



**SOUTHERN CALIFORNIA
ASSOCIATION of GOVERNMENTS**

Administration Manual

Distribution of Transportation Planning Grant Funds

October 1, 2008

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A. INTRODUCTION

SCAG is a Metropolitan Planning Organization (MPO) mandated by the Federal and State governments to develop regional plans for transportation, growth management, hazardous waste management, air quality and other issues of regional significance. SCAG functions as the MPO for six Southern California counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura.

SCAG receives Federal funds through the California Department of Transportation (Caltrans). Federal sources of funds primarily include the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) consolidated planning grant funds (CPG). These funds are administered through the Master Fund Transfer Agreement (MFTA) between Caltrans and SCAG. (See Appendix A, MFTA.) CPG funds are a primary source of funding for SCAG's annual Overall Work Program (OWP) that is approved by FTA/FHWA.

The following fund sources are governed by the terms and conditions of the MFTA, as included in each annual Overall Work Program Agreement (OWPA) between SCAG and Caltrans:

- FHWA-- Metropolitan Planning
- FHWA-- Partnership Planning
- FTA Metropolitan Planning-- Section 5303
- FTA State Planning and Research—Section 5304
- Any other Federal or State Funds administered by and through Caltrans, Office of Regional and Interagency Planning

SCAG and the subregions have access to the Regional Planning Handbook developed by the Caltrans Headquarters Office of Regional and Interagency Planning (ORIP) as a resource to describe the interactions between Caltrans District, ORIP staff, Metropolitan Planning Organizations (MPOs), Regional Transportation Planning Agencies (RTPAs) on the Overall Work Program (OWP) and the Regional Transportation Plan (RTP).

1. PURPOSE

The purpose of this manual is to provide instructions on how to apply for grants from SCAG, how these grants are awarded, how the grant funds are distributed to subrecipients, the procedures that SCAG will follow to exercise oversight of the subrecipients and the procedures that the subrecipients will follow to insure compliance with Federal and State laws and regulations.

Section I describes the procedures to be followed in applying for and awarding grant funds.

Section II describes the Federal and State regulations and procedures SCAG will implement to insure compliance by subrecipients receiving these grant funds.

Section III describes the responsibilities of the subrecipients of SCAG grant awards.

2. APPLICABILITY

The procedures in this manual apply to SCAG and its subrecipients seeking to receive grant funds from SCAG. All subrecipients of Federal and/or State grant funds through SCAG are subject to the same Federal and State requirements as SCAG. (See Section II).

3. SUBRECIPIENTS

Subrecipients are non-Federal entities that expend Federal grant awards or State funds received from a pass-through entity to carry out a Federal and/or State program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. A subrecipient may also be a recipient of State funds directly from a State agency. Whether the subrecipient receives awards from a Federal agency or State agency or a pass-through entity, the subrecipient is subject to the same Federal and State regulations as the pass-through entity.

SCAG is considered a “pass-through entity” in relation to its subrecipients, and as such requires that its consultants and subrecipients comply with the applicable terms and conditions (flow-down provisions) of the MFTA and fund requirements. A “pass-through entity” is defined as a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program. (See OMB Circular A-133, Subpart A__ .105).

SCAG’s subrecipients include, but are not limited to, transportation commissions, cities, counties, councils of government and other public, private and/or non-profit agencies. Agreements with these subrecipients take the form of Memorandum of Understanding (MOU), Funding Agreements, or similar agreements. SCAG’s agreements with its subrecipients who are subregions of SCAG are through Continuing Cooperative Agreements (CCA). (See Appendix B, CCA Template).

Fifteen of SCAG’s transportation planning grant subrecipients are designated as subregions of SCAG. Eleven are councils of government or voluntary associations and the other four are local governments.

I. DISTRIBUTION OF TRANSPORTATION PLANNING GRANT FUNDS

A. APPLICATION FOR SCAG SPONSORED AWARDS

All subrecipients are eligible to apply for grant funds by submitting funding proposals to SCAG during its OWP budget development process. (See definition of SCAG subrecipients above, A-3, Page 2).

The OWP budget process is initiated by SCAG management in September of the year prior to the year in which funds are to be expended. In September, a draft budget development schedule is presented to the SCAG Regional Council with recommendations on budget priorities for the next fiscal year. The Regional Council reviews the draft schedule and approves it. SCAG management publishes the budget schedule and distributes it to all interested parties including current and potential subrecipients of grant funds.

In October the Regional Council adopts the budget priorities and outcomes for the next fiscal year. SCAG management publishes and distributes the priorities and outcomes and conducts a Budget Workshop for subrecipients and staff to explain the budget process including the schedule, funding sources, priorities and outcome expectations, information submittal requirements, and the budget review and approval process.

All subrecipients seeking grant funds are required to submit a SCAG OWP Project Proposal (See Appendix D), due by the end of November.

B. APPROVAL OF PROPOSALS

Proposals are received and evaluated by SCAG managers in an extensive review and selection process as part of OWP development. The review considers the objectives of the project, whether the project meets the eligibility criteria for the fund sources available, the amount of funds available, whether the project meets the objectives of the SCAG Regional Council, and other factors. A Project Selection Criteria scoring sheet is used as a tool in the selection process. (See Appendix E).

C. PROGRAMMING OF AWARDED PROPOSALS

Projects selected by SCAG management are recommended for inclusion in a draft OWP budget in December. Subrecipients are notified if their proposals have been recommended for inclusion in the OWP. The draft budget is prepared and presented to the SCAG Regional Council in February, for review and comments. In March, the

Regional Council adopts the draft Budget, releases it for public comment and sends the draft to Caltrans for review.

In April, FTA, FHWA and Caltrans provide their comments and the budget is finalized based on their comments, and comments received during the public review process. On May 1 a final budget is submitted to Caltrans and shortly thereafter it is submitted to the SCAG Regional Council for final approval. During June, Caltrans submits the Final Budget to the FHWA for approval by June 30th.

After approval of the OWP by FTA and FHWA, SCAG notifies subrecipients of their projects' approvals and authorizes implementation of projects in two forms.

In the case of SCAG subregions, a Continuing Cooperative Agreement (CCA) is prepared for execution by SCAG and the subregion. The CCA is renewable each year and delineates the scope of work that the subregion is being authorized to perform, and specifies the terms and conditions of the agreement between SCAG and the subregion. The CCA has four main parts: 1. General Terms and Conditions; 2. Scope of Work for each project; 3. Budget for the project(s); 4. Match budget for the subregion. (See Appendix B, CCA Template). The CCA includes the Federal and State requirements that the subregion must adhere to as a subrecipient of Federal or State funds. It further requires the Executive Director or other designated, authorized signatory of the subregion to sign and provide SCAG an annual certifications and assurances form. (See Appendix C, "Affirmation of Subregion"). There is one, and only one, CCA per subrecipient.

For other subrecipients, a Memorandum of Understanding (MOU) or a Letter of Agreement (LOA) is negotiated between SCAG and the subrecipient on a project by project basis. The MOU or LOA incorporates the Scope of Work, term of the agreement, amount, payment terms, cost principles with references to the Federal regulations that govern the agreement, and other terms as required. Each MOU or LOA includes the Federal and State requirements that the subregion must adhere to as a subrecipient of Federal or State funds.

If the subrecipient's project requires the services of an outside consultant, SCAG conducts the procurement in accordance with Federal and State regulations for Third Party Contracts.

D. THIRD PARTY CONTRACTS

When work is contracted out, all Federal and State compliance responsibilities of SCAG apply to the consultant third party entities as they do to SCAG and must be included in the consultant agreements. If portions of the work are further contracted out to subconsultants, the consultant must include the Federal and State compliance responsibilities in the subconsultants' agreements.

Consultant procurement always must be done in an open and competitive manner, which is inclusive and includes certified Disadvantaged Business Enterprises. The best quality work must be obtained at the fairest price.

Third party contracts for less than \$100,000 may be awarded through a fairly informal procedure where price or rate quotations are obtained from an adequate number of sources.

Third party contracts of \$100,000 and more must be awarded according to Caltrans' *Local Assistance Procedures Manual*, Chapter 10, and Local Program Procedure (LPP 00-05). There are seven steps in the award process:

1. Determination that the work can best be accomplished by a consultant;
2. Selection of the appropriate contracting method;
3. Development of a request for proposal (RFP), request for qualifications (RFQ) or invitation to bid (IFB), depending upon the contracting method chosen;
4. Advertisement for project to solicit bids or proposals;
5. Consultant selection and contract negotiation;
6. Contract approval and negotiation;
7. Contract performance monitoring, evaluation and closeout.

E. PRE-AWARD AUDITS

SCAG performs preaward audits of contractors and other subrecipients. If the contract award amount is \$250,000 or more, a preaward audit is required to be performed. In the case of subregions, SCAG may perform preaward audits of amounts under \$250,000.

In awards under \$250,000, a preaward audit must be performed if :

- The subrecipient has been designated as high risk by an awarding agency;
- There is inadequate knowledge about the subrecipient's accounting procedures;
- There has been previous unfavorable experience with the subrecipient;
- SCAG or the subrecipient requests an audit;
- The funding agency deems it prudent.

Preaward audits are discussed further in Section II, D.

F. ADMINISTERING AN AWARD

SCAG Project Managers will communicate with the subrecipients to insure the project is progressing on schedule. Project Managers may request an interim audit if necessary. Interim audits, as discussed later, are concerned with such things as a new or deficient accounting system to determine if the new system is functioning properly or needed corrections were made to the deficient system. For a contract of long duration, an interim audit may be requested to ensure that costs being incurred are allowable. The

Project Managers will meet with the subrecipients, management and staff involved in the project to discuss progress and completion status.

I. SCAG Project Managers will continue to perform oversight over subrecipients in the following ways:

1. Encourage subrecipients to submit monthly invoices;
2. Verify that invoices include progress reports;
3. Review progress reports to ensure project is progressing accurately and on schedule;
4. Compare invoice to contract budget to ensure eligibility of costs and costs do not exceed budget;
5. Review invoice to ensure supporting documentation is included and invoiced costs are within the scope of work for the project(s) being billed;
6. Obtain report of in-kind match work from the subrecipient;
7. Review subrecipient match tasks for eligibility;
8. Notify SCAG Finance that invoice is approved or disapproved.

II. SCAG Project Managers will maintain a project file to include:

1. Project proposal;
2. Project scope;
3. Correspondence, including communications log;
4. Meeting agendas, minutes, and attachments;
5. Project change form;
6. Progress reports;
7. Interim and final products;
8. Project close out form;
9. Copies of other applicable project documents as required, such as copies of contracts or MOUs.

III. Subregions are required to designate a responsible person as Subregional Project Manager. (Fifteen of SCAG's subrecipients are subregions. See discussion above, Part A-3, Page 2). The Subregional Project Managers are responsible for:

1. Developing the scope of work for projects involving contractors. These contractors are selected through SCAG's procurement system;
2. Reviewing the consultant's work products and providing progress reports, including a Quarterly Progress Report;
3. Monitoring the day-to-day activities of the consultant;
4. Recommending approval of payment of invoices from the consultant, promptly;
5. Tracking, monitoring and reporting on all of their SCAG projects, whether staff or consultant projects;
6. Informing SCAG of any issues that arise with the projects, at the earliest possible time, to insure that the projects are completed on schedule and within budget;
7. Providing estimates to complete projects and the estimated completion date.

IV. The Quarterly Progress Reports prepared by the subrecipient, and submitted for SCAG's review, must include, but are not limited to, the following:

1. Information such as SCAG Manager/Project Manager;
2. Subrecipient Project Manager responsible for the project;
3. A brief contract description;
4. The name of the consultant (if applicable);
5. Work planned for the quarter;
6. Work accomplished in the quarter;
7. Work planned for the next quarter;
8. Issues encountered;
9. Issue resolution;
10. Any proposed amendments;
11. Final products;
12. Percentage of work complete;
13. OWP completion date and current estimated completion date, with an explanation of any variance;
14. Contract number and amount;
15. Expenditures for the quarter and year to date and the funding split listed in the OWP.

All progress reports are due to Caltrans on the 30th of the month following the close of the quarter. Therefore, an internal review meeting will be held upon completion of the report to insure accuracy before submittal to Caltrans. The SCAG Project Manager and the Subrecipient Project Manager must brief the Program Manager on the project so they can respond to any questions. A Progress Report Review Meeting is scheduled and chaired by Caltrans for the following week.

G. INVOICING

The Local Assistance Procedures Manual sets out the requirements for SCAG to obtain reimbursement for expenditures on Federal and State funded projects. SCAG is required to submit invoices to Caltrans for completed work after SCAG has paid for the work. Invoices may be submitted monthly to Caltrans. Section 5 of the Local Assistance Procedures Manual describes the invoice process and requirements.

Invoices may vary in format but must include the following information:

1. Invoice date;
2. Billing number;
3. Invoice number;
4. Federal or State project number;
5. Local agency's Federal Tax Identification Number;
6. Date project accepted by the local agency (if final invoice) or "On going" if the project is not completed;
7. Project location;
8. Project Expenditure Authorization number;
9. Local agency/State agreement number and date executed;

10. Phase of work headings (e.g., Preliminary Engineering, etc.);
11. Federal Appropriation codes;
12. Federal Authorization/Agreement date for each phase of work;
13. Time period for which claimed project participating costs were incurred and paid for each phase of work from project beginning to date;
14. Cost breakdown by Federal Appropriation codes;
15. Certification statement, printed name, title and signature of the local agency representative;
16. Contact name;
17. One copy of proper documentation to validate all the expenditures being claimed on the invoice. These include copies of cancelled checks.

Sample invoices are contained in the Caltrans Local Assistance Procedures Manual, Section 5-A. Section 5.13 provides an invoice checklist to be completed before sending the invoice to Caltrans.

H. CHANGES AND AMENDMENTS

Any changes to the OWP must be approved by the Federal and State grantors in the form of an amendment. There are two types of amendments: Administrative and Formal.

1. **Administrative:** These amendments require concurrence from Caltrans and involve changes to the OWP that do not affect the budget or the delivery of regional transportation planning tasks, activities, steps and products. Examples of an Administrative Amendment would be the correction of errata; project schedule change; changing from a staff task to a consultant task or vice-versa.

SCAG usually processes one administrative amendment by the end of August of the budget year and may process more on an as needed basis. Subrecipients must notify the SCAG Project Manager of the need for an administrative amendment at the earliest possible time. The date for the last administrative amendment submission is March 1st of the budget year. SCAG Project Managers will notify subrecipients of the changes after receipt of written approval from Caltrans.

2. **Formal:** These amendments require Caltrans District approval and concurrence from Caltrans Headquarters before the amendment can be forwarded to FHWA/FTA for their review and final approval. A formal amendment is required if there are substantive changes to work elements funded with CPG, or if the changes (regardless of funding type) impact regional transportation planning activities and if there are changes to the total OWP budget and would require that SCAG's OWP Agreement with Caltrans be amended. Some examples of changes that require a formal amendment are deleting or adding projects; a change in workscope; substitution of fund sources within a work element and/or project; redirection of CPG funds or local match among work elements and/or projects; increasing the work element/project budget.

SCAG will prepare a formal amendment, usually in October, to encompass both previous year's carryover balances and adjustments to the current year's budget due to

circumstances that have occurred since the beginning of the fiscal year. Caltrans must concur with the carryover balances prior to submission of the amendment.

The Regional Council also must approve of the budget amendment prior to submission. This budget amendment must be submitted to Caltrans no later than February 10th to allow sufficient time for review by FHWA, FTA and Caltrans. Once the amendment has been approved, costs can be incurred and any new RFP/contract process can begin.

I. LOCAL (NON-FEDERAL) MATCH

CFR 49, Part 18, Section 18.24 contains the Federal regulations for matching or cost sharing. A matching or cost sharing requirement may be satisfied by: 1. Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement, including allowable costs borne by non-Federal grants; 2. The value of third party in-kind contributions applicable to the period to which the matching requirements apply.

CPG funding requires a non-Federal match, currently 11.47 percent of the total funding of a project. The match is 11.47 percent of the total sum of Federal participation plus the required non-Federal participation amount. The match is calculated work element-by-work element, not on the total Federal funds in the OWP.

Match requirements are contained in the Caltrans Regional Planning Handbook, Section 3.05. As mentioned above, one of the requirements for match funds is that they are not from Federal funds. Subrecipients must be careful to insure that non-Federal funds are used for the match provided. The MFTA also notes the matching requirements in Article 1, Section 1-J. (See Appendix A, Page 3). SCAG also agrees, in the Overall Work Program Agreement (OWPA) with Caltrans, to comply with the Federal matching requirements for CPG funds.

SCAG prescribes its requirements to subregions for match funds in the CCA , Part 7. This part gives the requirements for In-Kind Match Reports and Cash Matches. (See Appendix B, Continuing Cooperative Agreement Template, Page 5).

II. REGULATORY PROCEDURES FOR SUBRECIPIENTS

Subrecipients (including subregions with which SCAG has an executed CCA) are subject to the same Federal and State requirements as SCAG. SCAG's MFTA with Caltrans requires SCAG and its contractors, subcontractors and subrecipients to comply with Federal and State requirements set forth in the MFTA.

Applicable Federal regulations include, but are not limited to, the following:

Code of Federal Regulations, Title 48, Federal Acquisition Regulations System, Chapter 1, Part 31, Contract Cost Principles and Procedures; This part defines the various types of costs for consultants, including direct and indirect costs, the principles and procedures and a discussion of selected costs that are allowable or unallowable.

Code of Federal Regulations, Title 49, Transportation, Part 18, Uniform Administrative Requirements For Grants and Cooperative Agreements to State, Local and Indian Tribal Governments; This part establishes uniform administrative rules for Federal grants and subawards. Some of the items discussed are rules for matching, or third party in-kind contributions. This part also sets out the requirement that subgrantees must conform to the rules imposed upon grantees and that grantees are responsible for managing and monitoring grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Rules on conflicts of interest are also included in this part. (See Page 17).

Code of Federal Regulations, Title 2, Part 225 (Formerly known as Office of Management And Budget Circular A-87, Cost Principles For State, Local and Indian Tribal Governments). This regulation establishes principles and standards for determining allowable costs for Federal awards carried out through grants, cost reimbursement contracts and other agreements with State and local governments and Indian tribal governments. It defines certain elements of costs and discusses allowable and unallowable costs, similar to the Code of Federal Regulations, Title 48, Part 31, noted above. It also contains a section on Indirect Cost Rate Proposals and the way to submit them for approval.

Federal Transit Administration, Circular C 4220.1E, Third Party Contracting Requirements. This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts.

Federal Transit Administration, Circular C 5010.1C, Grant Management Guidelines. The purpose of this circular is to provide guidelines and management procedures for Metropolitan Planning grants, Capital Program grants and Urbanized Area Formula grants for assistance programs of the Federal Transit Administration (FTA), after award.

Federal Transit Administration, Circular C 8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Grants. This circular provides application instructions and program guidance instructions for the preparation of Metropolitan Planning Program (MPP) grant applications for funds authorized by 49 U.S.C. 5303.

The Code of Federal Regulations, Titles 48 and 49, may be accessed on the Internet at <http://www.gpoaccess.gov/cfr>.

The Office Of Management and Budget (OMB) Circular A-87 may be accessed at <http://www.whitehouse.gov/omb/circulars/a087>.

The Federal Transit Administration circulars may be accessed at <http://www.fta.dot.gov/laws/circulars>.

Subrecipients should review the above Federal regulations so that they can comply with the requirements.

Subrecipients must also comply with the Federal Certifications and Assurances, including the Lobbying Certification, published annually in SCAG's OWP, as required by the MFTA. (Appendix A, pages 7-8).

Subrecipients must also comply with the Caltrans Local Programs Procedures Manual Chapter 5, Accounting/Invoicing (LPP 04-10) when seeking reimbursement of indirect costs or including indirect costs in the in-kind match amount.

In instances where SCAG authorizes a subrecipient to retain a consultant(s) to perform work, the consultant selection process must comply with competitive selection requirements under 49 CFR 18.36 and State law and procedures, including the Caltrans *Local Assistance Procedures Manual* and Local Program Procedure (LPP 00-05) at [www.dot.ca.gov/hq/Local Programs/lam/lapm.htm](http://www.dot.ca.gov/hq/Local%20Programs/lam/lapm.htm). Further, subrecipients must incorporate all applicable flow-down requirements (from the CCA or other funding agreement between SCAG and the subrecipient), including the Federal and State requirements described above, into such consultant(s) contracts.

A. SCAG Oversight of Subrecipients

SCAG performs oversight of subrecipients through various means, as discussed earlier in Section I, Part E, Administering an Award.

In addition to the steps discussed in Section I, Part E, SCAG utilizes various other methods to monitor subrecipients and insure compliance. SCAG Contracts will oversee all procurement of consultants for the subrecipients. Procurements will be conducted according to the Federal Acquisition Regulations (CFR Title 48, Part 31 and CFR Title 49, Part 18.36).

B. SCAG Audit Committee

SCAG's Audit Committee is a subcommittee of the Regional Council reporting to the Administration Committee. The Audit Committee is empowered to:

- Oversee the work of any registered public accounting firm employed by SCAG;
- Resolve any disagreements between management and the auditor regarding financial reporting;
- Review all external auditing services for the Administration Committee;
- As needed, consider and recommend to the Administration Committee and the Regional Council the retention of independent counsel, accountants, or others to advise the Administration Committee or assist in the conduct of an investigation;
- Seek any information it requires from employees—all of whom are directed to cooperate with the Subcommittee's requests—or external auditors, or outside counsel, as necessary;
- Meet with SCAG's officers, external auditors, or outside counsel, as necessary.

The Audit Committee's responsibilities include:

- Financial Statements;
- Internal Control;
- Internal Audit;
- External Audit;
- Compliance;
- Reporting Responsibilities;
- Other matters, as requested by the Regional Council and Administration Committee.

C. Audit Oversight of Subrecipients

SCAG has utilized various audit techniques to ensure compliance by the subrecipients. SCAG's Audit Committee reviews and approves the annual internal audit plan. The audit plan includes schedules of OWP audits of subrecipients as well as contract preaward and other types of audits. SCAG has an ongoing program of auditing its subregions each year. The Audit Committee is informed of progress in audits and receives and reviews Preaward audit and OWP Incurred Cost audit reports issued by SCAG. In February 2006 SCAG issued a report called "Audit Guidance for Subregions" to all the subregions. This guidance explained the Federal Regulations applicable to subrecipients (subregions), the types of audits, the cost types and the accounting systems permissible.

Following are the descriptions of the various types of audits performed.

D. Preaward Audit or Survey

A preaward survey is an evaluation of a subrecipient's, (or contractor's) ability to perform a proposed contract. Normally, there are three categories of information sought, including the subrecipient's (or contractor's) financial capability to perform the contract, the adequacy of the subrecipient's (or contractor's) accounting system to accumulate proper cost information and the subrecipient's (or contractor's) internal control system. Preaward audits are required for all new subrecipients with contracts of \$250,000 and above and for all new subregions, regardless of amount.

1. Financial Capability

The objective of this assessment is to make a recommendation whether or not a subrecipient (or a contractor) has sufficient financial resources to perform the contract. The assessment begins with obtaining and reviewing the audited financial statements for the latest year and at least the two preceding years. If the organization does not have an independent audit then a review of its internal financial statements, general ledger and trial balances for the current period and preceding periods are made. Various key financial ratios, such as the current ratio (current assets divided by current liabilities) and other ratios are calculated, depending on the type of organization being audited. For example, a subrecipient contractor would have a number of key ratios such as Debt to Equity or Net Income to Sales that are not applicable to governmental subrecipients. For all subrecipients, a review of Accounts Receivable and Accounts Payable agings should be performed.

2. Accounting System

The preaward accounting system survey is a review to determine the acceptability of the subrecipient's (or contractor's) accounting system for accumulating costs under a prospective Government contract.

a. Properties of an Acceptable Accounting System:

- Must be able to record and report financial data in accordance with generally accepted accounting principles;
- Must be able to accumulate costs under a government contract;
- Must have a Chart of Accounts;
- Must be under General Ledger control, that is, can be reconciled with the General Ledger;
- Must be able to accumulate costs by contract (Job order costs system);
- Must be able to segregate Direct Costs from Indirect Costs;
- Must have a timekeeping and labor distribution system that identifies employees' labor by intermediate or final cost objectives and charges direct and indirect labor to the appropriate cost objectives;
- At least monthly, a determination of costs charged to a contract, usually a report that shows the results of charges to contracts.

b. Segregation of Direct and Indirect Costs:

- **Direct Costs** – Any cost that can be identified specifically with a particular final cost objective, such as a project or a contract. An example would be labor specifically identified to a contract.
- **Indirect Costs** – Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. An example would be lighting in a plant that houses the work of several contracts.

The accounting system must have a labor distribution system that charges Direct and Indirect Labor to the appropriate cost objectives.

Subrecipients may be reimbursed for their Indirect Costs provided they submit an Indirect Cost Rate Proposal, to either Caltrans or their cognizant government agency, if applicable, and have the Proposal approved. (The procedures for submitting an Indirect Cost Rate Proposal are found in Code of Federal Regulations, Title 2, Part 225 (OMB Circular A-87), Appendix E, State and Local Indirect Cost Rate Proposals). Additionally, they must comply with the California Department of Transportation's Local Programs Procedures (LPP) 04-10.

The subrecipient's system must be able to identify and exclude unallowable costs from government contracts.

c. Labor Charging System:

- Should have clear, reasonable procedures;
- Must accurately record time charges;
- Should segregate responsibility for timekeeping and payroll accounting, if possible;
- Time cards and/or time sheets should be recorded on a daily basis;
- Time sheets should show the account or project number and the hours charged;
- Time sheets should be signed by the employee and approved by the employee's supervisor.

Time and effort or timekeeping requirements are described in Code of Federal Regulations, Title 2, Part 225, Appendix B, Section 8, Compensation for Personal Services. It is of utmost importance that these timekeeping requirements are followed. Unlike other costs, labor is not supported by external documentation or physical evidence to provide an independent check or balance. Management must emphasize to employees the responsibility for accurately recording time charges.

Note that falsification of time charges under a government contract may be subject to criminal charges (18 US Code).

d. Cost Breakdown

Subregions must submit both proposals and actual invoice costs providing a breakdown of the cost elements:

- Material
- Direct Labor
- Indirect Costs (Overhead)
- Subconsultant Costs
- Other Direct Costs

SCAG must be able to trace amounts from invoices submitted to SCAG to job cost records and original, approved source documents, for example, timesheets, vendor invoices or canceled checks.

There must be an ability to reconcile job cost records to the accounting records.

3. Internal Control Systems

An adequate subrecipient (including subregion) Internal Control System should provide for the following:

- a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods;
- b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use;
- c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures;
- d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:
 1. Timesheets should be prepared, signed, and dated by all employees;
 2. Timesheets should be completed in ink;
 3. Corrections should be crossed-out and initialed by the employee;
 4. Timesheets should be signed by a supervisor as reviewed and retained on file.

e. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed, approved and signed by a supervisor.

E. Audits to Monitor Subrecipients' Compliance

SCAG will utilize other types of audits to monitor the subrecipients' compliance with regulations. These are:

1. Interim Audits

Interim audits are performed on an as-needed basis. During the preaward audit, if it is determined that the subrecipient's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies have been corrected. An interim audit may be requested by SCAG to address concerns during the course of the project or contract. Also, the SCAG Internal Auditor may initiate an interim audit of a long duration contract to ensure that costs reimbursed to date are allowable. If deficiencies are found in the interim audit, corrective action must be taken immediately by the subrecipient.

2. Incurred Cost Audits

This type of audit is performed on an as-needed basis or upon completion of the subrecipient's fiscal year, a contract or a project. It is meant to determine whether costs that are claimed are allowable, allocable, reasonable and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the consultant contract or subrecipient agreement (e.g., CCA).

The examination includes reviews of applicable laws and regulations, the contract requirements and the subrecipient's or contractor's internal controls systems. Audit tests of the subrecipient's or contractor's accounting records and other auditing procedures considered necessary will also be performed. Additional audit procedures may also be governed by the individual subrecipient's or contractor's agreement with SCAG. Unsupported or unallowable costs must be reimbursed to SCAG within 30 days of the final audit resolution. As noted above, under Interim Audits, if deficiencies in the subrecipient's internal controls or accounting system are discovered, immediate corrective action must be taken. Depending upon the severity of the deficiency, costs may be disallowed.

III. SUBREGIONS' RESPONSIBILITIES

A. Project Management and Administration

In Section I, Part F,III, the requirement for subregions to designate a responsible person as Subregional Project Manager and the responsibilities of the Subregional Project Manager are discussed. Subregions must insure that their practices are in alignment with the guidelines discussed below in Part B. In addition, subregions have the following responsibilities:

- a. Provide SCAG with copies of Joint Powers Agreements or other founding legal documents and any changes to legal status;
- b. Provide copies of contracts with Executive Director/Subregional Coordinator;
- c. Provide Annual Affirmation of Subregion, signed by authorized signatory;
- d. Report to SCAG when a new Executive Director and/or Subregional Coordinator is retained;
- e. Administer the grants;
- f. Keep SCAG informed on the project progress and request prior approval of any changes when necessary;
- g. Submit accurate and complete invoices. These invoices must show the costs incurred, in detail. If there are staff costs they must show the name(s) of the staff, their hourly pay rates, fringe benefit rates and costs, and overhead rate, if applicable. The invoices must also show the billing period, project number and title, year to date budget and costs and the remaining budget for each project;
- h. Obtain approval of Overhead rates through submittal of Indirect Cost Rate Proposals, as mentioned above.

B. Compliance with Federal Regulations

Subregions are also required to be cognizant of, and insure that their practices conform to, the administrative requirements referenced above in Section II when accepting Federal funds. The administrative requirements include: 48 CFR Part 31; 2 CFR Part 225; 49 CFR Part 18, in particular Part 18.37 and Part 18.40; Federal Transit Administration Circulars and the Federal Certifications and Assurances as cited in the MFTA. (Appendix A, pp. 7- 8).

1. 48 CFR Part 31

The objective of this regulation is to achieve uniformity in the use of cost principles and procedures. Individual deviations concerning cost principles require advance approval of the agency head or designee. Part 31 defines the types of contracts, Direct Costs and Indirect Costs. Part 31 further describes various costs that are either allowable or unallowable. It goes on to state that CFR, Title 2, Part 225 (OMB Circular A-87) sets forth the principles for determining allowable costs of contracts and subcontracts with State, local and federally-recognized Indian tribal governments.

2. 2 CFR, Part 225

As noted above, this establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments under grants, cost reimbursement contracts, and other agreements with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. This regulation also describes the process for submission of Indirect Cost Rate Proposals.

3. 49 CFR, Part 18

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments. Part 18.37 sets out the rules for subgrants and Part 18.40 explains the requirements for grantees to monitor subgrantees. Also, the provisions of Part 18.36 prescribes the rules and regulations for Procurement. In this section are the rules for conflicts of interest.

In addition, subregions must be in compliance with Federal Transit Administration (FTA) regulations, namely:

4. FTA Circular C 4220.1E, Third Party Contracting Requirements. This

Circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts;

5. FTA Circular C 5010.1C, Grant Management Guidelines. This Circular provides guidelines and management procedures for Metropolitan Planning grants, Capital Program grants and Urbanized Area Formula grants for assistance programs of the FTA after award;

6. FTA Circular C 8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Grants.

This Circular provides application instructions and program guidance instructions for the preparation of Metropolitan Planning Program grant applications for funds authorized by 49 U.S.C. 5303.

C. Conflict of Interest Rules

As noted above, Code of Federal Regulations Title 49, Part 18.36 (b) (3) states that no employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent,
- Any member of his immediate family,
- His or her partner, or
- An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award.

The CCA also requires subregions to comply with the applicable provisions of SCAG's Conflict of Interest Policy, which incorporates Federal and State conflict of interest requirements. (Appendix B, Page 10, Item 13).

Subregions must comply with the provisions of the State conflict of interest laws, including California Government Code 1090-1099.

Appendix A

Master Fund Transfer Agreement

APPENDIX

A

MASTER FUND TRANSFER AGREEMENT

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION PLANNING**

MASTER FUND TRANSFER AGREEMENT

Recipient: Southern California Association of Governments,

a Metropolitan Planning Organization (MPO)

Effective Date of this Agreement: January 1, 2005

Termination Date of this Agreement: December 31, 2014

**FUND SOURCES COVERED BY THIS AGREEMENT MAY INCLUDE ALL OR SOME OF THE
FOLLOWING FUND SOURCES AS IDENTIFIED IN EACH ANNUAL OVERALL WORK
PROGRAM AGREEMENT**

- ◆ Federal Highway Administration (FHWA)--Metropolitan Planning (PL)
- ◆ FHWA State Planning and Research--Partnership Planning
- ◆ Federal Transit Administration (FTA)--Metropolitan Planning Section 5303
- ◆ FTA State Planning and Research--Section 5313(b)
- ◆ Any other Federal or State Funds administered by and through the California Department of Transportation, Office of Regional and Interagency Planning

This Master Fund Transfer Agreement (MFTA), effective as of the date set forth above, is by and between the signatory public entity identified above, hereinafter referred to as MPO [as authorized in section 134 of Title 23 of the United States Code (23 USC Section 134), section 450.104 of the Code of Federal Regulations (23 CFR section 450.104), and Title 49 Code of Federal Regulations (49 CFR Part 18)], and the State of California, acting by and through its Department of Transportation, hereinafter referred to as STATE. This MFTA supercedes all previous Master Fund Transfer Agreements issued to MPO by STATE for all these types of funds.

RECITALS

- A. These funds may include, without limitation, federal Consolidated Planning Grant (CPG) and any other Federal or State funds administered by and through the Department of Transportation, Office of Regional and Interagency Planning.

CPG consists of four federal funding types and sources: (i) FHWA Metropolitan Planning (PL); (ii) FTA Metropolitan Planning (Section 5303), both of which are annually allocated to MPOs; (iii) FHWA State Planning and Research-Partnership Planning; and (iv) FTA State Planning and Research (Section 5313(b)), the last two of which are discretionary grants awarded through a grant application solicitation process.

- B. Pursuant to Public Utilities Code sections 99311 and 99311.1, STATE is required to pass through federal and state funds made available for transportation planning and other purposes to entities qualified to act as recipients of these funds in accordance with the intent of law and policy.
- C. STATE is also required to encumber Federal and State funds made available for planning purposes to entities qualified to act as recipients of these federal and state funds in accordance with the intent of law and policy.
- D. STATE agrees to notify MPO annually in writing of the anticipated level of State and Federal Planning funding that may be available to MPO for each subsequent year's approved Overall Work Program, hereinafter referred to as the OWP.
- E. STATE has prepared this MFTA, which, together with the annual OWP and annual Overall Work Program Agreement (hereinafter referred to as the annual OWPA), set forth the entire terms and conditions under which these funds are to be expended by MTC for the fiscal year period of that OWP and annual OWPA.

ARTICLE 1 - PROGRAM ADMINISTRATION

Section 1. Overall Work Program and Overall Work Program Agreement

- A. MPO agrees to develop and submit an annual draft OWP for approval by STATE, FTA and FHWA, as applicable. This submittal, due no later than thirty (30) days prior to each federally scheduled Intermodal Planning Group meeting or by each March 1, whichever is earlier, shall describe MPO's next Fiscal Year transportation planning program (Fiscal Year refers to the State Fiscal Year of July 1 to June 30).
- B. Each annual OWPA will expressly adopt and incorporate the terms and conditions of this MFTA by reference.
- C. MPO shall be responsible for the complete performance of the work contained in each OWP. All work shall be accomplished in accordance with applicable provisions of State and Federal law.
- D. MPO will include a signed federal (FHWA and FTA) Annual "Metropolitan Transportation Planning Process Certification" form and a signed annual FTA "Certifications and Assurances for FTA Assistance" form (refer to Article IV, Section 1) in each annual OWP.
- E. The annual OWPA is the approved OWP encumbrance document. Disbursement of funds by STATE will occur only after the execution of this MFTA; approval of the annual OWP by STATE, the FTA and FHWA; and execution of the annual OWPA. Funds will not be encumbered or reimbursed by STATE to MPO until that annual OWPA has been executed and the State Budget for that fiscal year has been passed.
- F. No funds of any nature are allocated or encumbered in this MFTA unless included in an adopted and approved OWP by means of an approved and fully executed annual OWPA.

- G. MPO agrees to satisfactorily complete all work element tasks, projects, and products as described in each approved annual OWP financed with State or Federal funds and encumbered by STATE via the annual OWPA.
- H. STATE agrees to pass through available funds and to reimburse allowable costs incurred in executing the tasks, projects, and products incorporated in the annually approved OWP funded from State and Federal sources and encumbered by STATE.
- I. Only work performed during the term of, and consistent with, the work elements in the OWP may be reimbursed. Reimbursements are based upon the fiscal year, July 1 - June 30. All work performed subsequent to the end of each fiscal year (June 30) can only be reimbursed in the following fiscal year and is subject to the approved OWP and annual OWPA for that corresponding fiscal year.

MPO may incur costs against its approved annual OWP and may submit requests for reimbursement with the understanding that STATE is unable to approve any payments for reimbursement until such time as the funds are included in that Fiscal Year's Annual State Budget which is passed by the Legislature and is signed by the Governor.

- J. MPO shall use non-federal funds to finance the local share of eligible costs to ensure compliance with all applicable matching requirements for federal funds described in this MFTA and actually encumbered against the annual OWPA. Credit for local match will be allowed only for work performed during the approved term of each annual OWPA.
- K. MPO further agrees to ensure that amendments to a previously approved OWP and annual OWPA are adopted by the MPO Board and approved by STATE, the FTA and FHWA, as applicable, prior to initiating any work identified in those amendments. Changes requiring amendments generally include adding, deleting, or revising a work element; adding funds to, deleting funds from, and/or moving funds between work elements; or revising a scope of work. If a work element or project will not be completed as approved, MPO will report this in its Quarterly Progress Report and amend the OWP/annual OWPA accordingly. OWP and annual OWPA amendments must be submitted to STATE and be fully executed no later than April 1 each year.
- L. MPO acknowledges and agrees that MPO is the sole control and manager of the work proposed in the OWP and is solely responsible for complying with the funding and use restrictions established by State and Federal law and this MFTA.
- M. MPO shall be free to copyright material developed under work items identified in the OWP provided that STATE and FHWA/FTA, as applicable, reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, that work for government purpose.

Section 2. Quarterly Progress Reports

- A. MPO shall submit Quarterly Progress Reports to STATE no later than thirty (30) calendar days after the close of each quarter describing progress toward completion of tasks, projects, and products, conformance with project schedules, and reporting all costs incurred for the work elements contained

in the OWP. Progress reports should include all work elements for transportation planning tasks, projects, and products funded wholly or in part by any of the fund sources listed on Page 1 of this MFTA. Quarterly Progress Reports submitted to STATE will identify all projects by work element number and title and shall contain, at a minimum, the information requested in the example format provided in APPENDIX A to this MFTA.

- B. STATE reserves the right to deem incomplete any Quarterly Progress Report that does not sufficiently document the above-required information and may withhold payment of Requests for Reimbursement submitted pending the submission of required documentation.

ARTICLE II - ALLOWABLE COSTS AND REIMBURSEMENT

Section 1. Requests For Reimbursement

- A. Requests for Reimbursement must conform to either subpart 1 or subpart 2 hereinbelow for the entire OWP fiscal year:

1. MPO shall prepare and submit to STATE, not more frequently than every other week, not to exceed twenty-six (26) Requests for Reimbursements per fiscal year, but at least quarterly, two signed Requests for Reimbursements of actual allowable costs incurred by MPO consistent with work elements described in the OWP (conforming to the format provided in APPENDIX B) and including all required information, as applicable, provided for in example APPENDIX B2 to this MFTA for the reimbursement of actual allowable costs incurred and paid by MPO consistent with work elements described in the OWP. The amount billed per each work element is not to exceed the total amount authorized for that work element in the OWP. Reimbursements under this MFTA will be allowed if based upon actual costs expended and supported by MPO's accounting system. MPO must not only have incurred the allowable project cost on or after the effective date of the annual OWPA and on or before its termination date, but must also have paid those expenses.

2. MPO shall prepare and submit to STATE, not more frequently than once a month, but at least quarterly, two signed Requests for Reimbursements of actual allowable costs incurred by MPO consistent with work elements described in the OWP (conforming to the format provided in APPENDIX B) and including all required information, as applicable, provided in example APPENDIX B2 to this MFTA. The amount billed per each work element is not to exceed the total amount authorized for that work element in the OWP. Reimbursements under this MFTA will be allowed if based upon actual costs incurred and supported by MPO's accounting system. Allowable incurred costs that are eligible for reimbursement by STATE are only those that are treated by MPO's accounting system in accordance with Generally Accepted Accounting Principles as accrued due to such costs having been billed to MPO and recognized by MPO as valid, undisputed, due and payable.

By submitting accrued but unpaid costs for reimbursement, MPO agrees that within ten (10) days of receipt of STATE's reimbursement, the full amount of all cost items submitted as reimbursable accrued costs shall be paid to each billing entity. Any reimbursed accrued cost not paid within this ten (10) day grace period shall accrue interest payable to STATE at the

then present interest rate established by the State Treasurer's Pooled Money Investment Account. Interest accrued must be timely remitted to STATE. Reimbursed accrued costs not paid to the billing entities by MPO within forty-five (45) days of MPO's receipt of STATE's reimbursement will thereafter be deemed unallowable. All unallowable costs must be immediately remitted to STATE.

If MPO is found, through audit or other means, not to have paid a billing entity its invoiced sums then owed within the (10) day grace period, MPO must immediately revert to the reimbursement process described in subpart 1 above.

- B. STATE agrees to make reimbursements to MPO as promptly as STATE fiscal procedures will permit, but not more often than monthly, upon the receipt of two original signed Requests for Reimbursements (conforming to the format provided in APPENDIX B) that include all required information, as applicable, (provided in example APPENDIX B2) of actual allowable costs incurred for the period of time covered by that Request for Reimbursement.
- C. Advance payments are not allowed for State and/or Federal funds administered under this MFTA.

Section 2. Travel and Per Diem Reimbursement

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates are not commercially available to MPO, or its contractors, its subcontractors, and/or its subrecipients, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process.

Section 3. Final Request for Reimbursement and OWP Closeout Documentation

- A. MPO shall submit an OWP/annual OWPA closeout documentation package to STATE no later than sixty (60) days after June 30th of each fiscal year. The closeout package shall conform to the format provided in APPENDIX C.
- B. The closeout package must be attached to a transmittal letter, typed on MPO's letterhead. If these documents are not received within sixty (60) days after the June 30 date for that closing of the annual OWPA, STATE may withhold future apportionments and/or allocations to MPO. STATE's election not to withhold future apportionments and/or allocations immediately after the end of one fiscal year shall not limit STATE's ability to initiate subsequent withholdings.

Section 4. Funding Contingencies

All obligations of STATE under the terms of the MFTA and each annual OWPA are subject to the availability of Federal and State funds and the annual passage of the applicable State Budget Act. The authorization and obligation of these funds by outside entities may be terminated, limited or otherwise adversely affected by factors which may include, but are not limited to, changes in State or Federal law regarding the encumbrance and reimbursement of the funds provided by each annual OWPA and this MFTA.

ARTICLE III - AUDITS AND REPORTS

Section 1. Cost Principles

- A. MPO agrees to comply with Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- B. MPO agrees, and shall require all of its contractors, subcontractors, and subrecipients to agree, to the following: (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., (subrecipients shall refer to the Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments) shall be used to determine the allowability of individual project cost items, and (b) these parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Costs for which MPO receives reimbursement payment or credit that is determined by a subsequent audit or other review by either STATE or Federal authorities to be unallowable under Office of Management and Budget Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid to STATE by MPO within thirty (30) days of MPO receiving notice of audit findings. Should MPO fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between both parties hereto, STATE is authorized to intercept and withhold future payments due MPO from any source, including, but not limited to, the State Treasurer and the State Controller.
- D. MPO agrees to furnish documentation to STATE to support this requirement that all of its agreements with contractors, subcontractors, and subrecipients do contain provisions requiring adherence to this section in its entirety.

Section 2. Indirect Cost Agreement and Cost Allocation Plan

- A. If MPO seeks reimbursement for indirect costs, indirect cost agreements and cost allocation plans are to be provided to STATE annually prior to the beginning of each fiscal year for review and approval prior to MPO seeking any reimbursement of indirect costs.
- B. MPO agrees and shall require that all of its agreements with subrecipients contain provisions requiring adherence to this section in its entirety.

Section 3. Record Retention/Audits

- A. MPO shall maintain, and shall require its subrecipients, contractors and its subcontractors to maintain all source documents, books and records connected with their performance of OWP work initiated under this MFTA and each applicable annual OWPA for a minimum of three (3) years from the date of final payment to MPO or until audit resolution is achieved for each annual OWPA, whichever is later, and shall make all such supporting information available for inspection and audit by

representatives of STATE, the Bureau of State Audits, or the Federal Government upon request. Copies will be made and furnished by MPO upon request at no cost to STATE.

- B. MPO shall establish and maintain, and shall require that its subrecipients, contractors and subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item and produce Quarterly Reports which clearly identify reimbursable costs and other expenditures by OWP work elements.
- C. MPO's pre-award requirements for dealing with third party contractors/consultants and local agencies must be consistent with STATE Local Program Policy (LPP 00-05) or any successor thereto.
- D. MPO agrees to include all costs associated with this MFTA, OWP and annual OWPA, and any amendments thereto: to be examined in the annual audit and in the schedule of activities to be examined under MPO's single audit prepared in compliance with Office of Management and Budget Circular A-133. MPO is responsible for assuring that the Single Auditor has reviewed the requirements of this MFTA, the OWP and the annual OWPA. Copies of said audits shall be submitted to STATE.
- E. When conducting an audit of the costs claimed under the provisions of each annual OWPA and this MFTA, STATE will rely to the maximum extent possible on any prior audit of MPO pursuant to the provisions of State and Federal law. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to STATE when planning and conducting additional audits.
- F. MPO agrees to furnish documentation to STATE supporting this requirement that all of its agreements with contractors, subcontractors, and subrecipients do contain applicable provisions requiring adherence to this section in its entirety.
- G. Neither the pendency of a dispute nor its consideration by STATE will excuse MPO from full and timely performance in accordance with the terms of this MFTA, the OWP, and the annual OWPA.

ARTICLE IV - GENERAL PROVISIONS

Section 1. Federal Certifications and Assurances

- A. MPO shall comply with the FHWA and FTA "Metropolitan Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.334 and the Transportation Equity Act for the 21st Century and its successors thereto. This Certification is provided annually by FHWA and FTA and is published in STATE's annual *MPO OWP Guidance*. It may include, but is not limited to:
 - 1. 23 U.S.C. 134 and 135, 49 U.S.C. Section 5303 and 5323(1), and 23 CFR part 450.220;
 - 2. Sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d));

3. Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
4. Section 1101(b) of the Transportation Equity Act for the 21st Century (Pub. L. 105-178 112 Stat. 107), and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 97 - 424, 96 Stat. 2100, 49 CFR part 26); and
5. The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).

B. MPO shall comply with annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in the *Federal Register*.

The 2003 Federal Certification includes the following areas under "Assurances Required of Each Applicant:"

1. Authority of Applicant and Its Representatives
2. Standard Assurances
3. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions
4. Drug-Free Workplace Agreement
5. Intergovernmental Review Assurance
6. Nondiscrimination Assurance
7. DBE Assurance
8. Nondiscrimination on the Basis of Disability
9. Procurement Compliance Certification
10. Certifications and Assurances Required by the U.S. Office of Management & Budget

C. Copies of these annual Certifications and Assurances shall be included by MPO in each final OWP.

D. MPO shall comply, and shall require its contractors, subcontractors, and subrecipients to comply with these Certifications.

- E. MPO agrees to furnish documentation to STATE to support this requirement that all of its agreements with contractors, subrecipients and subcontractors, do contain provisions requiring adherence to this section in its entirety.

Section 2. Disadvantaged Business Enterprise (DBE) Requirements

- A. As mandated by 49 CFR Part 26, MPO shall require that its contractors, subcontractors, and subrecipients do not, discriminate on the basis of race, color, national origin, or sex in the award, administration and performance of any State or FHWA/FTA fund-assisted contract or in the administration of MPO's DBE program.
- B. MPO's DBE program, as required by 49 CFR Part 26 and as approved by STATE, is incorporated by reference in this MFTA. Implementation of this program is a legal obligation and the failure of MPO to carry out its terms shall be treated as a violation of this MFTA. Upon notification to the recipient of its failure to carry out its approved program, the US DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq. and 49 CFR Part 26.13(a).

Section 3. Non-Discrimination Clause

- A. In the performance of work undertaken pursuant to this MFTA, MPO shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.
- B. MPO shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. MPO shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 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 MFTA by reference and made a part hereof as if set forth in full.
- C. Each of MPO's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. MPO shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this MFTA.
- D. MPO shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this MFTA by this reference. Wherever the term "Contractor" appears therein, it shall mean MPO.

- E. MPO shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with this Section 3.

Section 4. Federal Lobbying Activities Certification

- A. MPO certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of MPO, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than State or Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or 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 Federal contract, grant, loan, or cooperative agreement, MPO shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying", in accordance with those form instructions.
- C. This certification is a material representation of fact upon which reliance was placed when this MFTA and each annual OWPA was entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. 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. MPO also agrees by signing this MFTA that MPO shall require that the language of this certification be included in all contracts and subcontracts funded wholly or in part by any fund sources listed on Page 1 of this MFTA and which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Section 5. Contract Award

In accordance with Title 49, CFR, Part 18, Section 18.37 and state law and procedures, all MPO, contractor, subcontractor and subrecipient contracts containing Federal and State planning funds are required to be competitively bid and awarded consistent with LPP-005 or successors thereto.

Section 6. Contract Amendment

No amendments to the terms of this MFTA, any OWP or any annual OWPA shall be valid unless made in writing and signed by the individuals legally authorized to contractually bind the parties hereto. Each party agrees that it has had or will have the opportunity to seek review by and approval

from its legal counsel of the original documents and any proposed alteration or variation. No oral understanding or agreement not incorporated herein shall be binding on any of the parties thereto. For the purposes of this MFTA, the Chief of Office of Regional and Interagency Planning, Division of Transportation Planning, shall be the Contract administrator for STATE.

Section 7. Dispute Resolution

The remedy for the resolution of any claims brought by MPO against STATE under this MFTA and the applicable annual OWPA shall be by non-binding arbitration. Unless otherwise agreed by STATE and MPO, the arbitration shall be conducted by a single arbitrator selected by the parties from the certified list created by the Public Works Contract Arbitration Committee per Public Contract Code section 10240.

ARTICLE V – MUTUAL AGREEMENT

GENERAL PROVISIONS

STATE and MPO mutually agree:

Section 1. Parties of Agreement

This MFTA, the OWP, the annual OWPA and any related agreements are solely between the named parties thereto and no express or implied benefit to entities or individuals not a party thereto is intended or to be inferred. There are no third-party beneficiaries to or of this MFTA or any OWP, or annual OWPA or any other agreement pertaining hereto.

Section 2. Hold Harmless and Indemnification Clause

- A. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by MPO under or in connection with any work, authority or jurisdiction delegated to MPO under this MFTA and each annual OWPA. It is understood and agreed that, pursuant to Government Code section 895.4, MPO shall fully defend, indemnify and save harmless STATE and its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury as defined in Government Code section 810.8 occurring by reason of anything done or omitted to be done by MPO under or in connection with any work, authority or jurisdiction delegated to MPO under this MFTA and each annual OWPA.
- B. Neither MPO nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this MFTA. It is understood and agreed that, pursuant to Government Code section 895.4, STATE shall fully defend, indemnify and save harmless MPO, its officers and employees from all claims, suits, or actions of every name, kind and description brought for or on account of injury as defined in Government Code section 810.8 occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this MFTA.

Section 3. Termination

- A. In the event that MPO fails to complete a Work Element as described in the OWP or fails to comply with applicable Federal and State laws and regulations, STATE reserves the right to terminate all funding for that OWP, or a portion thereof, upon thirty (30) days prior written notice to MPO. The Notice of Termination will specify the reason and effective date for the termination. During the period before the termination date becomes effective, MPO and STATE shall meet to try and resolve any dispute. No such termination shall become effective if, within the thirty (30) day period after receipt of the Notice of Termination, MPO either cures the default, or if that default is not reasonably susceptible to cure within said thirty (30) day period, STATE approves a MPO plan and MPO thereafter diligently completes the cure in a manner and timeline acceptable to STATE.

- B. This MFTA shall remain in full force and effect until superseded or terminated by either party upon thirty (30) days prior written notice.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: *Randy Schuer*
Contract Officer

Date: 1/10/05

Southern California Association of Governments

By: *Mark Pisano*
Executive Director, Mark Pisano

Date: 11/11/04

Southern California Association of Governments

By: *Karen Tachiki*
Attorney Karen Tachiki, Chief Counsel

Date: 11/24/04

Appendix B

Continuing Cooperative Agreement Template

APPENDIX

B

CONTINUING COOPERATIVE AGREEMENT TEMPLATE

CONTINUING COOPERATIVE AGREEMENT

#07-XXX-S1

between

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

and

NAME OF SUBREGION

THIS AGREEMENT is entered into effective July 1, 2006, between Name of Subregion (hereinafter referred to as Subregion) and the Southern California Association of Governments (hereinafter referred to as SCAG).

RECITALS

WHEREAS, the Subregion is a subrecipient of State and Federal planning funds programmed in SCAG's annual Overall Work Program (OWP), administered by and through SCAG. The SCAG annual OWP is part of an agreement with the State of California Department of Transportation (State), which includes the Overall Work Program Agreement (OWPA) and Master Fund Transfer Agreement (MFTA). Together, the OWP, the OWPA and MFTA set forth the terms and conditions under which these funds are to be expended by SCAG and its subrecipients.

WHEREAS, SCAG and the Subregion intend to coordinate development of the annual SCAG OWP, with final OWP approval by SCAG; and

WHEREAS, SCAG and the Subregion intend to cooperate to ensure the timely development, adoption and implementation of integrated comprehensive regional plans and policies, as set forth by Federal and State requirements; and

WHEREAS, SCAG and the Subregion intend to cooperate to ensure continual satisfactory compliance with applicable Federal and State laws and planning and management guidelines; and

WHEREAS, SCAG and the Subregion intend to ensure their respective cost accounting systems meet Federal and State regional planning fund requirements; and

WHEREAS, SCAG and the Subregion intend to improve accountability of persons carrying out the duties prescribed in this Agreement, and reduce delays associated with the billing process.

NOW THEREFORE, IT IS MUTUALLY AGREED THAT

1. Agreement with the Subregion and Amendments. This Agreement constitutes a continual, year-to-year arrangement between the Subregion and SCAG, and may be amended by mutual written agreement.
 - a. This Agreement includes the annual, "Subregional Scope of Work" (Exhibit A), "Subregional Budget" (Exhibit B), "Sample Subregional Invoice" (Exhibit C), and "Sample In-Kind Match Report" (Exhibit D) hereinafter referred to as Exhibits A, B, C, and D respectively, attached hereto and incorporated herein by this reference.
 - b. SCAG's maximum payment obligation to the Subregion is limited to those funds identified in Exhibit B (Chart 1, "Federal Amount").
2. Scope of Subregional Responsibilities.
 - a. SCAG shall engage the Subregion and the Subregion shall be responsible for the complete performance of the work described in Exhibit A, including the grant-funded and in-kind match work, in accordance with the Budget constraints described in Exhibit B (Chart 1 and Chart 2, "In-Kind Match" Column).
 - b. Only SCAG may contract with a consultant ("SCAG Consultant") to perform Subregional work related to projects identified in the attached Exhibit B under "Consultant Work" (Chart 2). For SCAG Consultant contracts, the Subregion shall identify a responsible person ("Subregional Project Manager") by name and title in such SCAG contracts, in compliance with Section 3 of this Agreement and subject to change at the discretion of the Subregion. Written notification of any change in the identity of the Subregional Project Manager shall be provided to SCAG by the Subregion within ten (10) days of such change.
 - c. The Subregional Project Manager shall be responsible for the following co-management duties, in coordination with the SCAG Project Manager in relation to such contracts: develop the scope of work for the contract with the SCAG Consultant; participate in selection of such consultant; review consultant's work product(s) and provide progress reports, including Quarterly Progress Reports; monitor the day-to-day activities of the consultant, and recommend approval of payments to the consultant. Subregional approval of the SCAG Consultant Invoice is required within five (5) days of receipt of such Invoice from SCAG, in order for SCAG to efficiently process payment to the SCAG Consultant. SCAG maintains final authority to approve and accept SCAG Consultant work products.

- d. The Subregional Project Manager shall coordinate all work described in Exhibit A with the SCAG Project Managers identified under each project listed in Exhibit B . SCAG shall not be obligated to make payments to the Subregion until the Subregional Project Manager has carried out the responsibilities described herein and in compliance with Sections 6 through 8 of this Agreement.
 - e. SCAG strongly urges the Subregion to establish an oversight structure and process at its governing board level. This oversight may be in the form of an Audit Committee or Finance Committee to oversee compliance with the applicable Federal and State regulations cited herein.
3. Personnel. The Subregion shall either hire personnel or procure a Contractor for performance of the work described in Exhibit A, only in the following manner:
- a. Subregional Personnel. The Subregion, upon approval and authorization of its governing body, shall utilize employees with salaries that do not vary on the basis of funds received from SCAG.
 - b. Subregional Contractor. The Subregion, upon approval and authorization of its governing body, may contract for the services of a Subregional Coordinator or Executive Director (“Contractor”), consistent with and in compliance with all applicable Federal and State regulations and guidance including but not limited to 49 C.F.R. Section 18.36, the Local Assistance Procedure Manual, and the Consultant Selection Guidebook; and with applicable SCAG Policies, Procedures and Manuals. The Subregion shall provide SCAG with written notification of the identity of the Contractor prior to the beginning of each fiscal year and within 10 days of any change in the identity of such person.
4. Time of Performance. The services provided pursuant to this Agreement shall begin upon issuance of a Notice to Proceed by SCAG to the Subregion and shall continue until completion, but not later than June 30 of each year.
5. Materials to be Furnished to the Subregion.
- a. SCAG shall provide the Subregion with a right to use (without charge by SCAG) information, data, reports, records, and maps which are in the possession of or readily available to SCAG, for the purposes of carrying out work under this Agreement. However, SCAG’s proprietary information or otherwise confidential or privileged materials shall not be provided to the Subregion, unless authorized by SCAG’s legal counsel.
 - b. At the option of SCAG and if allowable under Federal and State grant requirements, SCAG may procure equipment, software, or other materials for use by the Subregion, only for purposes of carrying out work described under

this Agreement. The Subregion agrees to comply with all license agreements for software or other materials procured by SCAG for use by the Subregion.

- c. All equipment, software, or other materials provided to the Subregion under this Agreement shall remain the property of SCAG.
6. Invoices and Quarterly Progress Reports. In performing the work described in Exhibit A, the Subregion may incur only the costs authorized by Exhibit B. Said costs shall comply with Section 8 below. The Subregion shall submit to SCAG, not more frequently than every month, but at least quarterly, each requisition for payment (Invoice) accompanied by a narrative progress report. Separate progress reports for each project identified in Exhibit B are not required, so long as one report identifies each project separately. Additionally, the Subregion shall submit a Quarterly Progress Report at the close of each quarter in accordance with paragraph b. below.
- a. The Subregion shall submit the following relative to an Invoice:
 - i. an Invoice in duplicate, in accordance with the "Sample Subregional Invoice," Exhibit C .
 - ii. a progress report that, in narrative form, describes progress toward completion of tasks, projects, and products, conformance with project schedules, and reporting of all costs incurred for the work elements contained in Exhibit B (under Chart 1); and
 - iii. upon request of SCAG, additional information or documentation to support the costs contained in the Invoice.
 - b. The Subregion shall submit a Quarterly Progress Report to SCAG, no later than ten (10) days after the close of each quarter (i.e., for the first quarter, ending September 30, the deadline is October 10), describing progress toward completion of all tasks, projects, and products, conformance with project schedules, and reporting of all costs incurred for the work elements contained in Exhibit B.
 - c. In the submittal of Quarterly Progress Reports, the Subregion shall include seven, double-sided copies of all completed products to the assigned SCAG Project Manager, in a form determined by SCAG, as referenced in Section 9.
 - d. Year-end Invoices and supporting documentation shall be sent by the Subregion via certified mail and received by SCAG on or before July 31st of each fiscal year. Invoices received by SCAG after July 31st shall not be paid.
 - e. Payment of Subregional Invoices is contingent upon receipt by SCAG of the above documentation provided by the Subregion, consistent with Sections 6 through 8. Payment to the Subregion is further contingent upon SCAG's

determination, which shall not be unreasonably withheld, that the performance of the Subregion has been satisfactory.

- f. The Subregion shall not be entitled to reimbursement of indirect costs unless a copy of an applicable, approved indirect cost plan has been received by SCAG prior to submittal of the first Invoice from the Subregion. However, the last approved indirect cost allocation plan shall remain in place until each new annual plan is approved, so long as Caltrans permits such practice.
7. In-Kind or Cash Match. The Subregion shall provide the required, local In-Kind match in accordance with Exhibit A (In-Kind match work) and Exhibit B, along with In-Kind Match Reports provided in a format consistent with Exhibit D. In-kind Match Reports may be provided to SCAG by the Subregions and/or local public agency(ies) within the Subregion. However, it remains the responsibility of the Subregion to ensure SCAG receives the In-kind Match Reports and documentation in accordance with the requirements below and the requirements described in Section 8.
- a. In-Kind Match Reports shall be submitted with SCAG Consultant Invoices approved by the Subregional Project Manager or upon request of SCAG staff. In-kind Match Reports shall include the following information: the name of the Subregion and/or local public agency within the Subregion, applicable WBS (Work Breakdown Structure) Number, description of services performed, period of the service performed, employee name, actual pay rate, total hours worked, fringe benefit rate, indirect cost rate (if the rate is approved as part of an indirect cost plan submitted in accordance with Section 6.f. above/7.b. below), total cost incurred, and a statement that costs were funded with non-Federal local funds accompanied by an authorized signature of the Subregion and/or local agency(ies) providing the match. The Subregion shall provide additional information or documentation relative to the Match Reports, upon request of SCAG.
 - b. Cash Match. Upon receipt of an invoice from SCAG for Cash Match, the Subregion shall promptly provide the total amount of its Cash Match for all projects described in Exhibit B, Chart 2. The Cash Match shall comply with Section 10. and must be received by SCAG before the issuance of the Notice to Proceed to the Consultant.
 - c. The Subregion shall not be entitled to credit for indirect costs unless a copy of an applicable, approved indirect cost plan has been received by SCAG prior to submittal of the first In-kind Match Report from the Subregion. However, the last approved indirect cost allocation plan shall remain in place until each new annual plan is approved, so long as Caltrans permits such practice.

8. Cost Principles.

- a. Subregion agrees to be bound by and shall require its Contractor to comply with the following:
 - i. the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq. (OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments)," shall be used to determine the allowability of individual project cost items, and
 - ii. the Federal administrative procedures in accordance with 49 Code of Federal Regulations, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- b. Any costs for which the Subregion receives payment or credit that is determined by a subsequent audit or other review by either SCAG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 C.F.R., Chapter 1, Part 31; or 49 C.F.R., Part 18, are to be repaid by Subregion within thirty (30) days of the Subregion receiving notice of audit findings. Should Subregion fail to reimburse moneys due SCAG within the thirty (30) days, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due Subregion.
- c. All costs charged to this Agreement by the Subregion shall be supported by properly executed payrolls showing labor (wage) rates per hour, and if applicable, copies of Internal Revenue Service W-2 or 1099 Forms, or both; time records, including timesheets or time cards signed by the employee and approved by the supervisor; and invoices and vouchers, evidencing in proper detail the nature of the charges. These costs shall comply with the cost principles cited above in paragraph a. of this Agreement.
- d. All reports and documents produced under this agreement shall include the following statement:

"Funding: The preparation of the report was financed in part through grants from the United States Department of Transportation (DOT). Additional financial assistance was provided by the California State Department of Transportation."
- e. The Subregion agrees to furnish documentation to SCAG to support this requirement that its Agreements with a Contractor contain provisions requiring adherence to this Section in its entirety.

9. Written and Electronic Versions of Work Products and Related Materials. The Subregion shall provide copies of all of its work products and related materials to SCAG, including any reports, newsletters or other written materials, in hard copy as well as electronically, which were created pursuant to the Scope of Work under this Agreement.
- a. Any graphic images accompanying the text of these written materials shall be included, in digitized form, in the electronic version.
 - b. The electronic versions of all written materials and accompanying graphic images shall, when printed or otherwise displayed, appear in the identical format, location, quality, and state of replicating in which they appear in the hard copy versions.
 - c. Materials in the electronic version shall be presented to SCAG on a medium pre-approved in writing by the SCAG Project Manager.
 - d. SCAG shall be free to copyright material developed under this Agreement. The State and the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, work products funded under this Agreement for government purpose.
10. Records Retention and Audits.
- a. The Subregion shall maintain, and shall require that its Contractor maintain, all source documents, books and records connected with their performance of work initiated under this Agreement and each annual SCAG OWP for a minimum of three (3) years from the date of final payment to Subregion or until audit resolution is achieved for each annual SCAG OWP, whichever is later, and shall make all supporting information available for inspection and audit by representatives of SCAG, the State, the Bureau of State Audits, or the Federal Government upon request. Copies will be made and furnished by SCAG upon request at no cost to SCAG.
 - b. The Subregion shall establish and maintain, and shall require that its Contractor establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Invoices which segregate and accumulate the costs of work elements by line item and produce Quarterly Progress Reports which clearly identify reimbursable costs and other expenditures by OWP work elements.
 - c. The Subregion agrees to include all costs associated with this Agreement and any amendments thereto to be examined in the annual audit and in the schedule of activities to be examined under a single audit prepared by the

Subregion in compliance with Office of Management and Budget Circular A-133.

In accordance with Office of Management and Budget Circular A-133, Subregions that are required to file a Single Audit report shall provide SCAG with a copy of the report by March 31st of each year.

- d. Neither the pendency of a dispute nor its consideration by SCAG or the State will excuse the Subregion from full and timely performance in accordance with the terms of this Agreement.
- e. The Subregion agrees to furnish documentation to SCAG to support this requirement that its Agreements with a Contractor contain provisions requiring adherence to this Section in its entirety.

11. Certifications and Assurances.

- a. The Subregion shall adhere to the requirements contained in SCAG's annual Certification and Assurances (FHWA and FTA "Metropolitan Transportation Planning Process Certification") submitted as part of SCAG's OWP, pursuant to 23 CFR 450.334 and 23 U.S.C. 134. This Certification shall be published annually in SCAG's OWP. Such requirements shall apply to the Subregion to the same extent as SCAG and may include, but are not limited to:
 - i. Title VI of the Civil Rights Act of 1964 and Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
 - ii. Pub. Law 105-178, 112 Stat. 107 and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 970424, 96 Stat. 2100, 49 CFR part 26); and
 - iii. The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (DOT) implementing regulations (49 CFR 27, 37, and 38).
- b. The Subregion shall additionally comply with the requirements contained in the annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in SCAG's OWP. Such assurances shall apply to the Subregion to the same extent as SCAG, and include but are not limited to the following areas:
 - i. Authority of Applicant and Its Representatives
 - ii. Standard Assurances
 - iii. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions
 - iv. Drug Free Work Place Agreement

- v. Intergovernmental Review Assurance
- vi. Nondiscrimination Assurance
- vii. DBE Assurance
- viii. Nondiscrimination on the Basis of Disability
- ix. Procurement Compliance Certification
- x. Certification and Assurances Required by the U.S. Office of Management and Budget.

c. Federal and State Lobbying Activities Certification.

- i. By signing this Agreement, the Subregion certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of the Subregion, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than State or Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or 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 Federal contract, grant, loan, or cooperative agreement, the Subregion shall complete and submit Federal Standard Form-LL, "Disclosure Form to Report Lobbying," in accordance with those form instructions."
 - iii. This certification is a material representation of fact, upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. and by the MFTA between SCAG and the State.
- d. The Subregion shall further require its Contractor to comply with these Certifications. The Subregion agrees to furnish documentation to SCAG to support this requirement that all of its Agreements with a Contractor contain provisions requiring adherence to this Section in its entirety.
- e. The Executive Director (or other designated, authorized signatory) of the Subregion shall sign an annual certifications and assurances form entitled "Affirmation of Subregion," which shall be provided to SCAG separately at the time this Agreement and annual, amendments to the Agreement are executed.

12. Equal Employment Opportunity/Nondiscrimination. In the performance of work undertaken pursuant to this Agreement, the Subregion for itself, its assignees and successors in interest, shall affirmatively require that its employees and Contractor shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

The Subregion shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Subregion shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing the Government Code sections referenced above, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

The Subregion shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements.

- a. Sanctions for Noncompliance: In the event of the Subregion's noncompliance with the nondiscrimination provisions of this Agreement, SCAG shall impose such contract sanctions as it or the DOT may determine to be appropriate, including, but not limited to:
- i. Withholding of payments to the Subregion under this Agreement until the Subregion complies, and/or
 - ii. Cancellation, termination or suspension of the Agreement, in whole or in part.
- b. Incorporation of Provisions: The Subregion shall include the provisions of this Section in every agreement with its Contractor. The Subregion shall take such action with respect to any such agreement as SCAG or DOT may direct as a means of enforcing such provisions, including sanctions for noncompliance

13. Conflict of Interest. The Subregion and its officers, employees, and agents (including a Contractor) that perform work under this Agreement shall comply with Federal and State conflict of interest laws, regulations and policies, and applicable provisions of SCAG's Conflict of Interest Policy.

14. Independent Contractor. The Subregion and its officers, employees, and agents (including a Contractor) shall be independent contractors in the performance of this Agreement, and not officers, employees, contractors or agents of SCAG.
15. Disadvantaged Business Enterprise (DBE). It is the policy of SCAG, the California Department of Transportation, and the U.S. Department of Transportation, that Disadvantaged Business Enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have an equal opportunity to receive and participate in the performance of Agreements financed in whole or in part with FHWA/FTA funds provided under this Agreement.

The Subregion and its employees shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any State or FHWA/FTA funds-assisted contract or in the administration of SCAG's DBE program per the requirements of 49 C.F.R. Part 26. Failure to carry out the requirements of this paragraph shall constitute a breach of contract and may result in termination of this Agreement or such other remedy SCAG may deem appropriate

16. Disputes. The parties agree to submit any disputes arising under this Agreement to neutral mediation before resorting to litigation.
17. Hold Harmless. The Subregion and SCAG mutually agree to indemnify and hold harmless each other, Caltrans, DOT and all of their officers, agents and employees from any and all claims, demands, costs or liability arising from or connected with negligent performance on the part of the Subregion or SCAG. The Subregion and SCAG will reimburse each other for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to negligent acts, errors or omissions on the part of the Subregion or SCAG. The Subregion further agrees to reimburse SCAG for claims, demands, costs or liability associated with the incomplete performance of work contained in Exhibit A, in the event that the Subregion terminates this Agreement in accordance with Section 19.a. herein.
18. Noncompliance. In addition to such other remedies as provided by law, in the event of noncompliance with any grant condition or specific requirement of this Agreement, this Agreement may be terminated.
19. Termination of Agreement.
 - a. Termination for Convenience. Either party may terminate this Agreement at any time by giving written notice to the other party of such termination at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in the Agreement shall be returned to SCAG at its option. The Subregion shall return at the option of SCAG, all equipment, software, or other materials provided to the Subregion under this Agreement. If this Agreement is

terminated by SCAG, as provided herein, the Subregion shall be reimbursed for expenses incurred prior to the termination date, in accordance with Section 6 through 8 of this Agreement.

- b. Termination for Cause. If through any cause, the Subregion shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Subregion violates any of the covenants, agreements, or stipulations of this Agreement, SCAG shall thereupon have the right to terminate the Agreement by giving not less than ten (10) calendar days written notice to the Subregion of the intent to terminate and specifying the effective date thereof. SCAG shall provide a reasonable opportunity for the Subregion to cure prior to termination. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the Subregion under this Agreement shall be provided to SCAG. At the option of SCAG, the Subregion shall return all equipment, software, or other materials provided to the Subregion under this Agreement. The Subregion shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.

20. Environmental, Resource Conservation, and Energy Requirements. The Subregion recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to the Project. The Subregion agrees to adhere to any such Federal and State requirements.

21. Notice. Any notice or notices required or permitted to be given pursuant to this agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

WAYNE MOORE
CHIEF FINANCIAL OFFICER
Southern California Association of Governments
818 West 7th Street, 12th Floor
Los Angeles, California 90017-3435

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, on the day and year first herein written above:

Southern California Association
of Governments

Name of Subregion

By _____
WAYNE MOORE
Chief Financial Officer

By _____
NAME
Title

Date _____

Date _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

Joe Burton
Chief Counsel

Legal Counsel for Subregion

EXHIBIT A

Subregional Scope of Work

EXHIBIT B

Subregional Budget

EXHIBIT C

Sample Subregional Invoice

EXHIBIT D

Sample In-Kind Match Report

Appendix C

Affirmation of Subregion

APPENDIX

C

AFFIRMATION OF SUBREGION

Affirmation of Subregion

Name of Subregion: _____

Continuing Cooperative Agreement Number: _____

Name and Title of Subregional Representative: _____

I hereby certify, as _____ of _____ (Subregion), that the Subregion shall comply with all State and Federal statutes, regulations, executive orders, and directives referenced in the Continuing Cooperative Agreement and the SCAG Audit Guidance for Subregions, relative to the Overall Work Program with SCAG for the 2006/2007 fiscal year.

The assurance the Subregion makes herein applies to each Overall Work Program project for which the Subregion receives, or may later receive, SCAG assistance during the 2006/2007 fiscal year.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statement made by me on behalf of the Subregion, are true and correct.

Signed,

Date: _____

Name and Title: _____

Appendix D

SCAG OWP Project Proposal

APPENDIX

D

SCAG OWP PROJECT PROPOSAL

SCAG FY 08-09 OWP PROJECT PROPOSAL

SCAG Use Only	
New Project _____	Carryover _____
Proj. No. _____	07/08 wbs no. _____
Project Name: _____ <i>(If carryover project, project name should be same as it appears in 07/08 OWP)</i>	
Name of Subregion _____	
Submitted by: _____ Phone No. _____	

PROPOSED BUDGET: (Do not fill in shaded areas.)

	FY 08/09 Budget	Local Match	FY 08/09 Total Budget	Multi-Year Budget	
				FY 09/10	FY 10/10
Staff					
Travel					
Printing					
Staff Subtotal	\$0	\$0	\$0		
Consultant		\$0	\$0		
TOTAL PROJECT COST					\$0

PREVIOUS ACCOMPLISHMENTS: *(Please limit text to box. If new project, indicate "New Project.")*

OBJECTIVE OF THE PROJECT *(Please limit text to box)*

SCAG FY 08-09 OWP PROJECT PROPOSAL

STEPS FOR STAFF WORK		Start Date	End Date
		(mm/dd/yyyy)	
1			
2			
3			
4			
5			

STEPS FOR STAFF IN-KIND SERVICES OR LOCAL CASH MATCH (This work will be included in your FY 08-09 Continuing Cooperative Agreement – CCA)		Start Date	End Date
		(mm/dd/yyyy)	
1			
2			
3			
4			
5			

STEPS FOR CONSULTANT WORK		Start Date	End Date
		(mm/dd/yyyy)	
1			
2			
3			
4			
5			

STEPS FOR STAFF IN-KIND SERVICES OR LOCAL CASH MATCH TO SUPPORT CONSULTANT WORK (This work will be included in your FY 08-09 Continuing Cooperative)		Start Date	End Date
		(mm/dd/yyyy)	
1			
2			
3			
4			
5			

PROJECT DELIVERABLES / PRODUCTS		Completion Date
		(mm/dd/yyyy)
1		
2		
3		
4		
5		

SCAG FY 08-09 OWP PROJECT PROPOSAL

PROJECT ADDRESSES THE FOLLOWING SAFETEA-LU PLANNING FACTORS

(Check all that apply)

- | | |
|--|--|
| | 1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency. |
| | 2) Increase the safety of the transportation system for motorized and non-motorized users. |
| | 3) Increase the security of the transportation system for motorized and non-motorized users. |
| | 4) Increase the accessibility and mobility of people and for freight. |
| | 5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development process. |
| | 6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight. |
| | 7) Promote efficient system management and operation. |
| | 8) Emphasize the preservation of the existing transportation system. |

PROJECT ADDRESSES THE FOLLOWING PLANNING EMPHASIS AREAS (PEAs)

(Check all that apply)

- | | |
|--|---|
| | 1) Incorporating Safety and Security in Transportation Planning |
| | 2) Participation of Transit Operations in Metropolitan and Statewide Planning |
| | 3) Coordination for Non-Emergency Human Service Transportation |
| | 4) Planning for Transit Systems Management/Operations to Increase Ridership |
| | 5) Support Transit Capital Investment Through Effective Systems Planning |
| | 6) Financial Planning |
| | 7) Project Monitoring |
| | 8) Regional Congestion Partnership |
| | 9) SAFETEA-LU Implementation |

Appendix E

Project Selection Criteria

APPENDIX

E

PROJECT SELECTION CRITERIA

PROJECT SELECTION CRITERIA

	Point Scale	Maximum Points
Project Merit		
1. <i>project addresses identified goal</i>	no yes	0 55
		55
2. <i>project responds to RC approved outcomes</i>	no yes	0 45
		45
3. <i>level of need (federal requirement, supports requirement, generally good planning)</i>		40
not needed	0	
good planning project	10	
supports federal requirement	20	
federal requirement	30	
Subtotal		140
Project Value		
1. <i>clarity of scope</i>		20
discription is not a scope	0	
scope is acceptable but lacking in parts	10	
steps are well written and understandable	15	
excellent, clear and complete	20	
2. <i>usefulness of project deliverables</i>		20
product has no use	0	
product responds only to specific need	5	
product is a good stand alone report	10	
product can be used as jump off point for future products	15	
product is creative and can be used by others as a model	20	
3. <i>reasonableness of scope vs. schedule</i>		10
no way the project can be successfully completed on schedule	0	
if work progresses as planned, completion should occur	5	
no forseen problems in meeting the schedule	10	
4. <i>reasonableness of scope vs. budget</i>		10
no way the project can be successfully completed within budget	0	
reasonable to complete project within budget	5	
no forseen problems in meeting the budget	10	
Subtotal		60
Administrative Compliance		
1. <i>% of funds expended last fiscal year</i>		14

PROJECT SELECTION CRITERIA

expended 0%	0
expended 1% - 29%	2
expended 30% - 49%	4
expended 50% - 79%	7
expended 80% - 89%	10
expended 90% - 100%	14

2. *% of funds expended 2 years ago*

expended 0%	0
expended 1% - 60%	2
expended 61% - 80%	4
expended 81% - 100%	6

6

3. *timely progress report submittal for last fiscal year*

submitted 0	0
submitted 1	1
submitted 2	4
submitted 3	7
submitted 4	10

10

4. *invoices submitted quarterly/approved in 30 days*

0%	0
1-24%	2
25-49%	5
50-74%	7
75-100%	10

10

5. *all forms complete and accurate*

not complete or accurate	0
almost, just needs a few minor touch-ups	5
forms in perfect order	10

10

Subtotal
Grand Total

50
250