



## **San Gabriel Valley Council of Governments Capital Projects and Construction Committee**

### **Meeting Agenda**

**Monday, November 26, 2018 12:00PM**

**West Covina Community Center, 2<sup>nd</sup> Floor**

**1444 West Garvey Avenue South, West Covina, CA 91791**

---

Members of the public may comment on any item on the agenda at the time it is taken up by the Committee. We ask that members of the public come forward to be recognized by the Chair and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a three-minute time limit on individual remarks at the beginning of the discussion.

West Covina City Hall is accessible to persons using wheelchairs and with other disabilities. Informational material will be available in large print. Assistive listening devices, materials in other alternate formats, American Sign Language interpreters and other accommodations will be made available upon request. Requests should be made to Deanna Stanley at 626-962-9292 ext. 142 or [dstanley@theaceproject.org](mailto:dstanley@theaceproject.org)  
Providing at least 72-hour notice will help ensure availability.

---

- |       |                                                                                                                                                         |              |             |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------|
| I.    | Pledge of Allegiance                                                                                                                                    |              |             |
| II.   | Roll Call and Introductions                                                                                                                             |              |             |
| III.  | Public Comment                                                                                                                                          |              |             |
| IV.   | Approval of the Capital Projects and Construction Committee Meeting Minutes of October 22, 2018                                                         | Pages 1 – 5  | Action      |
| V.    | Chairman's Remarks                                                                                                                                      |              |             |
| VI.   | Member Comments                                                                                                                                         |              |             |
| VII.  | Chief Engineers Monthly Report                                                                                                                          | Pages 6 – 8  | Information |
| VIII. | Project Construction Progress Reports                                                                                                                   |              | Information |
| IX.   | Approval of Close Out of Construction Contract with OHL USA Inc. and Acceptance of the Puente Avenue Grade Separation Project as Substantially Complete | Pages 9 – 10 | Action      |

- |       |                                                                                                                                                                                      |               |             |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------|
| X.    | Approval of Close Out of Construction Contract with Walsh Construction Company and Acceptance of the San Gabriel Trench Project as Substantially Complete                            | Pages 11 – 12 | Action      |
| XI.   | Approval of Amendment No. 2 to the Waterline Relocation Agreement with Rowland Water District for the Fullerton Road Grade Separation Project                                        | Page 13       | Action      |
| XII.  | Receive and File Agreement No. 18-01 with CWE for Preliminary Engineering and Final Design Services for the Load Reduction Strategy Projects for the Rio Hondo River and Tributaries | Pages 14 – 39 | Action      |
| XIII. | Outgoing Committee Members Recognition                                                                                                                                               |               | Information |
| XIV.  | Adjournment                                                                                                                                                                          |               | Action      |



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



## **SGVCOG Capital Projects & Construction Committee October 22, 2019 Meeting Minutes**

Vice Chair Martinez called the meeting of the San Gabriel Valley Capital Projects and Construction Committee to order at 12:01PM at the City of West Covina Community Center.

1. **Pledge of Allegiance** – Committee member Messina lead the pledge of allegiance.

2. **Roll Call:**

In attendance was:

Victoria Martinez, Vice Chair, El Monte  
Barbara Messina, City of Alhambra  
Becky Shevlin, City of Monrovia  
Cory Moss, City of Industry  
Cynthia Sternquist, SGVCOG President  
Hilda Solis, LA County Board of Supervisor  
Jack Hadjinian, City of Montebello  
Nancy Lyons, City of Diamond Bar  
Sam Pedroza, City of Claremont  
Tim Sandoval, City of Pomona

**Staff:**

Mark Christoffels, Chief Engineer  
Gregory Murphy, Burke Williams & Sorensen, legal counsel  
Amy Hanson  
Charles Tsang  
Edward Villanueva  
Mark Mendoza, Paragon Partners  
Nathan Bocanegra  
Paul Hubler  
Phil Balmeo  
Rachel Korkos  
Ricky Choi  
Victoria Butler

**Guests:**

Art Correa, LASDPW  
Allan Tanjuaquio, Jacobs  
Cynthia Marian, OSM  
Charlie Guess, WSP  
Michael Molina, Twining  
Peter Ho, PreScience  
Martin Reyes, First District LAC  
Charlie Nakamoto, Jacobs

Joshua Nelson, CNC/Industry

3. **Public Comment** – There were no public comments.
4. **Approval of the Capital Projects & Construction Committee Meeting Minutes of September 24, 2018** – A motion was made by member Shevlin to approve revised minutes of September 24, 2018 to reflect member Sandoval's attendance. The motion was seconded by member Hadjinian.

M/S/C/Shevlin/Hadjinian/Unanimous

5. **Chairman Remarks** – Vice Chair Martinez congratulated staff on the recent opening of the Lemon Avenue on and off ramps to the 60 freeway. She stated that this was officially the first freeway project the ACE and SGVCOG have undertaken.
6. **Member Comments** – There were no comments.
7. **Chief Engineer's Monthly Report** – Mr. Christoffels reported that an Asian media briefing will take place on October 31 and encouraged the Committee to attend.
8. **Project Construction Progress Reports** – Charles Tsang, Senior Project Manager reported on the progression of the Lemon Avenue, 57/60 freeway on and off ramps in conjunction of the Fairway Drive grade separation project. Victoria Butler, Program Manager reported on the progress at Fullerton Road grade separation project. She reported on the storm drain framework currently in construction.

Mr. Christoffels announced that Victoria Butler would be retiring soon. Appreciations and feedback of her hard work at ACE were given.

9. **Hearing on Amended Resolution of Necessity No. 13-11 for the Fairway Drive Grade Separation Project** – Greg Murphy reminded the Committee that Resolution of Necessity No. 13-11 was adopted by the previous ACE Board in September, 2013, but an amendment is found to be necessary. He indicated that eight affirmative votes are needed to adopt the amended Resolution. He reported that the public would have an opportunity to speak during the hearing. The Vice Chair opened the hearing. Mr. Christoffels indicated that the Resolution of Necessity does not address compensation; it only approves the legal necessity of the property for the project. He reported that to file with a judge, a revised easement would need to be brought because some of the properties in the original resolution are no longer needed. Mr. Christoffels indicated that this report also applies to the following three items. He reported that the property owner is not objecting to the order. Public comment period was opened and there were no comments. Public comment was closed. There were no Committee questions.

A motion was made to amend Resolution of Necessity No. 13-11 authorizing the amendment of eminent domain proceedings to modify current easement requirements.

Ayes: Martinez, Solis, Sternquist, Messina, Pedroza, Lyons, Moss, Shevlin, Hadjinian, Sandoval

Nayes: None.

10. **Hearing on Amended Resolution of Necessity No. 13-14 for the Fairway Drive Grade Separation Project** –The Vice Chair opened the hearing. Public comment period was opened and there were no comments. Public comment was closed. There were no Committee questions.

A motion was made to amend Resolution of Necessity No. 13-14 authorizing the amendment of eminent domain proceedings to modify current easement requirements.

Ayes: Martinez, Solis, Sternquist, Messina, Pedroza, Lyons, Moss, Shevlin, Hadjinian, Sandoval

Nayes: None.

11. **Hearing on Amended Resolution of Necessity No.13-15 for the Fairway Drive Grade Separation Project** – The Vice Chair opened the hearing. Public comment period was opened and there were no comments. Public comment was closed. There were no Committee questions.

A motion was made to amend Resolution of Necessity No. 13-15 authorizing the amendment of eminent domain proceedings to modify current easement requirements.

Ayes: Martinez, Solis, Sternquist, Messina, Pedroza, Lyons, Moss, Shevlin, Hadjinian, Sandoval

Nayes: None.

12. **Hearing on Amended Resolution of Necessity No.13-16 for the Fairway Drive Grade Separation Project** – The Vice Chair opened the hearing. Public comment period was opened and there were no comments. Public comment was closed. There were no Committee questions.

A motion was made to amend Resolution of Necessity No. 13-16 authorizing the amendment of eminent domain proceedings to modify current easement requirements.

Ayes: Martinez, Solis, Sternquist, Messina, Pedroza, Lyons, Moss, Shevlin, Hadjinian, Sandoval

Nayes: None.

13. **Approval of Contract Amendment for Construction Management Services with WSP for the Fairway Drive Grade Separation Project** – Mr. Christoffels reported that a construction contract with WSP was approved in 2013 and that ACE initiated the construction of the Lemon Avenue, 57/60 freeway on and off ramps under the WSP contract. This work required a contract extension by 24 months for the additional work.

A motion was made by member Hadjinian, and seconded by member Solis to authorize Chief Engineer to amend the contract with WSP for an additional \$3,320,363 for construction management services for the Fairway Drive grade separation project for a new contract value is \$11,011,292.

M/S/C/Hadjinian/Solis/Unanimous

14. **Approval of Contract Amendment for Construction Management Services with Jacobs Management for the San Gabriel Trench Project** – Mr. Christoffels reported that heavy rains in 2016 caused major damages to railroad tracks in Northern California that Union Pacific Railroad needed to immediately repair. The repairs delayed the scheduling of our UPRR track laying work in the Trench project. This contract amendment will allow construction management services to continue through the end of the project.

A motion was made by member Solis and seconded by member Hadjinian to authorize Chief Engineer to amend the contract with Jacobs Management Co. to add an additional \$137,072 for construction management services associated with the San Gabriel Trench Project. The new contract value amount is \$22,270,447.

M/S/C/Solis/Hadjinian/Unanimous

15. **Approval of Task Order 2 for Construction Management Services for the Durfee Avenue Grade Separation Project with PreScience Corporation** – Mr. Christoffels reported that Task Order 1 for initial design and project constructability consulting was issued September 2017. This Task Order 2 request will allow the contractor to move forward with additional work needed in conjunction with the Durfee Avenue Grade Separation project. He indicated that the additional amount for this task order is included in the project budget.

A motion was made by member Solis and seconded by member Hadjinian to authorize the Chief Engineer to execute Task Order 2 under the construction management services contract with PreScience Corporation for an additional amount of \$5,791,548 for a new contract value of \$6,027,527.

M/S/C/Hadjinian/Solis/Unanimous

16. **Approval to Receive and File Quarterly Project Progress Reports** – Mr. Christoffels reported on the current projects progress and stages of construction. He highlighted the safety improvements underway in the City of Pomona, reporting the installation of pedestrian gates can be difficult because of right of way issues but that we are moving forward with this project. He reported at the Fairway Drive project, anticipate \$30 million in excess properties that will be recorded until the funds are received.

A motion was made by member Hadjinian and seconded by member Moss to approve to receive and file the quarterly project progress reports

M/S/C/Hadjinian/Moss/Unanimous

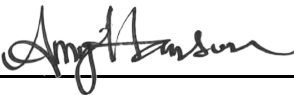
17. **Approval to Receive and File Quarterly Mitigation Monitoring Reports** – A motion was made by member Hadjinian and seconded by member Moss to approve to receive and file the quarterly project progress reports

M/S/C/Hadjinian/Moss/Unanimous

18. **Closed Session** – Greg Murphy announced the Committee would adjourn to closed session in accordance with Government Code Section 54956.9 to discuss existing litigation, ACE v Rowland Ranch Properties LLC LA Superior Court Case No. BC629038 and Alameda Corridor East Construction Authority v. Majestic Realty Co., et al; LASC Case No. BC 527 310.

The Board returned to open session and legal counsel indicated that the Committee was briefed on the matter and all members participated and unanimously gave direction to staff settle on defined terms.

19. **Adjournment** – The meeting was adjourned at 1:10PM. The next meeting will be held on November 26<sup>th</sup> at noon.

X 

---

Amy Hanson  
Assistant Clerk



Memo to: Capital Projects and Construction Committee Members & Alternates

From: Mark Christoffels  
Chief Engineer

Date: November 26, 2018

SUBJECT: Chief Engineer's Monthly Report

The following are items of note since the last meeting:

**Election Briefing** – Staff will provide a brief oral update at your meeting on Election Day results pertinent to the composition of the San Gabriel Valley's legislative delegation and the projects assigned to your Committee.

**SB 1 Media Briefing** – We held a press conference and media briefing on October 31 to successfully highlight the role of the new state SB 1 transportation revenues in delivering the San Gabriel Valley's high-priority highway, light rail and ACE rail-roadway grade separation projects. We were pleased to welcome as special guest speakers U.S. Representatives Grace Napolitano and Judy Chu and State Senator Connie Leyva in addition to members of your committee and councilmembers from COG cities.

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

Consultant/Vendor	Reason for Change	Change Amount	Total Contract Value
Walsh Construction Co.	San Gabriel Trench Project - CCO #48 – CN #127 – Additional Road Rehabilitation at the Del Mar Ave/Clary Ave Intersection	\$149,080	\$170,435,196
Walsh Construction Co.	San Gabriel Trench Project - CCO #49 – CN #85.1 – Additional Cost for SGCWD Water Meter; CN #103 – Unforeseen Concrete Condition at Commercial Building; CN #107 – Magnet & Lock Boxes for Trench Grates; Addition of Stop Log Signage & Padlocks; CN #122 – Emergency Access Ramp East of Rubio Wash; CN #125 – Support for AC Coring; CN #129 – Placement of Temporary K-Rail	\$69,334	\$170,504,530



	between the Alhambra Wash and Ramona St.		
Walsh Construction Co.	San Gabriel Trench Project - CCO #50 – CN #119 – San Gabriel Blvd – Mill & Overlay from STA 51+45.00 to Agostino Rd; Additional HMA & Raise Manholes N of San Gabriel Blvd.; CN #161 – Rock Blanket at San Gabriel Blvd. Median	\$238,590	\$170,743,120
Walsh Construction Co.	San Gabriel Trench Project - CCO #51 – CN #104 – Eliminated Utility Protection Slabs West of the Alhambra Wash; CN #112 – Chain Link Modifications at Alhambra Wash	(\$75,376)	\$170,667,744
Walsh Construction Co.	San Gabriel Trench Project - CCO #52 – CN #156 – Re-Slurry Seal of San Gabriel Blvd. from STA 69+05.82 to STA 86+54.36	\$105,225	\$170,772,969
Walsh Construction Co.	San Gabriel Trench Project - CCO #53 – CN # 157 – Fence at Storage Facility Property on West Main St. and Del Mar Ave	\$77,063.00	\$170,850,032
Walsh Construction Co.	San Gabriel Trench Project - CCO #54 – CN #145 – Del Mar Bridge Deck – Polyester Overlay Scope Reduction	(\$1,271)	\$170,848,761
Moffatt & Nichol	Extend Task Order No. 2 term through December 31, 2018 for Montebello Blvd. grade separation project	\$0.00	\$13,763,568
Moffatt & Nichol	Amendment No. 22 – Extend term through December 31, 2019 for San Gabriel Trench project	\$0.00	\$29,251,155
Moffatt & Nichol	Extend Task Order No. 3 term through December 31, 2019 for Puente Avenue grade separation project	\$0.00	\$7,470,547
Biggs Cardosa Associates, Inc.	Additional Design Services for the Fullerton Road grade separation project	\$153,320	\$11,420,999
Shimmick Construction Company, Inc.	Fullerton Road Grade Separation project: CCO #10 – PCO #012.03 – Puente Hills Plaza Switched Replacement and Electrical Service Rewire – Safety Representative during Night Work; PCO #012.05 – Puente Hills Plaza AC Electrical and Lot Lighting; PCO #020 - RFC No. 049 – Rain Event Reporting Increase; PCO	\$183,081	\$82,419,540

	#023 – Pedestrian Access at Fullerton Road and Railroad Street		
--	----------------------------------------------------------------	--	--

**Community Outreach Update** – Staff conducted the following project outreach activities:

- Provided staff support for the SB1 San Gabriel Valley Transportation Projects media briefing;
- Staffed an ACE projects exhibit table at the Mobility 21 transportation summit;
- Distributed construction alert notices regarding a 40-hour weekend closure of the Lemon Avenue ramps for State Route 60 and Lemon Avenue between Earlgate Avenue and Golden Springs Drive for the SR-60 Lemon Avenue Interchange project; and
- Conducted ongoing community outreach and support activities for the San Gabriel Trench, Fairway Drive, Fullerton Road, Durfee, and Montebello grade separation projects.



MEMO TO: ACE Construction Authority Board Members and Alternates

FROM: Mark Christoffels  
Chief Engineer

DATE: November 26, 2018

SUBJECT: Approval of Closeout of Construction Contract with OHL USA Inc. and  
Acceptance of the Puente Ave. (Alhambra Sub.) Grade Separation Project  
as Substantially Complete

**RECOMMENDATION:** It is recommended that the Committee:

1. Accept the Puente Ave. (Alhambra Sub.) grade separation construction contract with OHL USA Inc. (OHL) as being substantially completed in conformance with the project plans and specifications, and authorize the Chief Engineer to close out the construction contract upon receipt of project and financial documentation from the contractor.
2. Approve retention payment to OHL, upon completion of the statutory period identified in the California Civil Code, if no claims or objections have been filed, and upon concurrence of the Chief Engineer; and
3. Authorize the Acting Contracts Manager to release the Labor and Materials Bond and the Faithful Performance Bond upon expiration of the required lien period, if no claims or objections have been filed, upon concurrence of the Chief Engineer.

**BACKGROUND:** At the July 2014 ACE Board meeting, the Board authorized a contract with OHL for the construction of the Puente Ave (Alhambra Sub.) grade separation project in the City of Industry and Unincorporated LA County, in the amount of \$38,453,945. OHL was given a Limited Notice to Proceed on October 9, 2014 and a full notice to proceed on December 15, 2014.

The Puente Ave. (Alhambra Sub.) grade separation was opened to traffic on April 6, 2018. All work described in the project plans and specifications for this project was completed in October 19, 2018 when the pump station punch list work was completed.

The project employed 644 local workers, 53 of which were San Gabriel Valley residents, or about 8.23% of the total.

There was a total of 40 subcontractors. 2 contractors have offices in the San Gabriel Valley or about 5% of the total.

OHL exceeded the Small Business Enterprise (SBE) Program goal established under this contract:

SBE Contract Goal: 11%  
OHL's SBE Goal Attainment: 14%

ACE staff and the City of Industry, Los Angeles County Department of Public Works, Los Angeles County Sanitation District, and Union Pacific Railroad (UPRR) have accepted all construction work. The major components of the grade separation includes construction of retaining walls, roadway underpass, UPRR bridge, storm drain modifications, storm drain pump station, curb/gutter, sidewalks, roadway rehabilitation, traffic signal modifications, and landscaping.

Operation and maintenance of the project has been transferred to participating agencies, as follows:

- City of Industry: streets, street lighting, sidewalks, irrigation, landscaping and sewer lines, and storm drains
- Los Angeles County Sanitation District: sewer lines
- Los Angeles County Department of Public Works: streets, street lighting, sidewalks, irrigation, landscaping and sewer lines, Pump Station (pending final operational review), and storm drains
- Union Pacific Railroad: mainline track
- Various companies and agencies: water, gas, electrical and communications lines

This project was completed within the contingency authority provided to the Chief Engineer. At the time of preparation of this report, the final estimated construction contract amounts are as follows:

Original Contract Value	\$38,453,945.00
Change Orders (1-15)	\$1,964,430.62
Final Contract Value	\$40,418,375.62
Change Order Percentage	5.11%

Staff requests that the Committee approve final contract closeout and accept the Puente Ave. (Alhambra Sub.) project as completed.

**BUDGET IMPACT:** The project was completed within the approved budget.



MEMO TO: ACE Construction Authority Board Members and Alternates

FROM: Mark Christoffels  
Chief Engineer

DATE: November 26, 2018

SUBJECT: Approval of Closeout of Construction Contract with Walsh Construction Company and Acceptance of the San Gabriel Trench Project (Alhambra Sub.) Grade Separation Project as Substantially Complete

**RECOMMENDATION:** It is recommended that the Committee:

1. Accept the San Gabriel Trench Project (Alhambra Sub.) grade separation construction contract with The Walsh Group (Walsh) as being substantially completed in conformance with the project plans and specifications, and authorize the Chief Engineer to close out the construction contract upon receipt of project and financial documentation from the contractor.
2. Approve retention payment to Walsh, upon completion of the statutory period identified in the California Civil Code, if no claims or objections have been filed, and upon concurrence of the Chief Engineer; and
3. Authorize the Acting Contracts Manager to release the Labor and Materials Bond and the Faithful Performance Bond upon expiration of the required lien period, if no claims or objections have been filed, upon concurrence of the Chief Engineer.

**BACKGROUND:** At the July 2012 ACE Board meeting, the Board authorized a contract with Walsh for the construction of the San Gabriel Trench Project (Alhambra Sub.) grade separation project in the City of Alhambra, City of San Gabriel, City of Rosemead, and Unincorporated LA County, in the amount of \$172,592,600.00. Walsh was given a Limited Notice to Proceed on October 24, 2012 and a full notice to proceed on February 24, 2014.

The San Gabriel Trench Project (Alhambra Sub.) grade separation was opened to train traffic on July 24, 2017. All work described in the project plans and specifications for this project was completed in July 31, 2018.

The project employed 1,211 local workers, 133 of which were San Gabriel Valley residents, or about 10.98% of the total.

There was a total of 72 subcontractors. 12 contractors have offices in the San Gabriel Valley or about 16.66% of the total.

ACE staff and the Los Angeles County Department of Public Works, Army Corps of Engineers, Los Angeles County Sanitation District, and Union Pacific Railroad (UPRR) have accepted all construction work. The major components of the grade separation includes construction of the trench, retaining walls, 4 roadway bridges, 2 UPRR bridges, Alhambra and Rubio Wash modifications, curb/gutter, sidewalks, roadway rehabilitation, traffic signal modifications, and landscaping.

Operation and maintenance of the project has been transferred to participating agencies, as follows:

- City of San Gabriel: streets, street lighting, sidewalks, irrigation, landscaping and sewer lines, and storm drains
- Los Angeles County Sanitation District: sewer lines
- Los Angeles County Department of Public Works: storm drain, roadway, sidewalk Rubio Wash
- Army Corps of Engineers: Alhambra Wash
- Union Pacific Railroad: mainline track and railroad bridges
- Various companies and agencies: water, gas, electrical and communications lines

This project was completed within the contingency authority provided to the Chief Engineer. At the time of preparation of this report, the final estimated construction contract amounts are as follows:

Original Contract Value	\$172,592,600.00
Change Orders (1-54)	(\$1,743,839.22)
Final Contract Value	\$170,848,760.78
Change Order Percentage	-1%

Staff requests that the Committee approve final contract closeout and accept the San Gabriel Trench Grade Separation Project (Alhambra Sub.) project as completed.

**BUDGET IMPACT:** The project was completed within the approved budget.



MEMO TO: Capital Projects and Construction Committee Members & Alternates

FROM: Mark Christoffels  
Chief Engineer

DATE: November 26, 2018

SUBJECT: Approval of Amendment No. 2 to the Waterline Relocation Agreement with Rowland Water District for the Fullerton Road Grade Separation Project.

**RECOMMENDATION:** Staff recommends that the Committee authorize the Chief Engineer to execute an Amendment to the Waterline Relocation Agreement with Rowland Water District for the design, construction and inspection of private water facilities as part of the Fullerton Road Grade Separation project for a revised not to exceed amount of \$2,555,271.

**BACKGROUND:** The construction of the Fullerton Road grade separation project will impact existing water service connections to a water main due to the project lowering streets adjacent to the railroad tracks. The Rowland Water District owns water lines within the streets that will be impacted by the project and several of the affected customer service lines must be relocated in order to maintain service to the various customers.

On December 18, 2017 the ACE Board approved an agreement with Rowland Water District in an amount not to exceed \$2,225,898 for the design, construction and inspection for relocation of these various waterlines. Reimbursement to Rowland Water District was to be based on actual expenditures after the relocation work was completed.

Various previously unidentified water lines were discovered during construction, which required relocation or abandonment and other lines were discovered to have been placed shallower than records showed, requiring additional relocations. Additional actual expenditures are in the amount of \$329,373.

**BUDGET IMPACT:** Funding for the Rowland Water District relocation work is budgeted and will be paid using LA Metro funds and funding from the City of Industry.

MEMO TO: Capital Projects & Construction Committee Members and Alternates

FROM: Mark Christoffels  
Chief Engineer

DATE: November 26, 2018

SUBJECT: Receive and File Agreement No. 18-01 with CWE for Preliminary Engineering and Final Design Services for the Load Reduction Strategy Projects for the Rio Hondo River and Tributaries

**RECOMMENDATION:** Staff recommends that the Committee receive and file a fully executed copy of the Preliminary Design and Engineering Services contract with California Watershed Engineering Corporation (CWE) for the Load Reduction Strategy Projects for the Rio Hondo River and Tributaries.

**BACKGROUND:** At the August meeting, the Committee approved the selection of CWE for design and engineering services for the LRS projects. At the September meeting the Committee authorized the Chief Engineer to execute a design services contract with California Watershed Engineering Corporation (CWE) and issue Task Order No. 1 for preliminary design services (Phase 1) for \$249,394. In accordance with revised policies and procedures of the SGVCOG for Capital Projects, staff is required to bring back for receive and file by the Committee a fully executed copy of the agreement.

**BUDGET IMPACT:** Funding for this contract is being provided from the participating agencies under a separate agreement previously approved by the SGVCOG Governing Board.



**AGREEMENT NO. 18-01**

**AGREEMENT FOR  
PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES  
FOR  
LOAD REDUCTION STRATEGY PROJECTS FOR THE  
RIO HONDO RIVER AND TRIBUTARIES**

**BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AND**

**CWE**

**SEPTEMBER 24, 2018**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR**

**PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES**

**FOR**

**LOAD REDUCTION STRATEGY PROJECTS FOR THE**

**RIO HONDO RIVER AND TRIBUTARIES**

<b>TABLE OF CONTENTS</b>		
<b><u>SECTION</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
1	TERM OF AGREEMENT	C-1
2	SUBCONTRACTORS	C-1
3	SCOPE OF SERVICES	C-1
4	CHANGES IN WORK	C-2
5	ADDITIONAL SERVICES	C-2
6	RIGHT OF ENTRY	C-3
7	COMPENSATION AND METHOD OF PAYMENT	C-3
8	DEFICIENT SERVICES, ADDITIONAL COSTS AND REDESIGN	C-7
9	EQUIPMENT PURCHASES	C-8
10	OWNERSHIP OF DOCUMENTS	C-8
11	CONSULTANT'S BOOKS AND RECORDS	C-9
12	STATUS OF CONSULTANT	C-9
13	COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES	C-10
14	SMALL BUSINESS ENTERPRISE PARTICIPATION	C-10
15	FAIR EMPLOYMENT PRACTICES	C-10
16	NONDISCRIMINATION ASSURANCES	C-11
17	UNAUTHORIZED ALIENS	C-12
18	CONFLICTS OF INTEREST	C-13
19	RESTRICTIONS ON LOBBYING	C-13
20	CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION	C-14
21	INDEMNIFICATION	C-15
22	INSURANCE	C-15
23	ASSIGNMENT	C-16
24	TERMINATION OF AGREEMENT	C-16
25	DEFAULT	C-16
26	CONSULTANT'S ENDORSEMENT	C-17
27	CONTINUITY OF PERSONNEL	C-17
28	TIME OF THE ESSENCE	C-17
29	EXCUSABLE DELAYS	C-17
30	PATENT RIGHTS	C-17
31	COPYRIGHTS	C-17
32	LABOR COMPLIANCE REQUIREMENTS	C-18
33	WAIVER	C-18

## TABLE OF CONTENTS (CONTINUED)

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
34	NOTICES	C-18
35	BINDING EFFECT	C-19
36	MODIFICATION OF AGREEMENT	C-19
37	LAW TO GOVERN; VENUE	C-19
38	ATTORNEYS FEES, COSTS AND EXPENSES	C-19
39	SEVERABILITY	C-19
40	COVENANT AGAINST CONTINGENT FEES	C-19
41	REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION	C-20
42	CONSULTANT DESIGN STANDARDS	C-20
43	DISPUTES	C-20
44	USE OF PUBLIC FUNDS	C-20
45	SAFETY	C-21
46	NATIONAL LABOR RELATIONS BOARD CERTIFICATION	C-21
47	EVALUATION OF CONSULTANT	C-21
48	AUTHORITY TO EXECUTE	C-21
49	ENTIRE AGREEMENT	C-21
50	SIGNATURES	C-22

### LIST OF ATTACHMENTS:

EXHIBIT "A"	SCOPE OF SERVICES
EXHIBIT "B"	SAMPLE TASK ORDER
EXHIBIT "C"	COMPENSATION
EXHIBIT "D"	LIST OF PROPOSED SUBCONTRACTORS
EXHIBIT "E"	NONDISCRIMINATION ASSURANCES IN SUBCONTRACTS
EXHIBIT "F"	INSURANCE
EXHIBIT "G"	LIST OF KEY PERSONNEL
EXHIBIT "H"	LABOR COMPLIANCE PROVISIONS

**AGREEMENT NO. 18-01**

**AGREEMENT FOR PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES  
FOR  
LOAD REDUCTION STRATEGY PROJECTS FOR THE  
RIO HONDO RIVER AND TRIBUTARIES**

**BY AND BETWEEN**

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS  
AND**

**CWE**

This AGREEMENT FOR **PRELIMINARY ENGINEERING AND FINAL DESIGN SERVICES FOR LOAD REDUCTION STRATEGY PROJECTS FOR THE RIO HONDO RIVER AND TRIBUTARIES** BY AND BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND CWE (the "AGREEMENT"), is made and entered into effective as of the 24<sup>th</sup> day of September, 2018, by and between the San Gabriel Valley Council of Governments, (the "SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS") and CWE (the "CONSULTANT").

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 24 "TERMINATION OF AGREEMENT", this AGREEMENT shall remain in force from the effective date, as first shown above, and shall expire on September 24, 2023 and upon completion and acceptance of the **Preliminary Engineering and Final Design Services for the Load Reduction Projects for the San Gabriel River and Tributaries**. 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Any substitution and removal of subcontractors must be approved, in writing, by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS a copy of each of its fully executed agreements and amendments with its subcontractors upon request of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

**SECTION 3. SCOPE OF SERVICES.**

- A. EXHIBIT "A" describes the total SCOPE OF SERVICES that SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS makes no guarantee; either express or implied, as to the actual, total dollar value of all of the TASK ORDERS that will be authorized under this AGREEMENT.

- B. When SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS determines that a TASK ORDER (sample attached as EXHIBIT "B") is required, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will request that CONSULTANT prepare a draft scope of work 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), and other items, as appropriate. CONSULTANT shall provide the draft scope of work and proposed cost to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, which shall review the draft scope of work and cost 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and CONSULTANT.
- C. CONSULTANT shall not undertake any work associated with a specific TASK ORDER until that TASK ORDER has been approved by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, signed by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and CONSULTANT and a notice to proceed has been issued by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and CONSULTANT, the TASK ORDER shall be incorporated into and made a part of this AGREEMENT.

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

The 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, without additional compensation thereof. Should the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revision as directed by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Any revisions to satisfactorily completed work as directed by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. CONSULTANT shall be compensated for any such additional authorized services in the

amounts and in the manner agreed to in writing by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

**SECTION 6. RIGHT OF ENTRY. [NOT USED]**

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

- A. The total compensation to be payable by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to CONSULTANT for all TASK ORDERS under this AGREEMENT shall be based on executed TASK ORDERS issued by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. There is no guarantee, either express or implied, as to the actual dollar value of services to be authorized through TASK ORDERS.
- B. CONSULTANT shall be compensated in the manner and amounts specified in Attachment "B" COMPENSATION" of each TASK ORDER attached hereto and made a part of this AGREEMENT. The total compensation due CONSULTANT for each TASK ORDER shall not exceed the amount set forth in the budget contained in Attachment "B" of each TASK ORDER unless additional compensation is approved in writing in advance by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. CONSULTANT shall incur only such costs as are reasonable and necessary and in the best interests of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. The CONSULTANT agrees to use its best efforts to perform the work specified in Attachment "A" SCOPE OF SERVICES of each TASK ORDER and all obligations under this AGREEMENT within any not-to-exceed limit specified in Attachment "B" in such TASK ORDER. Any costs incurred by CONSULTANT in excess of the aforesaid limitation without the express written consent of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall be at CONSULTANT's own risk. Reimbursements on subcontracts for goods and services shall be limited to the actual amount paid by the 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 the CONSULTANT.
- C. The CONSULTANT's compensation for the design work [Phase 1: Preliminary Design and Phase 2: Final Design] as identified in Exhibit A: SCOPE OF SERVICES will be on a lump Sum basis, which must include all overhead costs and a fee that is no more than nine percent (9%) of the hourly cost rate. The CONSULTANT's compensation will be subject to a cap on total budget for each TASK ORDER.
- D. ANY TASK ORDER issued on a lump sum basis must include compensation for all work and deliverables, travel, equipment and all other project-related costs, administrative costs and proposed profit. Even though the method of payment to CONSULTANT 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 and proposed profit. This information will be used to determine the reasonableness of CONSULTANT's estimate and for pre/post-award audit purposes when appropriate. Any adjustment to the total lump sum compensation in any TASK ORDER, if necessary and properly justified by CONSULTANT, will not be effective until authorized in writing by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

- E. CONSULTANT's hourly rates are not adjustable for the first two (2) years of the performance period under the AGREEMENT. The CONSULTANT's performance period will start on the date of the first Notice to Proceed issued to the CONSULTANT. After the first two (2) years, CONSULTANT's hourly rates may have annual adjustments of no more than three (3) percent; subject to review and approval of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. These hourly rate limitations are applicable to all subconsultants.
- F. CONSULTANT shall notify the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 Attachment "B". As part of any such notification, CONSULTANT shall provide the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS with written justification for and a revised estimate of the total cost to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for the completion of such TASK ORDER.
- G. As soon as practical after the first day of each calendar month, but in no event later than the fifteenth (15<sup>th</sup>) of the month, CONSULTANT shall furnish to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS an original invoice. The invoice shall identify all compensation due to CONSULTANT by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for services performed in the previous month. Each original invoice shall also include sufficient supporting materials to enable SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to confirm that all claimed services have been properly completed and costs incurred as claimed by CONSULTANT. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall endeavor to pay the amount due CONSULTANT in full within thirty (30) days after receipt of invoice. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS reserves the right to withhold payments to CONSULTANT for any labor compliance violations until such matter is resolved.

Each CONSULTANT invoice shall also be accompanied by a Program Report, Histogram and Production S-curve chart exhibits. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

- H. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall independently review each invoice submitted by the 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. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. The eligibility requirements for billings for services, costs and expenses, as described in this SECTION 7 (H.), must be contained in all

CONSULTANT subcontracts and all CONSULTANT subcontracts must also include a provision mandating reimbursement of SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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.

- I. In the event SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS disputes any item in any invoice, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall notify CONSULTANT within thirty (30) days of receipt by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS of said invoice. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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. Should SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS require additional documentation to process any invoice, CONSULTANT shall provide such documentation within five (5) working days.
- J. Payment to CONSULTANT for services performed pursuant to this AGREEMENT shall not be deemed to waive any deficiencies in services performed by CONSULTANT.
- K. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will apply five percent (5%) retention to all payments made under this AGREEMENT. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will make a good faith effort to schedule an audit of CONSULTANT on at least an annual basis. After completion of each audit, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will issue a Draft Audit Report to CONSULTANT. 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 fails to respond to or acknowledge the Draft Audit Report within thirty (30) days, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will issue the Final Audit Report. The Final Audit Report will not be subject to reconsideration by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- L. In lieu of said retention, CONSULTANT shall 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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall be unreasonably withheld. CONSULTANT shall establish an escrow account at a financial institution approved by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- M. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for the work of CONSULTANT's subcontractors.

- N. CONSULTANT agrees to make payment of subcontractor retained funds to subcontractors no later than seven (7) calendar days after SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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.
- O. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Repeated and persistent failures by CONSULTANT to comply with the prompt payment policy of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will be considered a material failure to comply with the terms of this AGREEMENT and may result in the CONSULTANT being in default under SECTION 25.
- P. This AGREEMENT is subject to the requirements of 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.). The CONSULTANT also agrees 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Pre-award audit recommendations will be included in the AGREEMENT or in the amendments prior to their execution. In the event the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 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 or post award audit, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, in the reasonable exercise of its discretion, may require that the COST PROPOSAL be amended by the CONSULTANT to conform to any audit recommendations with any such amendments being subject to the approval of the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, in its reasonable discretion. Refusal by the 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 the CONSULTANT to be in default of the AGREEMENT as described in SECTION 25.

#### **SECTION 8. DEFICIENT SERVICES, ADDITIONAL COSTS AND REDESIGN.**

- 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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, CONSULTANT shall immediately re-perform, at its own costs, the services that are deficient. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to require that CONSULTANT perform again all or part of the SCOPE OF SERVICES shall be at the sole cost of CONSULTANT and, further, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall not pay any additional compensation to CONSULTANT for its re-performance.
- C. If a TASK ORDER requires CONSULTANT to prepare plans and specifications with a detailed, written estimate of the cost of construction, then CONSULTANT may be required to modify the plans and specifications, any construction documents relating to the plans and specifications, and CONSULTANT's estimate, at no cost to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, if the lowest responsive bid from a responsible bidder for construction received by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS exceeds by more than ten percent (10%) of CONSULTANT's estimate. Any such modifications shall be submitted in a timely fashion to allow SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to receive new bids within four (4) months after the date on which the original bids were received by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- D. If errors or omissions in the project plans and specifications prepared by the CONSULTANT cause SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to incur additional construction costs or other costs that could have been avoided had the plans and specifications not contained these errors and omissions, the CONSULTANT shall reimburse the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for any such additional construction or other costs incurred by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

#### **SECTION 9. EQUIPMENT PURCHASES.**

- A. When CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or consulting services, if requested, 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: "The 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, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS procedures; and credit the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS in an amount equal to the sales prices. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and the CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved, in advance, by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS."
- 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. If requested, Data shall be given to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. 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, timesheets or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS or its designated representatives or representatives of any governmental entities providing funding for the project, if a portion of such funding is used to compensate CONSULTANT hereunder. Copies of such documents or records shall be provided directly to the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS may, in writing, require that custody of such documents or records be given to the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and that such documents and records thereafter be maintained by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

## **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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. CONSULTANT shall have no authority to bind SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, nor any elected or appointed boards, committees, officers, officials, employees or agents of SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.
- 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS' 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and any subcontractors of CONSULTANT, and no subcontract shall relieve the CONSULTANT of his/her responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the CONSULTANT. CONSULTANT's obligation to pay its subcontractors is an independent obligation from the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS's obligation to make payments to the 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, nor any elected or appointed boards, committees, officers, officials, employees or agents of SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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.**

CONSULTANT should ensure that small business enterprises have been afforded every opportunity to participate in the work associated with this project and should take all necessary and reasonable steps for this assurance.

### **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 the 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS' funding agencies to investigate or ascertain compliance with this SECTION 15 of this AGREEMENT.
- D. Remedies for willful violation:
  - i. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall have the right to terminate this AGREEMENT, either in whole or in part, and any loss or damage sustained by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS in securing the goods or services described herein shall be borne by and paid for by CONSULTANT and SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 “E” “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 CONSULTANT 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS in connection therewith.

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

- A. The CONSULTANT shall disclose any financial, business, or other relationship with the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS that may have an impact upon the outcome of this AGREEMENT, or any ensuing SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS **construction management services and construction contracts**. The CONSULTANT shall also disclose current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS **construction management services and construction contracts**, which will follow.

- B. The 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. The CONSULTANT certifies that it will NOT bid individually or as part of a team on any ensuing **construction management services and construction contracts** on any SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS project covered by this AGREEMENT.
- E. The CONSULTANT certifies that any subconsultant and any firm affiliated with the CONSULTANT or subconsultants that earn revenue in excess of twenty-five thousand dollars (\$25,000) in connection with this AGREEMENT will NOT bid individually or as part of a team on any ensuing **construction management services and construction contracts** on ANY SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS project covered by this AGREEMENT.

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

- A. The 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 federal 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.
  - 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS without prior written authorization from the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, except as may be required by law.
- B. CONSULTANT, its officers, employees, agents or subcontractors shall not, without prior written authorization from the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS or unless



requested by legal counsel to the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS notice of such court order or subpoena.

- C. The 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and receipt of SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS' 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of CONSULTANT's conduct.
- E. CONSULTANT shall promptly notify SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS and to provide SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS has an obligation to control, direct, or rewrite said response.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity other than SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

## **SECTION 21. INDEMNIFICATION.**

- A. The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS along with its individual members, the City of Pasadena, the Los Angeles County and their respective elected and appointed boards, committees, 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, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS along with its individual members, the City of Pasadena, the Los Angeles County 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, shall defend INDEMNITEES at its expense by counsel acceptable to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

## **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 "F" INSURANCE and made part of this AGREEMENT and, unless waived by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS in its sole discretion, to require that all its subcontractors also obtain and maintain the insurance policies set forth in EXHIBIT "F". CONSULTANT insurance shall provide coverage for all activities under this AGREEMENT, whether performed by CONSULTANT or any subcontractors. The insurance policies shall name the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS along with its individual members, the City of Pasadena, the Los Angeles County and their respective elected and appointed boards, committees, officials, officers, agents, employees and volunteers as "additional insureds" with respect to all liabilities arising out of CONSULTANT'S or subcontractor's obligations under the AGREEMENT. All insurance policies shall be subject to approval by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS as to form and content. The insurance policy requirements as set forth in EXHIBIT "F" are subject to amendment or waiver if so approved in writing by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Upon request by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS to any and all remedies at law or in equity, including summary termination of this AGREEMENT.

Notwithstanding any other provisions in this SECTION 23, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS may assign this AGREEMENT, in whole or in part, including performance of SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS'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. SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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.
- B. Upon termination of this AGREEMENT, all property belonging to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, which is in CONSULTANT's possession, shall be returned to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. CONSULTANT shall furnish to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 7 of this AGREEMENT. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS shall not have any obligation or duty to continue compensating CONSULTANT for any services performed after the date of default, and SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

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

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

COUNCIL OF GOVERNMENTS, in its sole discretion, determines such a replacement is necessary. Replacement of key staff, in every case, are subject to SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS written approval prior to assignment to perform services under this AGREEMENT.

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

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

**SECTION 29. EXCUSABLE DELAYS.**

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

**SECTION 30. PATENT RIGHTS.**

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

**SECTION 31. COPYRIGHTS.**

The SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS may permit copyrighting reports or other agreement products. If copyrights are permitted, the funding agencies 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, the CONSULTANT and its subcontractors shall pay not less than the higher wage rate. CONSULTANT shall further adhere to the requirements contained in Exhibit "H" - 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 the 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 the CONSULTANT pays for a total fringe benefit package in an amount less than the aggregate credit allowed in the prevailing wage determination, the 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.

**SECTION 33. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

#### **SECTION 34. 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 electronic mail, or overnight delivery service or certified mail, postage prepaid and return receipt requested, addressed as follows:

To SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS:

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:

Gregory M. Murphy  
General Counsel  
San Gabriel Valley Council of Governments  
c/o Burke, Williams & Sorensen, LLP  
444 South Flower Street, Suite 2400  
Los Angeles, CA 90071-2953  
Telephone: (213) 236-2835  
Facsimile: (213) 236-2700

To CONSULTANT:

Vik Bapna  
Principal  
CWE  
1561 E. Orangethorpe Avenue, Suite 240  
Fullerton, California 92831  
Telephone: (714) 526-7500  
Facsimile: (714) 526-7004

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or electronic mail, 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 35. BINDING EFFECT.**

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

#### **SECTION 36. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. The

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

**SECTION 37. 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 38. 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 39. 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 40. COVENANT AGAINST CONTINGENT FEES.**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the 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, the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS, 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 41. 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS employee. For breach or violation of this warranty, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 42. CONSULTANT DESIGN STANDARDS.**

CONSULTANT, its officers, agents, employees, subcontractors, and any persons or entities for whom CONSULTANT is responsible, shall provide all services pursuant to this AGREEMENT in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the project (including its contracting mode).

#### **SECTION 43. 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS Project Manager or his designee, who may consider written or verbal information submitted by the CONSULTANT.
- B. Not later than thirty (30) days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by Executive Director or designee 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 the SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS will excuse the CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

#### **SECTION 44. USE OF PUBLIC FUNDS**

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 Metro Office of Inspector General's hotline number (800) 221-1142. The service is available Monday through Friday, during business hours and is confidential and anonymous.

#### **SECTION 45. SAFETY**

CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment procedures. CONSULTANT shall comply with safety instructions issued by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS.

Pursuant to the authority contained in Section 591 of the Vehicle Code, SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS has determined that such areas within the limits of the project and are open to public traffic. CONSULTANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the 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.

#### **SECTION 46. NATIONAL LABOR RELATIONS BOARD CERIFICATION**

In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding 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 47. EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

**SECTION 48. 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 49. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "H", 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 SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS 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 50. SIGNATURES.**

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

**CONSULTANT**

By Vik Bapna, VIK BAPNA  
Title PRINCIPAL

**SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS**

By Mr. [Signature]  
Title Chief Engineer

**ATTEST:**

[Signature]  
Secretary

**APPROVED AS TO FORM.**

[Signature]  
Counsel to SAN GABRIEL VALLEY  
COUNCIL OF GOVERNMENTS