

REQUEST FOR PROPOSALS (RFP)

COG #2018- 01

THE COUNCIL OF SAN BENITO COUNTY GOVERNMENTS INVITES CONSULTANTS TO SUBMIT THEIR PROPOSALS FOR THE:

TRANSPORTATION SALES TAX STRATEGY/PUBLIC OUTREACH PLAN

You are invited to submit your Proposal for the services to complete the above project. Submissions are due in the office of the Executive Director of the Council of San Benito County Governments by **12:00 noon PST on January 31, 2018.**

Copies of the RFP and the detailed information regarding the submission of the Proposal are available at the COG offices and may be obtained upon request. This RFP is available at the COG website (www.sanbenitocog.org) in PDF format. You may call Mary Gilbert at (831) 637-7665 to obtain a copy and for further information.

DATE: January 17, 2018
TO: Interested Consultants
FROM: Mary Gilbert, Executive Director
SUBJECT: Transportation Sales Tax Strategy and Public Outreach Plan

INVITATION

You are invited to submit a Proposal for the referenced services together with an hourly rate schedule and an estimate of hours per task by named individual to complete the project. Please include your estimate of other direct costs charged to this project.

Your Proposal is due in the office of the Council of San Benito County Governments, 330 Tres Pinos Road Ste. C-7 Hollister, CA 95023 by **12:00 noon on Wednesday, January 31, 2018.** Proposals received after the date and time specified above will not be considered.

Proposals shall be considered firm offers to enter into a contract, as described in this RFP for a period of ninety (90) days from the time of submittal.

Proposals and inquiries relating to this Request for Proposals shall be submitted to:

Mary Gilbert, Executive Director
Council of San Benito County Governments
330 Tres Pinos Rd. Ste. C-7
Hollister, CA 95023
(831) 637-7665 mary@sanbenitocog.org

Email inquiries relating to this Request for Proposals should include “Transportation Sales Tax Strategy/Public Outreach Plan” in the subject header.

BACKGROUND

The Council of San Benito County Governments is a state-designated public agency with regional transportation planning responsibilities that cross city-county boundaries. COG is committed to planning, funding and delivering transportation projects for the region. COG is also committed to providing information to the public about its projects, plans and activities, ensuring public participation and fostering public understanding of its functions.

COG's Board of Directors includes five members who consist of local officials from each of its incorporated cities and two county supervisorial districts, and an ex-officio member from Caltrans.

PROJECT DESCRIPTION

The Council of San Benito County Governments is looking for Proposals from qualified consultants to develop and implement a strategic outreach plan to increase public awareness and understanding of transportation needs and funding challenges, based on the proposed Scope of Work (Attachment A). It will be the responsibility of the consultant or consultant team to manage the Transportation Sales Tax Strategy and Public Outreach Plan, once approved. A final Scope of Work will be made a part of the professional services agreement between COG and the consultant. A copy of COG's standard contract used for contracting with consultants or individuals for professional services is included in Attachment B and shall serve as the basis for a contract with the successful respondent. *Respondents should not respond to this RFP if they cannot agree to the standard contract terms and conditions.*

It is important that the consultant have the capability to work closely with the COG staff. The consultant or consultant team must be prepared to undertake whatever liaison and meetings are required to satisfy this requirement.

SELECTION PROCESS

COG will establish a committee to review the Proposals. This review may be followed by an oral interview between a review committee and the firm(s) that responds best to the RFP. Based on the recommendations of the review committee, COG staff will meet (in person or by phone) with the most qualified consultant or consultant team and will attempt to negotiate a final Scope of Work and a Fee Schedule for the project. The final Scope of Work will include a full description of each task, a description of deliverable products, and a schedule of the due dates for the deliverable products and other important milestones. Upon successful completion of negotiations the consultants or consultant teams will be recommended to the COG Board for final selection and contract approval. The COG Board will have the sole right of contract approval.

Should the most qualified consultant or consultant team and COG fail to successfully negotiate a final scope of work and a mutually agreed upon Fee Schedule for these consulting services, then COG reserves the right to enter negotiations with the next most qualified candidate for performance of the work.

Further, COG may, or may not, also negotiate contract terms with selected respondents prior to award, and expressly reserves the right to negotiate with several respondents simultaneously and, thereafter, to award a contract to the respondent offering the most favorable terms to the Agency. Proposals submitted, therefore, should contain the respondents' most favorable terms and conditions, because the selection and award may be made without further discussion with any

respondent. The Agency will submit the Proposal considered to be the most responsive and competitive to the Board of Directors for consideration and selection. COG reserves the right to accept or reject any and all submitted Proposals, to waive minor irregularities, and to request additional information or revisions to offers, and to negotiate with any or all respondents at any stage of the evaluation.

Factors to be considered in selecting the consultant(s) are indicated below:

- | | |
|---|------------|
| 1) Experience in California Sales Tax Measures and Transportation Issues; | 30 percent |
| 2) Knowledge of San Benito County transportation and related Issues; | 30 percent |
| 3) Creativity in proposing strategies and messages; | 30 percent |
| 4) References; and | 5 percent |
| 5) Cost. | 5 percent |

QUESTION & ANSWERS, REQUESTS FOR CLARIFICATION OR EXCEPTIONS, ADDENDA

This Request for Proposals and any addenda will be posted on the COG'S website (www.SANBENITOCOG.org). Questions and answers regarding the Request for Proposals will also be posted on the website. All potential respondents are responsible for checking the website for any addenda to the Request for Proposal documents. To receive email notifications of addenda to this Request for Proposals, prospective respondents must submit an email request to the Project Manager.

Any requests for clarification or exceptions to requirements in this Request for Proposals must be received by COG no later than **12 noon, Pacific Standard Time, on January 25, 2018**, to guarantee response or consideration. Responses to questions concerning this Request for Proposals posed before this deadline will be posted on the COG website (www.sanbenitocog.org) and shall be acknowledged in the cover letter of the Proposal.

SUBMITTAL REQUIREMENTS/PROPOSAL FORMAT

All interested firms are required to submit five (5) hard copies and one (1) digital copy of their Proposal to perform the requested consulting services. The Proposal must include the names and qualifications of all personnel to be employed on the project. The Proposal should provide a short description of the firm's experience with projects that relate to this Scope of Work. A list of relevant past clients should be included.

A. Cover Letter

The cover letter shall introduce the firm, and give a brief description of the project understanding. The cover letter shall also include acknowledgement of any addenda or other notices posted on the COG website (www.sanbenitocog.org) during the proposal period.

B. Project Team

The Proposal shall clearly identify a Project Manager and include the names and qualifications of all personnel of the proposed team to be assigned to the contract and a chart representing the proposed organizational structure of the team. The Proposal shall demonstrate that the key personnel have the time available to work on the project. The Proposal shall include the estimated number of hours individual personnel will dedicate to the project.

C. Demonstrated Knowledge

The Proposal shall include the assigned project team's demonstrated knowledge of, expertise and experience with providing similar services and completing similar types of contracts.

Specific expertise should be shown in:

- Developing Public Outreach Plans and Messaging
- Managing Public Outreach Plans
- Community outreach and coordination

D. Work Plan

The Proposal shall include the consultant's proposed approach to the development and implementation of this type of strategy and public outreach plan, broken out by tasks which demonstrate the consultant's knowledge and understanding of the project and the constraints and challenges associated with performing the tasks outlined in the scope of work.

E. Cost Proposal

The Proposal must include a cost Proposal. The total not-to-exceed budget for the project is \$40,000. The Proposal must contain an overall cost for the project as well as cost by task. An estimate of hours by task is also required.

F. Proposed Schedule of Work and Deadlines

The Proposal must include availability of the Project Team to conduct work within the anticipated timeframes.

G. References

The Proposal shall include at least three (3) recent references from past clients for similar types of public outreach plans.

All Proposals must be submitted to the office of the Executive Director of the Council of San Benito County Governments, 330 Tres Pinos Road Ste. C-7, Hollister, CA 95023 **by 12:00 noon PST on January 31, 2018.**

PROPOSED SCHEDULE

January 17, 2018	Distribute RFP
January 31, 2018	Response due from Consultants
February 1-2, 2018	Review and Rank Proposals
TBD	Interview Top Ranked Consultants
February 9, 2018	Select Top Ranked Consultant, Negotiate Contract
February 15, 2018	Present Consultant Contract to COG Board for Approval

MISCELLANEOUS

A. Modification or Withdrawal of Submittals

Any Proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the respondent. To be considered, however, the modified Proposal must be received by the time and date specified above.

B. Property Rights

Any Proposals received within the prescribed deadline become the property of COG and all rights to the contents therein become those of COG.

C. Confidentiality

Before award of the contract, all Proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all Proposals), all responses will be regarded as public records and will be subjected to review by the public. Any language purporting to render all or portions of the Proposal confidential will be regarded as non-effective and will be disregarded.

D. Amendments to Request for Proposals

COG reserves the right to amend the Request for Proposals by addendum before the final Proposal submittal date.

E. Non-Commitment of COG

This Request for Proposals does not commit COG to award a contract, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services.

All products used or developed in the execution of any contract resulting from this Request for Proposals will remain in the public domain at the completion of the contract.

F. Conflict of Interest

The respondent shall disclose any financial, business or other relationship with COG that may have an impact upon the outcome of this contract or COG construction project. The respondent shall also list current clients who may have a financial interest in the outcome of this contract or COG projects that will follow. In particular, the respondent shall

disclose any financial interest or relationship with any construction company that might submit a bid on COG projects.

G. Nondiscrimination

The respondent must certify compliance with nondiscrimination requirements of COG pertaining to the development, implementation and maintenance of a nondiscrimination program. The respondent's signature affixed to and dated on the cover letters shall constitute a certification under penalty of perjury under the laws of the State of California that the respondent has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

H. Final Selection and Protests

The RFP process is considered concluded when a letter is sent to all participating consultants indicating which consultant will be recommended for Board approval. The firm recommended is not a final selection and no contract is certain until approved by COG Board of Directors.

Protestants shall submit a detailed written statement of protest to:

Council of San Benito County Governments
330 Tres Pinos Rd. Suite C-7
Hollister, CA 95023

no later than five (5) days prior to the Board meeting to enable proper consideration by the Board.

Attachments: A --- Scope of Work
 B --- Sample COG Standard Agreement for Professional Services

ATTACHMENT A

SCOPE OF WORK

The Council of San Benito County Governments (COG), San Benito County's regional transportation planning agency, is a state designated agency responsible for planning and funding transportation projects. COG has a responsibility to provide information on its projects, plans and activities to the public, invite participation and foster public understanding of its function. COG is seeking qualified consultant(s) to develop and manage a Transportation Sales Tax Public Outreach Plan and support to develop the Expenditure Plan for inclusion with a ballot measure in the November 2018 general election.

Consultant(s) will work with COG staff to develop and implement a strategic public outreach plan consistent with the goals identified below, that leads to the development of a Transportation Expenditure Plan for a sales tax measure in 2018. The plan must be designed to address the diverse interests, demographic and geographic community interests of San Benito County.

Consultant(s) will coordinate with other COG consultants as directed by COG staff.

Goals:

The goal of the COG is to have a transportation sales tax pass in 2018. In order for that to happen, the COG must gain community-wide support to meet the 2/3 "supermajority" threshold required by state law. The proposed public outreach plan must include an educational and awareness raising component that includes:

- COG mission and its success
- The federal and state transportation funding crisis
- The concept of San Benito County becoming a "self-help" county, and how self-help counties can leverage local dollars for other state and federal funding
- An Expenditure Plan of transportation projects that will be funded with the passage of a transportation sales tax
- Community's role in developing the Expenditure Plan
- Recommendations and development of other provisions and safeguards in the Expenditure Plan that will ensure voter confidence

Individuals or firms responding to this RFP should have a demonstrated expertise in strategic public outreach and consensus-building, understanding of transportation funding and project delivery requirements, and knowledge of San Benito County. Respondents should include the assigned project team's demonstrated knowledge of, expertise and experience with completing similar types of contracts by specified deadlines. Consultants should have the direct experience necessary to provide services that include, but are not limited to, the following tasks:

- 1) Work with COG staff to identify key stakeholders for direct outreach and engagements, and help tailor messages and information where needed.

- 2) Develop and assist in the development of messaging materials, talking points for briefing documents and presentations to the public and media.
- 3) Present information at COG committees and public workshops, as necessary.
- 4) Craft content for COG's website.
- 5) Provide ongoing advice and guidance to ensure that development of the Outreach Plan and Expenditure Plan stays on schedule.

COG intends to recommend budgeting approximately Forty Thousand Dollars (\$40,000) toward the cost of these services. The following is a general overview of services that may be requested:

SCOPE OF SERVICES

Sales Tax Public Outreach and Strategy services cover a broad range of needs and can involve providing key transportation outreach delivery activities described below, but not limited to:

1. Coordination with COG Staff and Consultants, including consultant conducting public opinion survey of likely San Benito County Voters
2. Review and use of public opinion survey results
3. Developing Public Outreach Plan and Messaging
4. Assisting COG with strategy and targeted listening sessions – including covering logistics for meetings, inviting attendees, note-taking, etc.
5. Managing Public Outreach Plan
6. Facilitating Consensus Building related to the creation of the Expenditure Plan
7. Assisting COG with development of cost projections, financing and leveraging opportunities for sales tax funding
8. Coordinating messaging across all media

The Proposal should include the firm's recommended approach to achieving the goals set forth in this Request for Proposals as they relate to the successful development of a Sales Tax Expenditure Plan for the November 2018 general election.

The schedule for the Expenditure Plan and ballot language development as of January 2018 is as follows:

February 2018:	Project Start
March 2018:	Receive Voter Survey Results
June 2018:	Final Draft Expenditure Plan Approved by COG Board
July 2018:	Expenditure Plan Considered by Local Jurisdictions
August 10, 2018:	Elections Office Deadline for Submission

**ATTACHMENT B – Standard Contract
(Begins on Next page)**

C O N T R A C T

The COUNCIL OF SAN BENITO COUNTY GOVERNMENTS ("COG") and _____ ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on _____, and end on _____, unless sooner terminated as specified herein.

2. Scope of Services.

CONTRACTOR, for COG's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONTRACTOR's performance, COG shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: _____
- (b) Professional liability insurance: _____
- (c) Comprehensive motor vehicle liability insurance: _____

6. Termination.

The number of days of advance written notice required for termination of this contract is _____.

7. Specific Terms and Conditions (check one)

- There are no additional provisions to this contract.
- The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COG :

Name: _____

Title: _____

Address: 330 Tres Pinos Rd. Ste. C-7

Hollister, California 95023

Telephone No.: (831) 637-7665

Fax No.: (831) 636-74160

Contract Administrator for CONTRACTOR:

Name: _____

Title: _____

Address: _____

Telephone No.: _____

Fax No.: _____

SIGNATURES

APPROVED BY COG:

Name: _____

Chair, Council of Governments

Date: _____

APPROVED BY CONTRACTOR:

Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: _____

Date: _____

**ATTACHMENT A
Scope of Services**

[Insert Scope of Services]

END OF ATTACHMENT A.

**ATTACHMENT B
Payment Schedule**

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- One month in arrears.
- Upon the complete performance of the services specified in Attachment A.
- The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNCIL OF GOVERNMENTS to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNCIL OF GOVERNMENTS shall pay to CONTRACTOR: (check one)

- a total lump sum payment of \$ _____, or
- a total sum not to exceed \$ _____,

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- There are no additional terms of compensation.
- The following specific terms of compensation shall apply: (Specify)

END OF ATTACHMENT B.

ATTACHMENT C
General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COG each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COG, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COG shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming COG and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of

CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.

- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.
- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COG, CONTRACTOR shall file certificates of insurance with COG, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COG as the insurance required herein. CONTRACTOR further agrees to notify COG in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COG or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable

advance notice given by COG, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if COG notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COG, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COG is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COG and not officers or employees of COG. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COG. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COG that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COG in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COG, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

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

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COG shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the

contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COG's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent

legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COG shall have the right to deduct from any payments specified in Attachment B any amount owed to COG by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COG exercises the right to reduce the consideration specified in Attachment B, COG, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.