. This is why local control is preserved over design elements such as density and height requirements under SB 1385 by Senator Caballero and SB 899 by Senator Wiener in the package. I also fought against carve outs for wealthier cities, which is why the package does not exclude coastal zones and other areas that were exempt under SB 50. And I fought for dedicated new funding for local governments to help with infrastructure costs associated with housing production. Although the economic effects of the COVID-19 pandemic prevented the Senate from taking up that legislation this year, I continue to advocate for additional funding support from both the federal government and the state government to assist our local governments.

The centerpiece of the Senate Housing Package is SB 1120, which I joint authored with the Senate President Pro Tem Toni Atkins, Senator Caballero, and Senator Wiener. This is a much more modest bill than SB 50 and respects local control. While it does create a ministerial approval for duplexes and urban lot splits, I fought for guardrails that prevent multiple lot splits that would exacerbate overcrowding and create spillover effects on local infrastructure. I also ensured that local control remains over parking, which is why SB 1120 continues to give local governments the ability to require off-street parking of up to one space per unit under most circumstances. Similarly, SB 1120 continues to give local governments the ability to require a setback of up to four feet from the side and rear lot lines, and the ability to impose other objective zoning standards and design standards.

In a time when bipartisan consensus is rare, the Senate passed SB 1120 on a 39-0 vote. This is in recognition of the significant improvements that it made over SB 50. Even the League of California Cities, and the Los Angeles County Division of the League, submitted 'support if amended' positions on the bill in recognition of these improvements. Although the Assembly also passed SB 1120, the shortened legislative session caused by COVID-19 resulted in time running out before the bill could be sent to the Governor's desk this year. But this does not mean that similar legislation will not be coming back in 2021.

With wildfires raging across California, destroying properties and forcing people out of their homes, our state's housing crisis is becoming even more dire. I am committed to being part of

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the solution and look forward to continuing to work collaboratively on behalf of local governments.

However, when cities take an oppose position on modest reforms like SB 1120, it only encourages my colleagues to focus on more aggressive policy changes like SB 50 that would cause a massive loss of local control over essential zoning and housing decisions.

For these reasons, if legislation identical to 1120 is introduced next year, I respectfully request that you take a Support if Amended position so that we can continue to productively address local concerns.

If you have any questions, concerns, or need additional information, please don't hesitate to reach out to me. With your assistance and support, I can continue to ensure that local concerns are heard in Sacramento.

Sincerely,

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

Susan Rubio
Senator, 22nd District