



C-1
REVISED

MAYOR ROBERT GARCIA
CITY OF LONG BEACH

Date: September 8, 2020
To: Members of the City Council
From: Mayor Robert Garcia

REVISED RECOMMENDATION:

Request the City Manager, or designee, to execute all documents and agreements to accept funds from the Gateway Cities Council of Governments (COG); and increase appropriation in the General Fund Group in the Legislative Department by \$27,318.18, offset by the FY 20 funds received.

DISCUSSION:

As the COG's representative to the Los Angeles County Metropolitan Transportation Authority (Metro), Mayor Garcia is allowed to fund a Metro Board Deputy to advise him on Board issues and work directly with the COG. The funding for that staff is granted by Metro to the COG. The estimated amount to be received in FY 20 is \$27213.18 and the amount in FY 21 is \$109,272.72.

The City will accept the funds allocated from the COG as a revenue offset for FY 20, and a one-time appropriation in FY 20 is requested in the Mayor's Office to use these funds to support existing staff costs and purposes. A similar request will be made for FY 21 after that year has started.

This matter was reviewed by Budget Manager Grace H. Yoon on July 21, 2020.

FISCAL IMPACT:

This item reimburses the City for the work done by the Mayor's staff on behalf of the COG. The appropriation increases in the Mayor's budget is offset by the new revenue from the COG. This recommendation is anticipated to result in a minimal impact to staff hours beyond normal budgeted scope of duties and a minimal impact on City Council priorities.

SUGGESTED ACTION:

Approve recommendation

Respectfully submitted,

Mayor Robert Garcia
Date Submitted: September 3, 2020

TO: Board of Directors

FROM: Nancy Pfeffer, Executive Director

SUBJECT: Amendment to Agreement for Support Services by and between Gateway Cities Council of Governments and the City of Long Beach

Background

For the past 15 years the COG has provided support to the Metro Board member and support staff through two different Transportation Deputies.

Issue

With the recent retirement of Sharon Weissman, Transportation Deputy to Metro Board Member Garcia a replacement has been hired to continue to support Metro Board Member Garcia. Before you is the agreement with the City of Long Beach for the support services of Justin Ramirez to continue the work as the Transportation Deputy.

Recommended Action

Approve agreement with the City of Long Beach.

**GATEWAY CITIES COUNCIL OF GOVERNMENTS
PROFESSIONAL SERVICES AGREEMENT
WITH
CITY OF LONG BEACH FOR
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
BOARD MEMBER SUPPORT SERVICES**

This Professional Services Agreement (“Agreement”) is made and effective as of July 1, 2020, (“Effective Date”), by and between the Gateway Cities Council of Governments, a California joint powers authority, (“GCCOG”) and City of Long Beach, a California municipal corporation (“Consultant”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This Agreement shall commence on the Effective Date and shall remain and continue in effect through January 31, 2021, unless sooner terminated pursuant to the provisions of this Agreement.

II. SERVICES

Consultant shall provide one City of Long Beach employee to perform support services to the Board Member of the Los Angeles Metropolitan Transportation Authority representing the Southeast Los Angeles/Long Beach sector of the County of Los Angeles. Exhibit “B” contains a description of the services to be provided by Consultant.

III. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of Consultant’s ability, experience, and talent, perform the services described herein.

IV. GCCOG MANAGEMENT

GCCOG’s Executive Director or designee shall represent GCCOG in all matters pertaining to the administration of this Agreement.

V. PAYMENT

- A. GCCOG agrees to pay Consultant monthly in the amount of \$9106.06 for the services provided under this Agreement.
- B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by GCCOG’s Executive Director or designee. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by GCCOG

and Consultant at the time GCCOG's written authorization is given to Consultant for the performance of said services.

- C. Consultant will submit invoices monthly for actual Services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If GCCOG disputes any of Consultant's Services or fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefor.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. GCCOG may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant at least ten (10) days' prior written notice. Upon receipt of said notice, Consultant shall immediately cease all Services under this Agreement, unless the notice provides otherwise. If GCCOG suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- B. In the event this Agreement is terminated pursuant to this section, GCCOG shall pay to Consultant the actual value of the Services performed up to the time of termination, unless GCCOG disputes any of the Services performed or fees. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to GCCOG pursuant to Section V.

VII. DEFAULT OF CONSULTANT

If GCCOG determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, GCCOG shall serve Consultant a written notice of the default. Consultant shall have seven (7) days after service of said notice to cure the default. In the event that Consultant fails to cure the default within such period of time or fails to present GCCOG with a written plan for the diligent cure of default if such default cannot be cured within seven days, GCCOG shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

VIII. OWNERSHIP OF DOCUMENTS

- A. Consultant shall maintain complete and accurate records with respect to tasks, costs, expenses, receipts, and other such information required by GCCOG that relate to the performance of Services under this Agreement. Consultant shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of

GCCOG or its designees at reasonable times to such books and records; shall give GCCOG the right to examine and audit said books and records; shall permit GCCOG to make transcripts or copies therefrom as necessary; and shall allow inspection of all Services, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services shall become the sole property of GCCOG and may be used, reused, or otherwise disposed of by GCCOG without the permission of Consultant. With respect to computer files, Consultant shall make available to GCCOG, at the Consultant's office and upon reasonable written request by GCCOG, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to GCCOG all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the Services under this Agreement.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnity

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless GCCOG and any and all of its officials, officers, employees, agents, and/or volunteers ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, caused in whole or in part by the negligent and intentional acts, errors, or omissions of Consultant, its officers, agents, employees, or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of Services under this Agreement.

B. Duty to Defend

In the event GCCOG, its officials, officers, employees, agents, and/or volunteers are made a party to any claim, action, lawsuit, or other adversarial proceeding ("Action") arising from Consultant's negligent performance of the Services under this Agreement and/or Consultant's intentional actions undertaken in or furtherance of the performance of the Services under this Agreement, whether or not Consultant is named in such Action, and upon demand by GCCOG, Consultant shall defend GCCOG at Consultant's sole cost, or at GCCOG's option, to reimburse GCCOG for its costs of defense, including reasonable attorney's fees and costs incurred in the defense.

- C. Payment by GCCOG for Services is not a condition precedent to enforcement of this section. Consultant's duty to defend, indemnify, and hold harmless GCCOG shall not extend to GCCOG's sole or active negligence. In the event of any dispute between Consultant and GCCOG as to whether liability arises from the sole or active negligence of GCCOG or its officials, officers, employees, agents, and/or volunteers, Consultant will be obligated to pay for GCCOG's defense until such time as a final judgment has been entered adjudicating GCCOG as solely or actively negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including, but not limited to, attorney's fees, expert fees and costs of litigation.

X. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached to and part of this Agreement. Self-insurance maintained by Consultant shall be an acceptable substitute for such insurance coverage as long as it is maintained at levels equal to or in excess of those as specified in Exhibit A.

XI. INDEPENDENT CONTRACTOR

- A. Consultant is and shall at all times remain as to GCCOG a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither GCCOG nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officers, employees, or agents of GCCOG. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against GCCOG, or bind GCCOG in any manner.
- B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, GCCOG shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for GCCOG. GCCOG shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. GCCOG, and its officials, officers, employees, and agents,

shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

XIII. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of GCCOG in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of GCCOG has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with this Agreement or any Services to be conducted as a result of this Agreement. Violation of this section shall be a material breach of this Agreement entitling GCCOG to any and all remedies at law or in equity.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of GCCOG, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any Agreement or sub-agreement, or the proceeds thereof, for Services to be performed under this Agreement.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without GCCOG's prior written authorization, unless the information is clearly public or required by law. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from GCCOG's Executive Director or designee, or unless requested by GCCOG's attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to the GCCOG. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives GCCOG notice of such court order or subpoena.
- B. Consultant shall promptly notify GCCOG should Consultant, its officers, employees, agents, and/or subconsultants be served with any summons, complaint, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the Services performed hereunder or the GCCOG, unless the GCCOG is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless Consultant is prohibited by law from informing GCCOG of such Discovery. GCCOG retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless GCCOG is a party to the lawsuit, arbitration, or administrative proceeding

and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with GCCOG and to provide the opportunity to review any response to discovery requests provided by Consultant. However, GCCOG's right to review any such response does not imply or mean the right by GCCOG to control, direct, or rewrite said response, or that GCCOG has an obligation to review any such response or verifies any response it has reviewed.

XVI. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mail by the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To GCCOG: Gateway Cities Council of Governments
16401 Paramount Blvd
Paramount, CA 90723
Attention: Nancy Pfeffer, Executive Director

To Consultant: City of Long Beach
Office of Mayor Robert Garcia
411 West Ocean Boulevard
Long Beach, CA 90802

XVII. ASSIGNMENT

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of GCCOG.

XVIII. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses required of it by law for the performance of the Services described in this Agreement.

XIX. GOVERNING LAW

GCCOG and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over GCCOG.

XX. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. AUTHORITY TO EXECUTE THIS AGREEMENT

The persons executing this Agreement on behalf of the parties warrants and represents that they have the authority to execute this Agreement on behalf of said parties and has the authority to bind the parties to the provisions of this Agreement.

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

CONSULTANT

By: _____
(Signature)

(Name)

(Title)

GATEWAY CITIES
COUNCIL OF GOVERNMENTS

Maria Davila, President

ATTEST:

Secretary

APPROVED AS TO FORM:

General Counsel

Attachment: Exhibit A Insurance Requirements
Exhibit B Description of Services

EXHIBIT A

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of GCCOG, and prior to commencement of Services, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance or self-insurance of the type and amounts described below and in a form satisfactory to GCCOG.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Consultant shall submit to GCCOG, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of GCCOG, its officers, agents, employees, and volunteers.

Other provisions or requirements

Proof of insurance or self-insurance. Consultant shall provide certificates of insurance or self-insurance to GCCOG as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by GCCOG's Risk Manager prior to commencement of performance. Current certification of insurance or self-insurance shall be kept on file with GCCOG at all times during the term of this Agreement. GCCOG reserves the right to require complete, certified copies of all required insurance policies at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, or Consultant's agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by GCCOG shall not be required to contribute with it.

GCCOG's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, GCCOG has the right but not the duty to obtain the insurance it deems necessary and any premium paid by GCCOG will be promptly reimbursed by Consultant or GCCOG will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, GCCOG may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the GCCOG's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against GCCOG, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against GCCOG, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the GCCOG to inform Consultant of non-compliance with any requirement imposes no additional obligations on the GCCOG nor does it waive any rights hereunder.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to GCCOG with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that GCCOG and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to GCCOG and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Services who is brought onto or involved in the Services by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subconsultants, and others engaged in the Services will be submitted to GCCOG for review.

GCCOG's right to revise specifications. GCCOG reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, GCCOG and Consultant may renegotiate Consultant's compensation or come to some other agreement to address the additional cost.

Self-insured retentions. Any self-insured retentions must be declared to and approved by GCCOG. GCCOG reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by GCCOG.

Timely notice of claims. Consultant shall give GCCOG prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

EXHIBIT B

SERVICES

Services provided by Consultant will include Metro Board Item analysis, collaboration with Metro Board staff to advance the transportation projects of the Southeast Los Angeles/Long Beach sector of the County of Los Angeles, preparing Gateway COG Transportation Committee Agenda and supporting materials for Mayor Robert Garcia, who serves as the Chair of the Gateway COG's Transportation Committee in his role as appointed Metro Board Director representing the Gateway Council of Governments, and other projects as assigned.