



**EXECUTIVE COMMITTEE
MEETING AGENDA**

TIME: 12:00 p.m.

DATE: Wednesday, February 17, 2021

Pursuant to Governor Newsom's Executive Order N-29-20, (March 18, 2020), the Executive Committee meeting will only be conducted via video conferencing and by telephone.

🌀 COMMITTEE MEMBERS 🌀

Natasha Johnson, City of Lake Elsinore – Chair
Jeff Hewitt, County of Riverside, District 5 – Vice Chair
Lesla Sobek, City of Menifee
Jonathan Ingram, City of Murrieta
Kevin Bash, City of Norco
Crystal Ruiz, City of San Jacinto
Kevin Jeffries, County of Riverside, District 1

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

EXECUTIVE COMMITTEE MEETING AGENDA

12:00 P.M.

WEDNESDAY, FEBRUARY 17, 2021

Pursuant to Governor Newsom's Executive Order N-29-20, (March 18, 2020), the Executive Committee meeting will only be conducted via video conferencing and by telephone. Please follow the instructions below to join the meeting remotely.

INSTRUCTIONS FOR ELECTRONIC PARTICIPATION

Join Zoom Meeting

<https://rctc.zoom.us/j/87697754887>

Meeting ID: 876 9775 4887

One tap mobile

+16699006833,,87697754887# US

For members of the public wishing to submit comment in connection with the Executive Committee Meeting please email written comments to the Clerk of the Board at lmobley@rctc.org prior to February 16, 2021 at 5:00 p.m. and your comments will be made part of the official record of the proceedings. Members of the public may also make public comments through their telephone or Zoom connection when recognized by the Chair.

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting on the RCA's website, www.wrc-rca.org.

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, Executive Order N-29-20, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a Committee meeting, including accessibility and translation services. Assistance is provided free of charge. Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENTS** - *Under the Brown Act, the Board should not take action on or discuss matters raised during public comment portion of the agenda which are not listed on the agenda. Board members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration. Each individual speaker is limited to speak three (3) continuous minutes or less.*

5. **ADDITIONS/REVISIONS** – *The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.*

6. **CONSENT CALENDAR** - *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

6A. APPROVAL OF MINUTES – JANUARY 20, 2021

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6B. WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN FEE COLLECTION REPORT

Page 8

Overview

This item is for the Committee to:

- 1) Receive and file the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Fee Collection Report for January 2021; and
- 2) Forward to the Board of Directors for final action.

6C. FISCAL YEAR 2020/21 SECOND QUARTER FINANCIAL REPORT

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Overview

This item is for the Committee to:

- 1) Receive and file the FY 2020/21 Second Quarter Financial Report;
- 2) Approve the budget adjustment to increase expenditures \$74,539 for consultant services;
- 3) Authorize the Chair to direct the Auditor-Controller to make the budget adjustment in the amount of \$74,539; and
- 4) Forward to the Board of Directors for final action.

6D. ADOPTION OF ORDINANCE NO. 21-01 RELATED TO PROCUREMENT POLICY MANUAL

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Overview

This item is for the Committee to:

- 1) Approve the revised Riverside County Transportation Commission (RCTC) and Western Riverside County Regional Conservation Agency (RCA) Procurement Policy Manual (PPM) for the procurement and contracting activities undertaken by the agencies, pursuant to legal counsel review as to conformance to state and federal law;
- 2) Adopt Ordinance No. 21-01, "*Ordinance of the Western Riverside County Regional Conservation Agency Regarding the Revised Procurement Policy Manual*"; and
- 3) Forward to the Board of Directors for final action.

6E. ADOPTION OF RESOLUTION NO. 2021-006 TO AMEND BYLAWS WITH REGARD TO THE EXECUTIVE DIRECTOR'S PURCHASING AUTHORITY AND OTHER ADMINISTRATIVE CHANGES

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Overview

This item is for the Committee to:

- 1) Following the completion of the four-week noticing period required in Article XIII(B) of the Western Riverside County Regional Conservation Authority (RCA) Bylaws, approve the proposed amendments to the RCA Bylaws;
- 2) Adopt Resolution No. 2021-006, "*Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Amending Its Bylaws with Regard to the Executive Director's Purchasing Authority and Other Administrative Changes*"; and
- 3) Forward to the Board of Directors for final action.

7. 2021 STATE AND FEDERAL LEGISLATIVE PLATFORM AND LEGISLATIVE UPDATE

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Overview

This item is for the Committee to:

- 1) Receive a presentation summarizing the RCTC Legislative Affairs program;
- 2) Receive and file an update on state and federal legislation;

- 3) Adopt the 2021 State and Federal Legislative Platform for Western Riverside County Regional Conservation Authority (RCA); and
- 4) Forward to the Board of Directors for final action.

8. PROPOSAL FOR CREATION OF AN RCA LEGACY HOME REBATE PROGRAM

Page 128

Overview

This item is for the Committee to:

- 1) Discuss and recommend to the Board of Directors whether to adopt an RCA Legacy Home Rebate Program; and
- 2) Forward to the Board of Directors for final action.

9. NEXUS STUDY IMPLEMENTATION UPDATE

Overview

This item is for the Committee to receive an update on the Nexus Study Implementation.

10. BOARD OF DIRECTORS / EXECUTIVE DIRECTOR REPORTS

Overview

This item provides the opportunity for the Board of Directors and the executive director to report on attended meetings/conferences and any other items related to RCA activities.

11. ADJOURNMENT

The next Executive Committee meeting is scheduled to be held at **12:00 p.m., March 17, 2021**, via Zoom.

AGENDA ITEM 6A

MINUTES

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

EXECUTIVE COMMITTEE

Wednesday, January 20, 2021

MINUTES

1. CALL TO ORDER

The meeting of the Executive Committee was called to order by Chair Natasha Johnson at 12:03 p.m. via Zoom Meeting ID: 885 4430 3606, pursuant to Governor Newsom’s Executive Order N-29-20.

2. ROLL CALL/PLEDGE OF ALLEGIANCE

Members/Alternates Present

Jeff Hewitt
Larry Greene
Natasha Johnson
Lesa Sobek
Jonathan Ingram
Crystal Ruiz

Members Absent

Kevin Jeffries

The Pledge of Allegiance was led by Board Member Ingram.

3. PUBLIC COMMENTS

There were no requests to speak from the public.

4. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

5. CONSENT CALENDAR - *All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.*

M/S/C (Ingram/Sobek) to approve the following Consent Calendar item(s):

5A. APPROVAL OF MINUTES – NOVEMBER 18, 2020

5B. WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN FEE COLLECTION REPORTS

- 1) Receive and file the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Fee Collection Reports for November and December 2020;
- 2) Direct staff to provide fee collection updates to the Board on a quarterly basis; and
- 3) Forward to the Board of Directors for final action.

5C. ADOPTION OF RESOLUTION 2021-001 RELATED TO REVISED INVESTMENT POLICY

- 1) Approve the revised investment policy for the Western Riverside County Regional Conservation Authority (RCA);
- 2) Adopt Resolution No. 2021-001, *“Resolution of the Board of the Western Riverside County Regional Conservation Authority Adopting a Statement of Investment Policy”*; and
- 3) Forward to the Board of Directors for final action.

5D. ADOPTION OF RESOLUTION 2021-002 RELATED TO DELEGATION OF AUTHORITY TO SIGN INSTRUMENTS ON BEHALF OF THE EXECUTIVE DIRECTOR IN THE EXECUTIVE DIRECTOR’S ABSENCE

- 1) Approve the delegation of authority to sign instruments on behalf of the Executive Director in the Executive Director’s absence;
- 2) Adopt Resolution No. 2021-002, *“Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Delegating Authority to Sign Instruments on Behalf of the Executive Director in the Executive Director’s Absence”*; and
- 3) Forward to the Board of Directors for final action.

5E. ADOPTION OF RESOLUTION 2021-003 AUTHORIZING THE ACCEPTANCE OF CREDIT CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFER AS ADDITIONAL METHODS OF PAYMENT AND COLLECTION OF PAYMENT PROCESSING FEES

- 1) Approve the acceptance of credit cards, debit cards, and electronic funds transfer as additional methods of payment and collection of payment processing fees;
- 2) Adopt Resolution No. 2021-003, *“Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Authorizing the Acceptance of Credit Cards, Debit Cards, and Electronic Funds Transfer as Additional Methods of Payment and Collection of Payment Processing Fees”*; and

- 3) Forward to the Board of Directors for final action.

6. ADOPTION OF ORDINANCE NO. 21-01 RELATED TO PROCUREMENT POLICY MANUAL AND RESOLUTION NO. 2021-005 RELATED TO ELECTRONIC SIGNATURE USE POLICY

Matt Wallace, Deputy Director of Financial Administration, presented items 6 and 7 concurrently as they were related. His presentation highlighted proposed amendments to the Bylaws, the adoption of the Procurement Policy Manual, and a proposed Electronic Signature Use Policy.

M/S/C (Greene/Ingram) to:

- 1) **Approve the revised Riverside County Transportation Commission (RCTC) and Western Riverside County Regional Conservation Agency (RCA) Procurement Policy Manual (PPM) for the procurement and contracting activities undertaken by the agencies, pursuant to legal counsel review as to conformance to state and federal law;**
- 2) **Rescind Ordinance No. 08-02, *“An Ordinance of the Western Riverside County Regional Conservation Agency Adopting a Purchasing Policy for Supplies, Materials, or Equipment”*;**
- 3) **Recommend the introduction of Ordinance No. 21-01, *“Ordinance of the Western Riverside County Regional Conservation Agency Regarding the Revised Procurement Policy Manual”*;**
- 4) **Approve the Electronic Signature Use Policy for the use of electronic signatures in lieu of manual signatures, pursuant to legal counsel review;**
- 5) **Adopt Resolution No. 2021-005, *“Resolution of the Western Riverside County Regional Conservation Agency Regarding the Electronic Signature Use Policy”*; and**
- 6) **Forward to the Commission for final action.**

7. INTRODUCTION OF RESOLUTION NO. 2021-006 TO AMEND BYLAWS WITH REGARD TO THE EXECUTIVE DIRECTOR’S PURCHASING AUTHORITY AND OTHER ADMINISTRATIVE CHANGES

M/S/C (Sobek/Greene) to:

- 1) **Forward to the Board of Directors the staff-proposed amendments to the Western Riverside County Regional Conservation Authority (RCA) Bylaws and recommend approval thereof, subject to the four-week noticing period required in Article XIII(B) of the RCA Bylaws; and**
- 2) **Introduce Resolution No. 2021-006, *“Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Amending Its Bylaws with Regard to the Executive Director’s Purchasing Authority and Other Administrative Changes”*.**

8. DISCUSSION AND POSSIBLE ACTION REGARDING THE MULTIPLE SPECIES HABITAT CONSERVATION PLAN LOCAL DEVELOPMENT MITIGATION FEE FOR CONSTRUCTION OF A SINGLE-FAMILY HOME

Aaron Hake, Interim Regional Conservation Deputy Executive Director, provided a presentation. He noted the Board of Directors approved the 2020 Nexus Study at its December 2020 Board meeting which increased the Local Development Mitigation Fee. As part of the motion, the Board directed staff to return to the Board in February with a recommendation for potential amendments to implementing the fee to include a legacy exclusion from the fee increase for property owners who want to build a single-family home. Mr. Hake presented the potential impacts to the MSHCP based on the averages of readily available data from the County of Riverside. After analyzing the available data, staff recommended not implementing an exclusion given the potential financial impacts on the MSHCP as the Board-approved LDMF takes the most conservative financial course analyzed during the Nexus Study. However, should the Board opt to recommend an exclusion, staff recommends consideration of some parameters for the exclusion including: homes that qualify are constructed and occupied by the property owners, parcels must have been created and owned by the applicant prior to the creation of the MSHCP, that the base fee remain indexed to the CPI as it has been in the past, Cities and County required to report to RCA on qualifying homes, and a parcel size threshold.

Chair Johnson asked if there was any public comment. Dan Silver of the Endangered Habitats League noted he had also sent in written comments in opposition of an exclusion for certain single-family homes. He stated he represents a Conservation group that has been working to implement the MSHCP since its inception and summarized his reasons for his opposition to the exclusion, noting the RCA is in a shortfall situation and is trying to raise money, therefore, to reduce finds would not be a responsible course of action. He stated the fee is reasonable and is being phased in and should apply to everyone equally. Mr. Silver's written comments were displayed on the screen in their entirety.

Chair Johnson stated Supervisor Jeffries was unable to join the meeting today, however, he provided comments on this item. Chair Johnson summarized his concerns with the data points and potential cost impacts based on the available data. Anne Mayer, Executive Director, added Supervisor Jeffries expressed concern that the Board would be unable to make decisions without data that provides a more comprehensive and detailed answer as to the implications of the proposed exclusion. Ms. Mayer stated that statement was factual, and it is the limitation of the data currently available to staff, noting the variation in the number of permits which did not indicate any pattern. This told staff that increased data will likely also be varied, therefore an accurate prediction of potential financial impacts will be difficult.

Board Member Ingram expressed his agreement with Supervisor Jeffries' comments, stating the fee has an unfair impact on the person building a single-family dwelling as the

person may have owned the property prior to the implementation of the MSHCP in 2004 and now the RCA is retroactively implementing a fee on them. He stated more data is needed to make a decision.

Board Member Sobek stated the board exists to bring success and sustainability to the MSHCP. She stated a blanket exemption has the potential of harming the plan and creating a shortfall and the Board Members have gone through a Nexus Study and have a responsibility to make sure the plan is successful. She is in favor of staff's recommendation but added the suggestion that perhaps an application could be created that could be brought to the Board for consideration of an exemption on an individual basis.

Steve DeBaun, legal counsel, stated an application could be created however criteria would need to be established upon which the Board would make a determination.

Board Member Greene asked about additional buildings added to properties such as garages. Mr. Hake clarified in this analysis they only looked at single-family residences.

Board Member Ingram stated he concurs with Menifee that exemptions should be looked at on a case-by-case basis. His goal is to make sure as many people as possible participate in a great plan and not make them feel they have been disenfranchised. He is not looking to exempt anyone who cannot substantiate what they are saying.

Vice Chair Hewitt does not support making any exceptions where time spent costs more than what the exemption is worth and therefore supports staff recommended action.

Karin Cleary-Rose, United States Fish and Wildlife Service, stated single-family homeowners already have certain exemptions from the MSHCP, however those exemptions do not include fees.

Board Member Ingram stressed the importance of selling the benefits and features of the plan.

Ms. Mayer thanked the Board Members for the feedback. She discussed the outreach that is being developed to engage communities, stakeholders, and property owners in the benefits of the plan.

Chair Johnson stated outreach has been communicated to staff as the highest priority.

Board Member Ruiz expressed concern for the people who have owned their property prior to the implementation of the MSHCP and stated there should be an opportunity for them to apply for an exemption. She recommended approving the fees as-is but bringing back exemption criteria to a future meeting for discussion.

Board Member Ingram concurred with approving the fees as-is and also provide direction that criteria for an exemption be brought forward for discussion at a future meeting. Mr. DeBaun stated exemption criteria should be implemented prior to the implementation of the fee increase in July.

Ms. Mayer stated if staff is given direction today to explore exemption criteria that staff gather additional information and speak to colleagues at the cities and county to seek their input and bring that information back to February's Executive Committee.

Board Member Sobek made a motion to move forward with staff recommendation to leave the fees as-is with no exclusions.

M/S/C (Sobek/Greene) to:

- 1) Recommend to the Board of Directors to leave the fees as-is, without an exclusion for certain single-family homes from the Board-adopted increase in the Local Development Mitigation Fee (LDMF); and**
- 2) Forward to the Board of Directors for final action.**

No: Murrieta and San Jacinto

Following the vote, Chair Johnson requested staff bring back exemption parameters for further discussion.

9. ADOPTION OF RESOLUTION NO. 2021-004 RELATED TO A SUPER BLOOM POLICY

Chair Johnson discussed the purpose of the super bloom policy.

Tricia Campbell, Reserve Management/Monitoring Manager, provided a PowerPoint slide that provided detail on the policy.

M/S/C (Greene/Ingram) to:

- 1) Approve a super bloom policy;**
- 2) Adopt Resolution No. 2021-004, "*Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Adopting a Super Bloom Policy*"; and**
- 3) Introduce Forward to the Board of Directors for final action.**

10. EXECUTIVE COMMITTEE APPOINTMENTS DISCUSSION

Chair Johnson discussed her process for appointing members to the Executive Committee, noting she reached out to the Board asking for those who wished to serve on the Executive Committee and received several responses. She expressed her wish that

the Executive Committee is representative of all of western county as in the past representation has been clustered around the southwest county. Chair Johnson stated Board Member Kevin Bash from Norco, the longest standing RCA Board Member, expressed his interest in serving on the Executive Committee and she will be recommending he be appointed. This addition will require one of the current cities to step down from the Executive Committee.

11. COMMITTEE MEMBER / EXECUTIVE DIRECTOR REPORT

Board Member Ingram requested staff ready information to be distributed to school districts throughout the incorporated cities and the county so we can begin to work on the outreach to the youth and families within these communities.

Board Member Sobek requested at a future meeting RCTC members are introduced.

Chair Johnson stated she had recommended to staff to have an educational item on future agendas similar to the recurring species of the month item.

Anne Mayer, Executive Director, provided an update on the management transition, focusing on key board objectives, immediate actions, and future plans.

Board Member Ingram expressed appreciation to Ms. Mayer and staff for their efforts. He noted he had received a delivery of a plaque from the RCA honoring his service as Chair and thanked staff and his colleagues.

12. ADJOURNMENT

There being no further business for consideration by the Executive Committee, the meeting was adjourned at 1:46 p.m.

Respectfully submitted,



Lisa Mobley
Clerk of the Board

AGENDA ITEM 6B

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY	
DATE:	February 17, 2021
TO:	Executive Committee
FROM:	Jennifer Fuller, Financial Administration Manager
THROUGH:	Theresa Trevino, Chief Financial Officer
SUBJECT:	Western Riverside County Multiple Species Habitat Conservation Plan Fee Collection Report

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Receive and file the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Fee Collection Report for January 2021; and
- 2) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

The Western Riverside County MSHCP Local Development Mitigation Fee (LDMF) collections provide funding for the acquisition of additional reserve lands and related costs. Attached is the Collection and Civic/Infrastructure Contribution LDMF report for January 2021. For the seven months ended January 31, 2021, RCA received approximately \$8.7 million in LDMF revenues. RCA budgeted \$10.5 million in LDMF revenues for FY 2020/21.

FISCAL IMPACT:

This is for informational purposes. There is no fiscal impact.

Attachment: Western Riverside County MSHCP LDMF Collection and Civic/Infrastructure Contribution Report for January 2021

**WESTERN RIVERSIDE COUNTY MSHCP LDMF COLLECTION AND CIVIC/INFRASTRUCTURE
CONTRIBUTION REPORT FOR JANUARY 2021**

LOCAL DEVELOPMENT MITIGATION FEE COLLECTIONS							
City/County	Month	REMITTED				EXEMPTIONS & FEE CREDITS	
		Residential Permits	Commercial Industrial Acres	Amount Remitted	Total FY Year-to-Date	Residential Permits	Amount
City of Banning	November-Rcvd Feb December-No Activity				\$4,468		
City of Beaumont	December	82		\$183,188	\$355,445		
City of Calimesa	December	25		\$55,850	\$404,354		
City of Canyon Lake	December-Rcvd Dec			\$0	\$11,170		
City of Corona	November December-pending	7	0.40	\$13,841	\$112,229		
City of Eastvale	December-No Activity			\$0	\$99,971		
City of Hemet	December	26		\$57,952	\$172,133		
City of Jurupa Valley	December	12		\$26,808	\$905,483		
City of Lake Elsinore	December		4.79	\$36,433	\$167,354		
City of Menifee	December	85		\$189,890	\$1,227,637		
City of Moreno Valley	December	55		\$122,870	\$500,121		
City of Murrieta	December-Pending			\$0	\$69,370		
City of Norco	December-No Activity			\$0	\$0		
City of Perris	November December-Rcvd Feb	61		\$136,274 \$0	\$505,529		
City of Riverside	Oct/Nov/Dec-Pending			\$0	\$134,506		
City of San Jacinto	December	17		\$37,978	\$240,933		
City of Temecula	November December-No Activity Roripaugh DA ¹	16		\$23,684	\$449,400	7	\$15,638
City of Wildomar	December-Pending			\$0	\$71,488		
County of Riverside	January	107	0.01	\$239,122	\$3,224,575		
Total LDMF Collections		493	5.20	\$1,123,890	\$8,656,165	7	\$ 15,638

CIVIC AND INFRASTRUCTURE CONTRIBUTIONS		
None		
Total Civic/Infrastructure Contributions		\$0

TOTAL JANUARY 2021 \$1,123,890

¹ Roripaugh Development Agreement dated 12/17/02. Project is exempt under Assessment District 161.

AGENDA ITEM 6C

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

DATE:	February 17, 2021
TO:	Executive Committee
FROM:	Jennifer Fuller, Financial Administration Manager
THROUGH:	Theresa Trevino, Chief Financial Officer
SUBJECT:	Fiscal Year 2020/21 Second Quarter Financial Report

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Receive and file the FY 2020/21 Second Quarter Financial Report;
- 2) Approve the budget adjustment to increase expenditures \$74,539 for consultant services;
- 3) Authorize the Chair to direct the Auditor-Controller to make the budget adjustment in the amount of \$74,539; and
- 4) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

Attached is the FY 2020/21 Second Quarter Financial Report, which includes an Executive Summary (cash balance summary and financial statement overview), detailed financial statements, and Multiple Species Habitat Conservation Plan (MSHCP) Fee Collections reports.

As of December 31, 2020, the RCA acquired 7 new properties totaling 253 acres valued at approximately \$1.9 million. In addition, the RCA received one land donation of approximately 3 acres and an estimated value of about \$73,000. The RCA also acquired 50 acres of Delhi Sands Flower-Loving Fly conservation credits valued at over \$6.3 million. Consultant costs related to properties acquired approximates \$142,000. The RCA is currently working with California Wildlife Conservation Board (WCB) and U.S. Fish and Wildlife Services (USFWS) to obtain federal and state funding of approximately \$5.9 million and \$2 million, respectively, for two properties. Additionally, the RCA is negotiating various land acquisitions with property owners which are eligible for federal and/or state funding.

Member Agencies remitted nearly \$8.9 million in local development mitigation fees to the RCA for the first half of the fiscal year. This represents 86 percent of the budgeted mitigation revenues for the year. Staff cautiously projects that mitigation fee revenue could reach almost \$15 million by June 30, 2021. As of December 31, 2020, the Member Agencies reported 3,666 new residential units and 36 acres of new commercial/industrial development. Last year, the RCA had collected \$8.1 million in local development mitigation fees as of December 31, 2019. The increase in fees is primarily attributable to an increase in residential development from

3,232 units in the prior year to 3,666 units in the new year. This was offset by a decrease in commercial/industrial development.

RCA received tipping fees of approximately \$1.7 million for the first two quarters of FY 2020/21, which represent about 52% of the budgeted \$3.3 million for the year. As of December 31, 2020, just over 1.1 million tons of out-of-county tonnage were reported by the Riverside County Department of Waste Resources. Staff projects that tipping fees will reach the budgeted revenues by June 30, 2021.

The RCA budgeted TUMF revenues of \$1.3 million for FY 2020/21. The Western Riverside Council of Governments (WRCOG) has not remitted any current TUMF revenues to the RCA during the first six months of FY 2020/21; however, during FY 2020/21, WRCOG remitted \$191,197 related to additional prior year revenues that were not accrued in the FY 2019/20 audited financial statements. Staff believes that WRCOG will begin to remit TUMF revenues in the third quarter.

As of the end of the second quarter, only minimal costs related to the transition of managing agencies had been recorded. Most costs, including benefit payments related to the termination of County employees serving as RCA staff, will occur in the third quarter. Salaries and benefit costs related to all RCTC employees acting on behalf of the RCA will be reported as contract expenditures going forward; accordingly, a budget transfer will be processed during the third quarter.

Many organizations have needed to make changes due to the coronavirus pandemic. The Santa Ana Watershed Association (SAWA), which provides biological monitoring services for the RCA, changed its site monitoring process from staff carpooling in company vehicles to requiring staff to drive separately and allow for social distancing. Many SAWA staff are now using their private vehicles, increasing the need for mileage reimbursement. This change was not contemplated during the FY 2020/21 budget process and has significantly increased SAWA's costs related to vehicles. SAWA requested an increase of \$74,539 to its approved budget to accommodate these costs. This increase would bring the total SAWA budget to \$1,452,254 for the standard contract. SAWA also has separate contracts related to the Clinton Keith wildlife crossing and Queno Butterfly. Those contract amounts are sufficient to cover the costs for those projects.

FISCAL IMPACT:

Generally tipping fee revenue could be sufficient to cover the increased expenditures related to the SAWA contract; however, given the current uncertainty related to the coronavirus pandemic, it is more prudent to budget the use of unassigned fund balance to offset the increased expenditures. Staff will continue to closely monitor spending and limit the use of fund balance where possible.

Financial Information					
In Fiscal Year Budget:	No	Year:	FY 2020/21	Amount:	\$74,539
Source of Funds:	Unassigned Fund Balance			Budget Adjustment:	Yes
GL/Project Accounting No.:	51630 935300 527980 Contracts				
Fiscal Procedures Approved:	<i>Theresa Trevino</i>			Date:	02/08/2021

Attachments:

- 1) Fiscal Year 2021 Budget Adjustment
- 2) Executive Summary (Cash Balance Summary and Financial Statement Overview)
- 3) Detailed Financial Statements
- 4) MSHCP Fee Collection Reports



DATE	March 1, 2021
TO	Auditor-Controller
FROM	Jennifer Fuller, Financial Administration Manager
SUBJECT	FISCAL YEAR 2021 BUDGET ADJUSTMENT (FUND 51630)

Background:

On March 1, 2021, the RCA Board of Directors approved the Fiscal Year 2021 budget adjustment contained herein.

Requested Action:

That the Auditor-Controller make the following budget adjustment:

RCA Reserve Management (935300)			
<u>Increase Appropriations</u>			
527980	Contracts		<u>\$74,539</u>
		Total Increase in Appropriations	<u>\$74,539</u>
<u>Anticipated Use of Fund Balance</u>			
370100	Unassigned Fund Balance		<u>\$74,539</u>
		Total Anticipated Use of Fund Balance	<u>\$74,539</u>

APPROVED BY: _____ DATE: _____
Natasha Johnson, Chair
RCA Board of Directors



EXECUTIVE SUMMARY

Fiscal Year 2021

Second Quarter Financial Report

July 1, 2020 – December 31, 2020

Cash Balance Summary

	Amount
Balance as of 7-01-20	\$ 51,920,393
Cash Receipts 7-01-20 through 12-31-20	<u>17,484,447</u>
Cash Available	69,404,840
Cash Disbursements 7-01-20 through 12-31-20	<u>(16,578,627)</u>
Cash Balance 12-31-20	<u>\$ 52,826,213</u>

Budget to Actual and FYE Projections

RCA Operations (935100)	Budget	Actual	Year-End Projections
<u>Revenue</u>	\$ 2,650,225	\$ 2,391,174	\$ 2,658,027
<u>Appropriations:</u>			
Salaries & Benefits	5,087,700	215,862	5,080,754
Supplies & Services	<u>335,240</u>	<u>97,405</u>	<u>326,523</u>
Total Appropriations	5,422,940	313,267	5,407,277
Net Change in Operating Position	\$ (2,772,715)	\$ 2,077,907	\$ (2,749,250)

Budget to Actual and FYE Projections

Land Management & Monitoring (935300)	Budget	Actual	Year-End Projections
<u>Revenue</u>	\$ 3,748,710	\$ 1,669,274	\$ 3,763,150
<u>Appropriations:</u>			
Salaries & Benefits	622,800	251,083	603,513
Supplies & Services	3,338,170	1,334,297	3,396,824
Other Charges	<u>70,000</u>	<u>3,538</u>	<u>67,076</u>
Total Appropriations	4,030,970	1,588,918	4,067,413
Net Change in Operating Position	\$ (282,260)	\$ 80,356	\$ (304,263)

Budget to Actual and FYE Projections

Land Acquisition (935201)	Budget	Actual	Year-End Projections
<u>Revenue</u>	\$ 37,925,990	\$ 13,504,009	\$ 42,375,614
<u>Appropriations:</u>			
Salaries & Benefits	2,265,200	894,736	2,069,501
Supplies & Services	2,168,120	867,531	2,101,380
Interest-Notes	1,038,000	1,009,242	1,028,484
Capital Assets	<u>38,495,200</u>	<u>8,349,345</u>	<u>38,495,000</u>
Total Appropriations	43,966,520	11,120,854	43,694,365
Net Change in Operating Position	\$ (6,040,530)	\$ 2,383,155	\$ (1,318,751)

Proposed Budget Adjustment

		935300 Land Management and Monitoring
Account	Description	
Increase Appropriations:		
527980	Contracts	<u>\$74,539</u>
Total Increase in Appropriations		<u>\$74,539</u>
Anticipated Use of Fund Balance:		
370100	Unassigned Fund Balance	<u>\$74,539</u>
Total Anticipated Use of Fund Balance		<u>\$74,539</u>

Staff Recommendations

That the Executive Committee:

- 1) Receive and file the Fiscal Year 2021 Second Quarter Financial Report;
- 2) Approve the Budget Adjustment to increase expenditures \$74,539 for consultant services;
- 3) Authorize the Chair to direct the Auditor-Controller to make the budget adjustment in the amount of \$74,539; and
- 4) Forward to the Board of Directors for final action.



QUESTIONS

Regional Conservation Authority
Budget vs. Actual Comparison as of December 31 2020
General Fund - 935100 Operations

Note: Amounts subject to rounding

REVENUES		Budget	Actual	% of Actual to Budget	Note No.	Projection through 6/30/21	Variance with Budget
722000	Participating Special Entity	\$ 2,182,645	\$ 2,176,718	100%	1	\$ 2,182,645	\$ -
740020	Interest-Invested Funds	60,000	33,901	57%	2	67,802	7,802
769240	Other Gov MSHCP Infrastructure	30,000	-	0%		30,000	-
769260	Other Gov MSHCP Civic Projects	25,000	1,721	7%	6	25,000	-
771410	Flood Control District	52,580	40,000	76%	7	52,580	-
777860	Joint Project Review	100,000	38,834	39%		100,000	-
781520	Tipping Fees	200,000	100,000	50%	10	200,000	-
Total Revenues		\$ 2,650,225	\$ 2,391,174	90%		\$ 2,658,027	\$ 7,802

EXPENDITURES		Budget	Actual	% of Actual to Budget	Note No.	Projection through 6/30/21	Variance with Budget
510040	Regular Salaries	\$ 128,870	\$ 94,229	73%		\$ 128,458	\$ 412
510200	Payoff Permanent-Seasonal	920,000	79,129	9%		920,000	-
510440	Annual Leave Buydown	2,520	1,804	72%		1,804	716
515200	Retiree Health Insurance	2,300	1,300	57%		2,300	-
518100	Budgeted Benefits	4,034,010	39,400	1%		4,028,192	5,818
Subtotal Salaries and Benefits		5,087,700	215,862	4%		5,080,754	6,946
520200	Communications	40	10	25%		26	14
520270	County Delivery Services	150	-	0%		150	-
520320	Telephone Service	15	2	13%		8	7
520940	Insurance-Other	2,500	1,088	44%	11	2,176	324
521360	Maint-Computer Equipment	1,350	659	49%		1,318	32
521540	Maint-Office Equipment	175	45	26%		90	85
521640	Maint-Software	355	120	34%		240	115
523100	Memberships	295	267	91%		290	5
523230	Miscellaneous Expense	370	110	30%		360	10
523640	Computer Equip-Non Fixed Asset	225	115	51%		225	-
523660	Computer Supplies	30	-	0%		30	-
523680	Office Equip Non Fixed Assets	300	-	0%		300	-
523700	Office Supplies	150	32	21%		64	86
523760	Postage-Mailing	170	58	34%		116	54
523800	Printing/Binding	150	-	0%		100	50
523840	Computer Equipment-Software	495	46	9%		472	23
524560	ACO Payroll Services	185	75	41%	12	32	153
524570	Auditing and Accounting	10,925	2,846	26%	13	10,692	233
524900	GIS Services	330	150	45%	14	300	30
525020	Legal Services	90,000	13,428	15%	15	86,856	3,144
525140	Personnel Services	540	248	46%		496	44
525840	RCIT Device Access	810	332	41%	16	664	146
525850	RCIT Device Public	15	-	0%		-	15
526700	Rent-Lease Bldgs	5,985	2,983	50%	17	5,966	19
527780	Special Program Expense	600	-	0%		-	600
527840	Training-Education/Tuition	70	8	11%		16	54
527980	Contracts	215,750	74,241	34%	18	213,482	2,268
528120	Board/Commission Expense	1,590	339	21%		1,178	412
528140	Conference/Registration Fees	70	-	0%		70	-
528900	Air Transportation	90	-	0%		90	-
528960	Lodging	100	-	0%		100	-
528980	Meals	625	-	0%		313	313
529000	Miscellaneous Travel Expense	15	-	0%		15	-
529010	Parking Validation	150	-	0%		75	75
529040	Private Mileage Reimbursement	600	203	34%		203	397
529080	Rental Vehicles	20	-	0%		10	10
Subtotal Services and Supplies		335,240	97,405	29%		326,523	8,718
Total Expenditures		\$ 5,422,940	\$ 313,267	6%		\$ 5,407,277	\$ 15,664
Net Change in Operating Position		\$ (2,772,715)	\$ 2,077,907			\$ (2,749,250)	\$ 23,466

Regional Conservation Authority
Budget vs. Actual Comparison as of December 31, 2020
General Fund - 935300 Land Management and Monitoring

Note: Amounts subject to rounding

		Budget	Actual	% of Actual to Budget	Note No.	Projection through 06/30/21	Variance with Budget
REVENUES							
740020	Interest-Invested Funds	\$ 60,400	\$ 30,762	51%	2	\$ 61,524	\$ 1,124
741000	Rents	93,880	46,468	49%	3	94,536	656
769240	Other Gov MSHCP Infrastructure	30,000	-	0%		30,000	-
769260	Other Gov MSHCP Civic Projects	25,000	-	0%		25,000	-
771410	Flood Control District	327,420	-	0%		327,420	-
777520	Reimbursement for Services	133,610	10,714	8%		133,610	-
781360	Other Misc. Revenue	28,400	-	0%		28,400	-
781520	Tipping Fees	3,050,000	1,581,330	52%	10	3,062,660	12,660
Total Revenues		\$ 3,748,710	\$ 1,669,274	45%		3,763,150	\$ 14,440
EXPENDITURES							
510040	Regular Salaries	400,930	157,917	39%		\$ 392,594	8,336
510440	Annual Leave Buydown	15,330	5,413	35%		5,413	9,917
515200	Retiree Health Insurance	7,170	3,585	50%		7,170	-
518100	Budgeted Benefits	199,370	84,168	42%		198,336	1,034
Subtotal Salaries and Benefits		622,800	251,083	40%		603,513	19,287
520200	Communications	215	77	36%		200	15
520320	Telephone Service	80	10	13%		40	40
520940	Insurance-Other	14,760	6,489	44%	11	12,978	1,782
521360	Maint-Computer Equipment	7,200	3,514	49%		7,028	172
521540	Maint-Office Equipment	940	615	65%		930	10
521640	Maint-Software	1,890	1,424	75%		1,848	42
523100	Memberships	1,685	930	55%		1,430	255
523230	Miscellaneous Expense	930	67	7%		467	463
523620	Books/Publications	-	-	0%		-	-
523640	Computer Equip-Non Fixed Asset	1,200	615	51%		1,115	85
523660	Computer Supplies	160	-	0%		80	80
523680	Office Equip Non Fixed Assets	1,600	-	0%		1,600	-
523700	Office Supplies	800	155	19%		410	390
523760	Postage-Mailing	880	307	35%		864	16
523800	Printing/Binding	800	-	0%		500	300
523840	Computer Equipment-Software	2,640	244	9%		2,588	52
524560	ACO Payroll Services	995	398	40%	12	211	784
524570	Auditing and Accounting	12,420	3,977	32%	13	11,954	466
524900	GIS Services	1,760	800	45%	14	1,600	160
525020	Legal Services	100,000	24,394	24%	15	98,788	1,212
525140	Personnel Services	2,880	1,324	46%		2,648	232
525840	RCIT Device Access	4,320	1,770	41%	16	3,540	780
525850	RCIT Device Public	65	-	0%		65	-
526700	Rent-Lease Bldgs	31,910	15,907	50%	17	31,814	96
527780	Special Program Expense	3,200	-	0%		3,200	-
527840	Training-Education/ Tuition	370	43	12%		185	185
527980	Contracts	3,125,215	1,268,137	41%	18	3,196,274	(71,059)
528120	Board/Commission Expense	8,480	1,808	21%		7,616	864
528140	Conference/Registration Fees	1,380	-	0%		1,380	-
528900	Air Transportation	1,290	-	0%		645	645
528960	Lodging	1,660	-	0%		830	830
528980	Meals	1,165	-	0%		583	583
529000	Miscellaneous Travel Expense	80	-	0%		40	40
529010	Parking Validation	800	-	0%		400	400
529040	Private Mileage Reimbursement	2,200	611	28%		611	1,589
529080	Rental Vehicles	500	-	0%		500	-
529500	Electricity	1,700	536	32%		1,572	128
Subtotal Services and Supplies		3,338,170	1,334,297	40%		3,396,824	(58,653)
535220	Assessments & HOA	70,000	3,538	5%		67,076	2,924
Subtotal Other Charges		70,000	3,538	5%		67,076	2,924
Total Expenditures		\$ 4,030,970	\$ 1,588,918	39%		4,067,413	\$ (36,442)
Net Change in Operating Position		\$ (282,260)	\$ 80,356			(304,263)	\$ (22,002)

Regional Conservation Authority
Budget vs. Actual Comparison as of December 31 2020
Capital Projects Fund - 935201 Land Acquisition

Note: Amounts subject to rounding

REVENUES		Budget	Actual	% of Actual to Budget	Note No.	Projection through 6/60/21	Variance with Budget
722000	Mitigation Fee	3,750,000	3,750,000	100%	1	3,750,000	-
740020	Interest-Invested Funds	110,000	68,894	63%	2	137,788	27,788
751680	CA-Grant Revenue	5,603,170	161,000	3%	4	5,603,170	-
766600	Fed-Capital Grants and Contrib	11,564,500	299,000	3%	5	11,564,500	-
777170	Development Mitigation Fees	10,500,000	8,941,899	85%	8	14,883,798	4,383,798
777600	TUMF Revenue-Developer Fees	1,300,000	191,197	15%		1,300,000	-
781220	Capital Contributions & Donations	4,910,000	73,000	1%	20	4,910,000	-
781360	Other Miscellaneous Revenue	188,320	19,019	10%	9	226,358	38,038
Total Revenues		\$ 37,925,990	\$ 13,504,009	36%		\$ 42,375,614	\$ 4,449,624
EXPENDITURES							
510040	Regular Salaries	\$ 1,457,200	\$ 559,108	38%		\$ 1,418,216	\$ 38,984
510440	Annual Leave Buydown	43,650	28,871	66%		28,871	14,779
515200	Retiree Health Insurance	25,730	13,415	52%		25,730	-
518100	Budgeted Benefits	738,620	293,342	40%		596,684	141,936
Subtotal Salaries and Benefits		2,265,200	894,736	39%		2,069,501	195,699
520200	Communications	1,085	306	28%		796	289
520320	Telephone Service	405	52	13%		208	197
520940	Insurance-Other	72,740	31,198	43%	11	62,396	10,344
521360	Maint-Computer Equip	36,450	17,791	49%		36,082	368
521540	Maint-Office Equipment	6,385	1,618	25%		5,236	1,149
521640	Maint-Software	9,555	3,265	34%		9,030	525
523100	Memberships	8,020	7,210	90%		7,210	810
523230	Miscellaneous Expense	4,700	2,771	59%		4,542	158
523640	Computer Equip-Non Fixed Asset	6,075	3,112	51%		6,024	51
523660	Computer Supplies	810	-	0%		600	210
523680	Office Equip Non Fixed Assets	8,100	-	0%		8,000	100
523700	Office Supplies	4,050	785	19%		3,570	480
523760	Postage-Mailing	4,450	1,553	35%		4,106	344
523800	Printing/Binding	4,050	-	0%		3,240	810
523840	Computer Equipment-Software	13,365	1,236	9%		12,472	893
524560	ACO Payroll Services	5,020	2,014	40%	12	1,086	3,934
524570	Auditing and Accounting	96,455	27,727	29%	13	95,454	1,001
524900	GIS Services	8,910	4,050	45%	14	8,100	810
525020	Legal Services	690,000	315,230	46%	15	680,460	9,540
525140	Personnel Services	14,580	6,702	46%		13,404	1,176
525840	RCIT Device Access	21,870	8,961	41%	16	20,922	948
525850	RCIT Device Public	320	-	0%		320	-
526700	Rent-Lease Bldgs	161,530	80,528	50%	17	161,056	474
527780	Special Program Expense	16,200	-	0%		16,200	-
527840	Training-Education/Tuition	1,860	500	27%		1,500	360
527980	Contracts	890,250	340,313	38%	18	880,626	9,624
528120	Board/Commission Expense	42,930	7,353	17%		34,706	8,224
528140	Conference/Registration Fees	1,950	-	0%		1,475	475
528280	Imaging Supplies	500	-	0%		400	100
528900	Air Transportation	8,620	-	0%		4,310	4,310
528920	Car Pool Expense	500	-	0%		500	-
528960	Lodging	11,240	-	0%		8,620	2,620
528980	Meals	3,610	-	0%		1,805	1,805
529000	Miscellaneous Travel Expense	1,105	-	0%		553	553
529010	Parking Validation	4,050	-	0%		3,025	1,025
529040	Private Mileage Reimbursement	6,200	3,256	53%		3,256	2,944
529080	Rental Vehicles	180	-	0%		90	90
Subtotal Services and Supplies		2,168,120	867,531	40%		2,101,380	66,741
532600	Principal Payment	1,000,000	1,000,000	100%		1,000,000	-
534000	Interest Notes-Warrants	38,000	9,242	24%	19	28,484	9,516
535220	Taxes and Assessments	-	-	N/A		-	-
Subtotal Other Charges		1,038,000	1,009,242	97%		1,028,484	9,516
540040	Land	38,475,200	8,349,345	22%	20	38,475,000	200
540060	Improvements-Land	20,000	-	0%		20,000	-
Subtotal Capital Outlay		38,495,200	8,349,345	22%		38,495,000	200
Total Expenditures		\$ 43,966,520	11,120,854	25%		43,694,365	272,156
Net Change in Operating Position		\$ (6,040,530)	2,383,155			(1,318,751)	4,721,780

Regional Conservation Authority
Notes to Financial Reports
December 31, 2020

Note: Amounts subject to rounding

	Operations	Land Management and Monitoring	Land Acquisition	Total RCA
REVENUES:				
1) Mitigation Fees				
Participating Special Entities:				
EMWD-Judson Potable Water	\$35,877			\$35,877
SCE-Valley Ivyglen Subtransmission Phase II	2,137,695			2,137,695
Lockheed Martin-Laborde Canyon	3,146			3,146
Species Specific:				
Crestmore Redevelopment, LLC			\$3,750,000	3,750,000
Total Participating Special Entities	<u>\$2,176,718</u>		<u>\$3,750,000</u>	<u>\$5,926,718</u>
2) Interest from Riverside County Treasurer Pool				
1st quarter interest at .62%	\$20,073	\$16,933	\$41,236	\$78,241
2nd quarter interest at .35% (estimate)	13,829	13,829	27,658	55,315
Total Interest	<u>\$33,901</u>	<u>\$30,762</u>	<u>\$68,894</u>	<u>\$133,556</u>
3) Rent revenues from the following sources:				
Goodhart		\$2,580		
Great Horses of America		3,000		
KCAA Radio		4,482		
Archery Club		1,250		
Cell Tower Lease		31,656		
Lockheed Lease		500		
Beekeepers		3,000		
Tower Leases and Property Rentals		<u>\$46,468</u>		
4) State revenues were received for the following property acquisitions:				
Walsh, Kenneth			\$161,000	
Total State			<u>\$161,000</u>	
5) Federal funds were received for the following property acquisitions:				
Walsh, Kenneth			\$299,000	
Total Federal			<u>\$299,000</u>	
6) Civic contributions from Member Agencies:				
County EDA - Jurupa Valley Boxing Club Parking	\$1,721			\$1,721
Total Civic	<u>\$1,721</u>	<u>\$0</u>	<u>\$0</u>	<u>\$1,721</u>
7) Contributions from Riverside County Flood Control:				
Fld Cntrl Mit fee-Crestview Dr	40,000			40,000
Total Flood Control	<u>\$40,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$40,000</u>

Regional Conservation Authority
Notes to Financial Reports
December 31, 2020

Note: Amounts subject to rounding

	Operations	Land Management and Monitoring	Land Acquisition	Total RCA
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REVENUES (Continued):

8) Mitigation fees through December 31, 2020 are as follows:

City of Banning	\$8,936
City of Beaumont	355,445
City of Calimesa	404,354
City of Canyon Lake	11,170
City of Corona	112,229
City of Eastvale	99,971
City of Hemet	172,133
City of Jurupa Valley	905,483
City of Lake Elsinore	167,354
City of Menifee	1,227,637
City of Moreno Valley	500,121
City of Murrieta	69,370
City of Norco	0
City of Perris	996,936
City of Riverside	163,487
City of San Jacinto	240,933
City of Temecula	449,400
City of Wildomar	71,488
County of Riverside	2,985,453
Total Mitigation	\$ 8,941,899

9) Miscellaneous Revenues were received as follows:

Deposit Agreements		\$19,019	\$19,019
Total Miscellaneous Revenues	\$0	\$19,019	\$ 19,019

10) RCA receives \$1.50 per ton for the out-of-county tonnage. In addition, RCA receives a maximum of \$400,000 annually for the in-county tonnage.

	Out-of-County Tonnage				
July 2020	193,764	\$16,667	\$273,979		\$290,646
August 2020	183,230	16,667	258,178		274,845
September 2020	180,549	16,667	254,157		270,824
October 2020	198,828	16,667	281,575		298,242
November 2020	177,701	16,667	249,885		266,552
December 2020 (estimate)	186,814	16,667	263,555		280,222
Total Tipping Fees	1,120,886	\$100,000	\$1,581,330		\$ 1,681,330

EXPENDITURES:

11) Insurance provided by SDRMA:

General & Property	\$1,088	\$6,489	\$31,198	\$38,775
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12) County Auditor-Controller's Office

Warrants and JE Lines	\$33	\$176	\$893	\$1,102
Payroll Services	\$42	\$221	\$1,121	\$1,384
Total ACO Accounting Charges	\$75	\$398	\$2,014	\$2,486

13) Auditing and Accounting:

Brown, Armstrong Accountancy Corp	\$2,846	\$3,977	\$27,727	\$34,550
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Regional Conservation Authority
Notes to Financial Reports
December 31, 2020

Note: Amounts subject to rounding

	Operations	Land Management and Monitoring	Land Acquisition	Total RCA
<u>EXPENDITURES (CONTINUED):</u>				
14) GIS Services				
Digital Globe	\$150	\$800	\$4,050	\$5,000
15) Legal Services as follows:				
Best, Best and Krieger	\$13,428	\$24,394	\$315,230	\$353,052
16) RCIT Device Charges				
RCIT Monthly \$1,844	\$332	\$1,770	\$8,961	\$11,063
17) Rent & lease building cost:				
RCA office monthly rent \$16,635	\$2,983	\$15,907	\$80,528	\$99,417
18) Contract services are as follows:				
Dudek	\$69,990	\$7,068	\$36,635	\$113,693
Economic & Planning Systems	1,329	7,090	35,895	44,315
EDA Real Estate Services			73,383	73,383
Hogan Lovells			75,000	75,000
Kadesh			37,500	37,500
OPR Communications	2,921	15,580	78,874	97,375
Parks & Open-Space Dist.-Land Mgmt.		463,295	3,027	466,322
SAWA		775,104		775,104
Total Contracts	\$74,241	\$1,268,137	\$340,313	\$1,682,692
19) Interest to Riverside County on Loan				
Interest rate at average 2020 Treasurer Pool Investment rate of .92%			\$9,242	
20) Land acquisition costs are as follows:				
Properties donated to the RCA:				
Highpoint Donation			\$73,000	
Subtotal Donated Properties			\$73,000	
Properties acquired:				
Marelli Property			111,484	
Tuscany Hills Ph 4			101,383	
IDA Lane			277,578	
Agua Mansa DSF Conservation			6,250,000	
Welsh, Kenneth			462,719	
Fresh Start Homes			854,302	
Kinne, Amie and Jonathan			61,233	
Ybarra, Gabriel & Gloria			16,040	
Consultants Costs:				
EDA Real Estate Services			105,246	
Best Best & Krieger			21,801	
Parks & Open-Space Dist.			4,949	
Other			9,610	
Total Land Acquisition Costs			\$8,349,345	

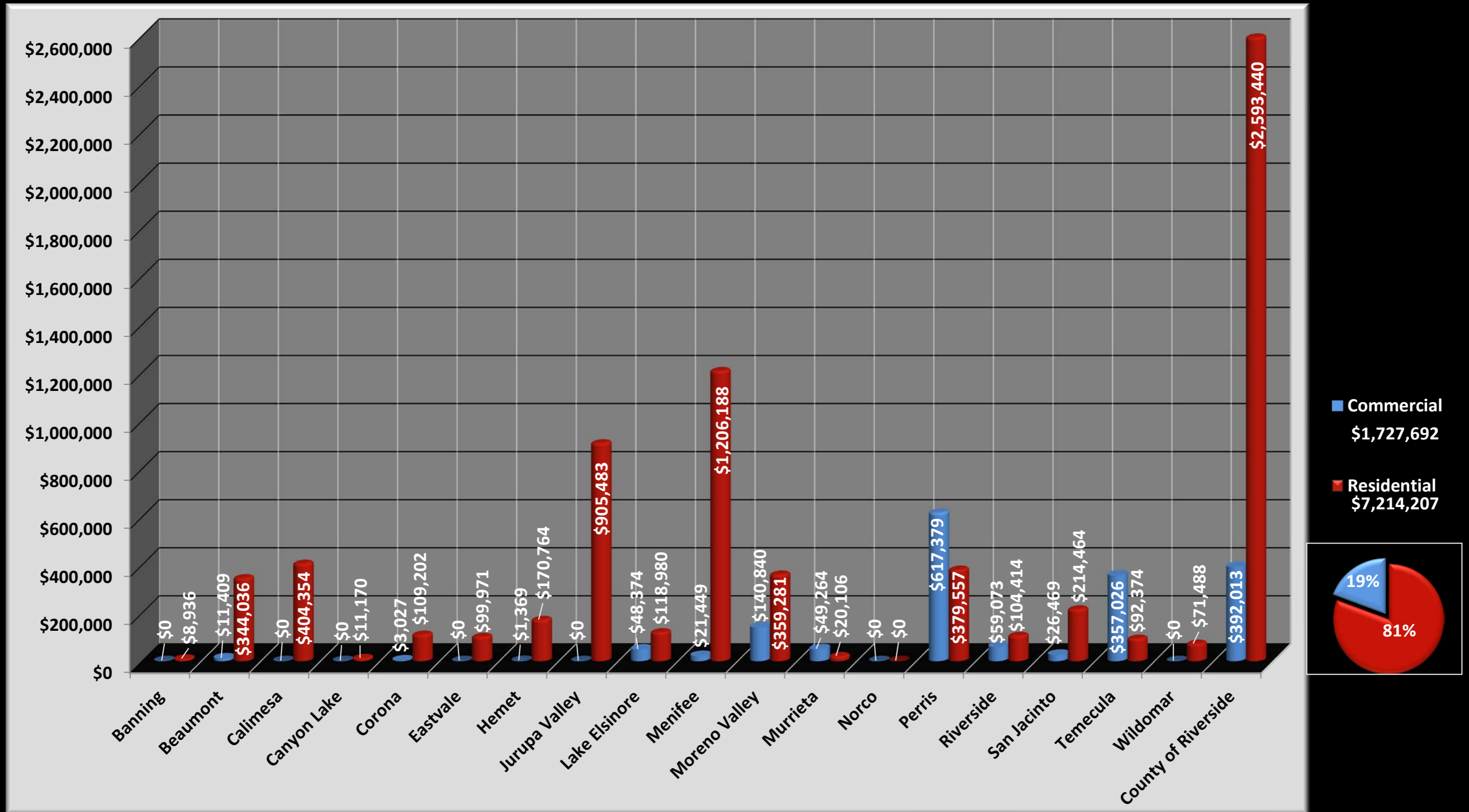
REGIONAL CONSERVATION AUTHORITY
MSHCP MITIGATION FEE COLLECTIONS BY MEMBER AGENCY
FISCAL YEAR 2021

Note: Amounts subject to rounding

BASED ON ACCRUAL BASIS (Month reported by City)

COUNTY AND CITIES:	JUL 2020	AUG 2020	SEP 2020	OCT 2020	NOV 2020	DEC 2020	TOTALS FY 2021	%
CITY OF BANNING	\$ 2,234	\$ 2,234	\$ -	\$ -	\$ 4,468	\$ -	\$ 8,936	0.1%
CITY OF BEAUMONT	24,574	46,914	-	26,808	73,961	183,188	\$ 355,445	4.0%
CITY OF CALIMESA	84,892	69,254	71,488	55,850	67,020	55,850	\$ 404,354	4.5%
CITY OF CANYON LAKE	2,234	4,468	-	-	2,234	2,234	\$ 11,170	0.1%
CITY OF CORONA	29,042	11,440	29,220	28,686	13,841		\$ 112,229	1.3%
CITY OF EASTVALE	30,030	45,760	15,601	-	8,580	-	\$ 99,971	1.1%
CITY OF HEMET	1,369	-		31,210	81,602	57,952	\$ 172,133	1.9%
CITY OF JURUPA VALLEY	29,042	308,292	483,257	40,212	17,872	26,808	\$ 905,483	10.1%
CITY OF LAKE ELSINORE		25,549	50,920	27,170	27,282	36,433	\$ 167,354	1.9%
CITY OF MENIFEE	140,970	218,846	262,493	212,144	203,294	189,890	\$ 1,227,637	13.7%
CITY OF MORENO VALLEY	90,440	33,510	4,468	106,712	142,121	122,870	\$ 500,121	5.6%
CITY OF MURRIETA	-	-	13,415	55,955	-	-	\$ 69,370	0.8%
CITY OF NORCO	-	-	-	-	-	-	\$ -	0.0%
CITY OF PERRIS	8,936	48,203	60,318	251,798	136,274	491,408	\$ 996,937	11.1%
CITY OF RIVERSIDE	18,369	57,919	58,219	11,896	2,298	14,786	\$ 163,487	1.8%
CITY OF SAN JACINTO	32,971	44,680	53,616	17,872	53,816	37,978	\$ 240,933	2.7%
CITY OF TEMECULA	2,234	26,544	8,580	388,358	23,684		\$ 449,400	5.0%
CITY OF WILDOMAR	26,808	-	33,510	8,936	2,234		\$ 71,488	0.8%
COUNTY OF RIVERSIDE	315,407	373,078	517,932	577,678	528,924	672,434	\$ 2,985,453	33.4%
TOTAL COUNTY AND CITIES	\$ 839,552	\$ 1,316,691	\$ 1,663,036	\$ 1,841,286	\$ 1,389,505	\$ 1,891,831	\$ 8,941,900	100.0%
OTHER								
FLOOD CONTROL					\$ 40,000		\$ 40,000	95.9%
OTHER GOV MSHCP INFRASTRUCTURE							\$ -	0.0%
OTHER GOV MSHCP CIVIC PROJECTS			1,721				\$ 1,721	4.1%
TOTAL OTHER	\$ -	\$ -	\$ 1,721	\$ -	\$ 40,000	\$ -	\$ 41,721	100.0%
GRAND TOTAL	\$ 839,552	\$ 1,316,691	\$ 1,664,757	\$ 1,841,286	\$ 1,429,505	\$ 1,891,831	\$ 8,983,621	

**Fiscal Year 2021
MSHCP Development Mitigation Fee Revenues
July 1, 2020 through December 31, 2020**



Note: Amounts subject to rounding

AGENDA ITEM 6D

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

DATE:	February 17, 2021
TO:	Executive Committee
FROM:	Matt Wallace, Deputy Director of Financial Administration
THROUGH:	Theresa Trevino, Chief Financial Officer
SUBJECT:	Adoption of Ordinance No. 21-01 Related to Procurement Policy Manual

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Approve the revised Riverside County Transportation Commission (RCTC) and Western Riverside County Regional Conservation Agency (RCA) Procurement Policy Manual (PPM) for the procurement and contracting activities undertaken by the agencies, pursuant to legal counsel review as to conformance to state and federal law;
- 2) Adopt Ordinance No. 21-01, *“Ordinance of the Western Riverside County Regional Conservation Agency Regarding the Revised Procurement Policy Manual”*; and
- 3) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

RCTC’s Procurement Department was established in July 2008 and is responsible for the purchase of all goods and services, in accordance with RCTC’s PPM and federal and state funding requirements to ensure the implementation of RCTC’s projects and programs. The procurement process is centralized and includes conducting outreach, issuing solicitations, oversight of the proposal evaluation process, conducting contract negotiations, recommending contract award, and updating procurement policies and procedures as required. After contract award and during the contract lifetime, contract administration activities include issuing contract task orders and amendments; ensuring compliance with contract terms, conditions, and deliverables; and monitoring contract balances to prevent contract overruns.

RCTC’s initial PPM was adopted in April 2007 to set forth a general procurement policy and set of standards that govern the conduct of RCTC procurement activities and of RCTC personnel engaged in those activities. Since the initial adoption of the PPM, RCTC adopted several revisions to update the PPM as a comprehensive document and to comply with the Federal Transit Administration; Federal Highway Administration; Caltrans; Office of Management and Budget’s issuance of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; RCTC regulations; and best practices. The policies are intended to maintain the integrity of RCTC’s procurement process, while ensuring that purchases are made in a cost

effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations. The objectives of RCTC's Procurement Policy Manual are to:

1. Maximize the value received for RCTC's expenditure of public funds;
2. Protect assets and/or services purchased with public funds and ensure their application in RCTC's interests;
3. Provide all vendors an equal opportunity to provide needed goods and/or services; and
4. Protect the integrity and reputation of RCTC, its officers, and employees.
5. Ensure compliance with state and federal funding requirements, as applicable.

The PPM has successfully guided RCTC's procurements for design-build, construction, preliminary engineering, and professional services as well as supplies, equipment, and materials.

In 2012, RCTC selected PlanetBids to provide online vendor and bid management support services after evaluating multiple software options and participating in demonstrations from similar providers. PlanetBids provides RCTC with a web-based e-procurement application to streamline the complete bidding process and further enable the collection, analysis, and leverage of all aspects of vendor data, purchasing activities, and corresponding history. Through the use of PlanetBids, RCTC has realized efficiency gains such as vendor registration and profile management; greater outreach to vendors; bid document distribution, including automatic addenda notification and acknowledgements; customer email notification; online question and answer management; secure e-bidding; robust reporting; and Request for Proposals/Request for Qualifications/Invitations for Bids evaluation tools. PlanetBids is also used by numerous other governmental agencies in Southern California which allows for bidding collaboration.

The RCA Board of Directors adopted RCA Ordinance No. 08-02 on September 8, 2008. The ordinance reflects professional standards in the management of RCA's resources to ensure that services, supplies, materials, or equipment are acquired in a uniform manner at the best possible cost commensurate with the quality needed. Further, RCA's bylaws include a provision for the Executive Director's authority to enter into contracts.

DISCUSSION:

RCTC and RCA entered into an Implementation and Management Services Agreement (Agreement) effective January 1, 2021. Under the Agreement, RCTC shall administer, coordinate, and supervise the activities of the RCA as set forth in the RCA Joint Exercise of Powers Agreement (JPA) and shall act for RCA in accomplishing its purposes. As a result of RCTC's management responsibilities, staff and legal counsel have reviewed RCA policies to determine which can be combined with RCTC policies into a comprehensive policy.

Since RCTC, acting through its personnel, attorneys and consultants, shall from time to time contract with and/or appoint personnel and consultants to provide the services to RCA, a revised procurement policy and related electronic signature policy have been developed to reflect RCTC's new role as managing agency for RCA and to provide greater specificity to RCA's existing policies.

The following is an overview of the major changes to the PPM:

General

Changes have been made throughout the manual to change "the Commission" to "the Agency." In certain cases, reference to "Agencies" or "each Agency/applicable Agency" is used where appropriate.

Chapter 1 – Procurement Process

- **Section 1 – Purpose and Scope:** References and definitions for both agencies have been added. This section also specifies that the term "Agency," as used in the manual, refers to either agency, as applicable.
- **Section 4(E) – Time-and-Materials Contracts:** General requirements appear first, and the specific subsections that have been carved out as only applicable to federal funding appear next.
- **All Sections:** Minor changes to the remainder of the chapter make the provisions applicable to both agencies.

Chapter 2 – Procurement Generally

- **Section 1(D) – Executive Director Single Signature Authority:** A new provision, with certain limitations, has been added for the RCA Executive Director's signature authority up to \$100,000 per contract and an annual aggregate amount not to exceed \$300,000. For RCTC, the annual aggregate amount of Executive Director's signature authority has been increased from \$1.5 million to \$2 million, and a constraint on the single signature authority has been removed. The language regarding the Executive Director's authority to execute contract amendments under single signature authority has been updated to avoid confusion.
- **Section 1(G) – Approval Limits and Solicitation Types:** Two new tables for RCA approval limits and solicitation types have been added. RCA is not subject to the Public Utilities Code (PUC) limitation and bid requirements for supplies, equipment and materials and for public works; however, RCA is subject to Public Contract Code (PCC) for limitations and bid requirements for public projects. Accordingly, separate tables are shown for each agency. RCA's authority for supplies, equipment and materials are included in the same table as its authority for services.

- **Section 2 – Procurement Officer – Designation and Delegation:** The designated Procurement Officer has been changed from the Chief Financial Officer to the Deputy Director of Financial Administration.
- **Section 9(D) – Authority’s Public Project Advertisement/Publication:** A paragraph was added to address RCA’s public project authority under the PCC.
- **Section 12(D) – Duties of Commission Staff Regarding Procurements:** Construction Change Order approval limits have been modified. Any change order exceeding \$100,000 but no greater than \$250,000 requires approval by the Project Delivery Director or the Toll Program Director. Any change order greater than \$250,000 requires approval by the Executive Director. *This provision is not applicable to RCA.*

Chapter 3 – Competitive Sealed Bids (“Low Bid”)

This chapter has been updated to include the RCA’s public project PCC requirement and to be consistent with current practices of using electronic bidding.

Chapter 7– Non-Competitive and Emergency Procurements and Remedial Measures

This chapter has been updated to track the language in the PUC for RCTC. New provisions have been added to refer to the RCA’s emergency procurement provisions under the PCC and to address emergency procurement provisions not covered by the PUC or PCC.

Chapter 8 – References to Applicable Laws/Regulations

This chapter is related to references to applicable laws/regulations. Most of this chapter is inapplicable to the RCA, as RCA does not receive FHWA or FTA funds; however, a general reference has been included regarding RCA compliance with grant requirements.

Chapter 9 – Disposal of Surplus Property

This chapter has been narrowed to address surplus personal property only. The approach for addressing surplus real property of the RCA and RCTC will be included in the updated right of way policies and procedures manual.

Staff recommended changes to the RCA bylaws in a separate agenda item at this meeting. The changes include a revision for the Executive Director’s contract authority to comply with the PPM.

Staff recommends approval of the PPM and adoption of Ordinance No. 21-01 related to the PPM.

In accordance with its JPA and state law, the RCA must adopt the PPM by ordinance. The ordinance was introduced at the RCA Board meeting on February 1, with the second reading and potential adoption at the March 1, 2021 Board meeting. The ordinance will be effective thirty days following adoption. Therefore, if the revised PPM is approved by the RCA, staff anticipates it will be effective March 31, 2021.

FISCAL IMPACT:

There is no fiscal impact related to the approval and adoption of the PPM; the approval of agreements and commitments by the Board of Directors or Executive Director, as provided in the PPM, from specific procurement activities results in a direct fiscal impact.

Attachments:

- 1) Ordinance No. 21-01, *“Ordinance of the Western Riverside County Regional Conservation Agency Regarding the Revised Procurement Policy Manual”*
- 2) Riverside County Transportation Commission and Western Riverside County Regional Conservation Authority Procurement Policy Manual (Revised February 2021)

ORDINANCE NO. 21-01

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
ADOPTING PROCUREMENT POLICY MANUAL**

WHEREAS, the Western Riverside County Regional Conservation Authority (“RCA”) is a public agency of the State of California formed by a Joint Exercise of Powers Agreement (“JPA”); and

WHEREAS, pursuant to Section 19 of the JPA, RCA has the power to adopt such rules and regulations as the Board may deem necessary for the conduct of RCA's affairs; and

WHEREAS, RCA adopts purchasing policies and procedures pursuant to Government Code section 54201 *et seq.*; and

WHEREAS, RCA previously adopted Ordinance No. 08-02; and

WHEREAS, RCA recently appointed the Riverside County Transportation Commission (“RCTC”) to serve as the Authority’s management entity; and

WHEREAS, RCA seeks to adopt a purchasing policy that reflects highly ethical and professional standards in the management of its resources, and ensure that services, work, supplies, materials or equipment are acquired in a uniform manner at the best possible cost commensurate with the quality or qualifications needed; and

WHEREAS, RCA, under the management supervision of RCTC, seeks to run its operations as efficiently and effectively as possible; and

WHEREAS, RCTC has a procurement policy manual; and

WHEREAS; RCA and RCTC have worked to combine RCA’s purchasing policies and RCTC’s procurement policies into one procurement policy manual; and

WHEREAS, it is the desire of both agencies to adopt combined procurement policies.

**NOW, THEREFORE, THE WESTERN RIVERSIDE COUNTY REGIONAL
CONSERVATION AUTHORITY HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. RCA hereby adopts the Procurement Policy Manual attached hereto as Exhibit “A,” as the same may be amended by RCTC from time to time without need for further action by RCA.

SECTION 2. This Ordinance supersedes and replaces Ordinance 08-02 and any other purchase policies or guidelines previously adopted by RCA.

SECTION 3: If any provision or clause of this Ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance

are declared to be severable.

SECTION 4. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption.

INTRODUCED on the 1st day of February, 2021, and PASSED AND ADOPTED at the regular meeting of the Board of Directors at the Western Riverside County Regional Conservation Authority held this 1st day of March 2021.

By:

Natasha Johnson, Chair
Western Riverside County
Regional Conservation Authority

ATTEST:

By: _____
Lisa Mobley, Clerk
Western Riverside County
Regional Conservation Authority

EXHIBIT "A"
PROCUREMENT POLICY MANUAL

[attached behind this page]

4th Draft 1/4/21



Riverside County Transportation Commission
and
Western Riverside County
Regional Conservation Authority
Procurement Policy Manual

(Revised February 2021,
Effective March 31, 2021)

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CHAPTER 1 – PROCUREMENT PROCESS

1.0 PURPOSE AND SCOPE

- A. The Riverside County Transportation Commission (hereinafter “RCTC” or “Commission”) and the Western Riverside County Regional Conservation Authority (“RCA” or “Authority”) procures goods and services using public funds. The Commission and Authority (collectively, “Agencies”) ~~It~~ has a responsibility to uphold the public trust and maximize the value of public funds by using them as efficiently and cost-effectively as possible. As used herein, the term “Agency” is intended to refer individually, and interchangeably, to the Commission or Authority, as applicable.-
- B. Employees of the Commission conduct the operations of both Agencies.
- C. This Procurement Policy Manual (Manual) sets forth a general procurement policy and set of standards that will govern the conduct of ~~Commission~~ Agencies’ procurement activities and of Commission personnel engaged in those activities. The policies contained herein are advisory, not mandatory, except as related to applicable state or federal laws, and any deviation therefrom shall not render any contract of either Agency ~~the Commission~~ void or voidable. This manual is for ~~Commission~~ the Agencies’ internal purposes only and shall not create any rights in any third parties. Compliance with the provisions in this Manual related to state or federal funding is required in order to maintain funding eligibility.
- ~~DC.~~ This Manual is intended to supersede, in its entirety, the Commission’s *Procurement Policies Manual* which was adopted on September 11, 2019, and the Authority’s procurement ordinance, Ordinance No. 08-02, adopted on September 8, 2008. December 13, 2017.
- ~~ED.~~ As used herein, “FHWA” refers to the Federal Highway Administration; “FTA” refers to the Federal Transit Administration; and “Caltrans” refers to the California Department of Transportation.

2.0 PROCUREMENT POLICY STATEMENT

- A. These ~~Commission~~ procurement policies establish the guidelines and policies for procuring the goods and services necessary for the ~~Commission~~ Agencies to carry out ~~their~~ responsibilities and duties. The policies are intended to maintain the integrity of each ~~the~~ Commission Agency’s procurement process, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.
- B. The objectives of this ~~Commission’s~~ Procurement Policy Manual are to:
1. Maximize the value received for each ~~the~~ Commission Agency’s expenditure of public funds;
 2. Protect assets and/or services purchased with public funds and ensure their application in each ~~the~~ Commission Agency’s interests;

3. Provide all vendors an equal opportunity to provide needed goods and/or services; and
4. Protect the integrity and reputation of the Authority and ~~Commission~~, its officers, and the Commission, its officers and employees.
5. Ensure compliance with state and federal funding requirements, as applicable.

C. Notwithstanding reference in this Manual to a single Agency, when in the best interest of the Agencies and consistent with legal requirements applicable to each Agency, the procurements described herein may be conducted as joint procurements.

3.0 PROCUREMENT STANDARDS

A. General

1. Contract Administration System. Each Agency~~The Commission~~ will maintain a contract administration system that helps ensure that contractors perform in accordance with the terms, conditions, and specifications of their respective contracts.
 - a. Contract administration activities may include the following:
 - i. Receive, evaluate, and act on value engineering and other change proposals.
 - ii. Negotiate cost and schedule impact related to change orders and other contract modifications.
 - iii. Process disputes under the contract's disputes clause.
 - iv. Review and approve payments under any progress payments clause.
 - v. Ensure that invoiced personnel charges are for positions and classifications included in the contract. If new positions or classifications are required, they must be included pursuant to a written contract amendment dated prior to the date costs are incurred.
 - vi. Ensure that hourly rates and other costs are billed at the contracted rates. The contracted rates may not be changed, except in accordance with the terms of the contract, or as legally allowed based on specific findings approved by the applicable Agency ~~Commission~~ members.
 - vii. Monitor progress and ensure timely notification of anticipated overrun.
 - viii. Monitor financial status and advise if contract performance is jeopardized.

- ix. Issue task orders and ensure that the basis for payment set forth in any task order is consistent with the terms of the contract and the hourly rates included in the contract, as applicable.
 - x. Perform property administration.
 - xi. Ensure contractor compliance with quality assurance requirements.
 - xii. Evaluate, for adequacy, the contractor's engineering efforts and management systems that relate to design, development, production and testing.
 - xiii. Evaluate and make recommendations on contractor requests for waivers and deviations.
 - xiv. Monitor contractor's small and disadvantaged business subcontracting.
 - xv. Ensure timely submission of required reports.
 - xvi. Administer special clauses such as drug and alcohol testing.
 - xvii. Receive, inspect, and accept or reject partial deliveries and final deliveries of all contract deliverables.
 - xviii. Assist in contract close out.
- b. ~~For~~ Commission contracts, the administration of construction contracts may be further supplemented by the Caltrans Construction Manual or other manual developed for a specific project, as required.
2. Avoid Duplicative Purchases. Commission staff should regularly review proposed and planned procurements to avoid purchase of unnecessary or duplicative items for either Agency.
 3. Lease vs. Purchase Analysis. Where appropriate, an analysis should be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical procurement approach.
 4. Value Engineering. When appropriate and in the AgencyCommission's best interests, the AgencyCommission will encourage the use of value engineering by including applicable clauses in contracts for appropriate equipment purchases and construction projects.
 5. Award to Responsive and Responsible Contractors. ~~TheThe Commission~~ Agency will make awards only to responsive and responsible contractors, as determined by the CommissionAgency, possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to such matters as contractor integrity, compliance with public policy as implemented by applicable laws and regulations, record of past performance, and financial and technical resources.

- a. In connection with the responsibility determination for federally funded procurements, a check of debarment and suspension must be performed and documented in the procurement records.
6. AgencyCommission Rejection of Bids, Quotes, and/or Proposals. The AgencyThe Commission, to the extent permitted by applicable laws, may reject any and all bids, quotes and/or proposals and re-advertise at its sole discretion. TheThe AgencyCommission should ensure that such rights are clearly stated in all AgencyCommission bid documents.
 7. Procurement Records. Records sufficient to document the significant history of each procurement activity should be maintained and retained by eachthe CommissionAgency in accordance with the applicable CommissionAgency's records retention policy. At a minimum, these records should include:
 - a. The rationale for the method of procurement;
 - b. Selection of contract type;
 - c. Reasons for contractor selection or rejection; and
 - d. The basis for the contract price.
 8. Specifications. The CommissionAgency will have clear and accurate contract specifications or statements of work that identify all requirements that offerors must fulfill. Additionally, written selection procedures for formal procurements shall be prepared to help ensure fair, unbiased evaluation of competing proposals.
 - a. For federally funded procurements, the AgencyCommission is prohibited from unduly restricting competition or placing unreasonable requirements on firms in order for them to qualify to do business (e.g., unnecessary experience and excessive bonding requirements).
 9. Brand Name or Equal. The use of “brand name or equal” purchase descriptions may be permitted:
 - a. Only when an adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and
 - b. When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.
 - c. For non-federally funded procurements, as otherwise permitted by state law.

This section is not intended to impose limitations on the Agency'sCommission's ability to require a brand name when the procurement is not federally funded and is not a “public work” or “public project” subject to the requirements contained in the California Public

Utilities Code (PUC), for the Commission, or the Public Contract Code (PCC), for the Authority.

10. Audit Provisions. Every AgencyCommission contract wherein contractor or other entity is receiving AgencyCommission funds in excess of \$10,000 should include a provision allowing examination and audit of records related to the contract by the AgencyCommission's auditor for a period of three years after final payment under the terms of the contract.
11. Violations or Breach of Contract. All contracts exceeding \$100,000 should include administrative, contractual, or legal remedies for violations or breach of the contract by the contractor.
12. Termination Clause. All contracts in excess of \$25,000, and public works contracts in excess of \$2,000, should provide for the termination of the contract for the CommissionAgency's convenience, and all contracts should provide for the termination of the contract for default in cases of contractor breach or non-performance. Federally funded contracts in excess of \$10,000 must provide for both termination for convenience and cause.
13. Issues not Included in the Procurement Policy Manual. If a policy, procedure or particular strategy or practice is in the best interest of the CommissionAgencies, or either of them, and is not specifically addressed, nor prohibited by statute or case law, users of this Manual should not assume it is prohibited. Rather, the absence of direction should be interpreted as permitting the Executive Director to innovate and use sound business judgment that is otherwise consistent with law and within the limits of his or her authority.

B. Written Standards of Conduct

1. Conflicts of Interest. All Commission members, officers, employees and other agents of each Agency, and Commission employees, must conduct the procurement process so as to avoid conflicts of interest, real or apparent. To maintain full and open competition, no Agency Commission member, officer, employee or other agent, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of any CommissionAgency contract of the applicable Agency if a conflict of interest, prohibited by law, would be involved. For federally-funded contracts, the foregoing shall also apply when any of those individuals previously listed has a financial or other interest in the firm selected for award. In addition to the foregoing, all procurements must be conducted in accordance with as applicable, the most current version of the "Conflict of Interest Code for the Riverside County Transportation Commission" or the "Conflict of Interest Code for the Western Riverside County Regional Conservation Authority," both adopted pursuant to the Political Reform Act of 1974 (as amended).

2. Lobbying and Gifts. ~~Commission~~Agency officers, ~~employees,~~ agents and ~~Commission~~ members, and Commission employees must comply with applicable state and federal law regarding acceptance of gifts, gratuities, or favors from contractors, potential contractors, or parties to subcontractor agreements. For federally-funded procurements, the procuring CommissionAgency officers, ~~employees,~~ agents or ~~Commission~~ members, and Commission employees, may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts; provided that exceptions may apply if, as determined by the Executive Director, the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. For federally-funded procurements, nominal value shall mean under fifty dollars (\$50).
3. Violations.
 - a. The violation of these Standards of Conduct by Commission employees will subject the violator to any disciplinary proceedings or action deemed appropriate by the Executive Director. Employees may correct a violation in any manner provided for under the Political Reform Act, and its implementing regulations.
 - b. The violation of any of these Standards of Conduct by ~~Commission~~ members or officers of either Agency will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations.
 - c. Contractors or subcontractors that violate these Standards of Conduct as relates to an active federally-funded procurement may be prohibited from bidding on the procurement, or may be subject to other action as deemed appropriate by the Executive Director.
 - d. Agents of ~~either the Commission~~Agency that violate these Standards of Conduct as relates to federally-funded procurements may be prohibited from participation on behalf of ~~that Agency~~~~Commission~~ on federally funded projects, or subject to other action as deemed appropriate by the Executive Director.
4. Prohibited Communications. To avoid any appearance of impropriety, instructions to bidders in solicitation documents should prohibit contacts of any kind from proposers/bidders with any ~~Commission~~ member of the procuring Agency or any Commission staff, other than the Procurement Officer, or designee, during an open procurement. Violation of this condition may result in immediate disqualification of a bid or proposal. This provision is not meant to prohibit communications between Commission staff and existing consultants/contractors related to existing business which the consultant/contractor is under contract to perform on behalf of the Agency. ~~the Commission.~~

4.0 TYPES OF CONTRACTS

A. General Provisions

1. The Procurement Officer should use the types of contracts described in this Chapter for most types of procurement, except as otherwise provided for certain small purchases described hereunder in Chapter 6. Innovative contracting arrangements are not prohibited, but require the advance approval of the Executive Director or the [applicable Agency Commission](#), as specified herein.
2. The “cost-plus-percentage-of-cost” method of contracting shall not be used for state or federally funded contracts.
3. The Procurement Officer, in consultation with the project manager, should select the type of contract that is most appropriate to the circumstances of each procurement, in accordance with the provisions of this Chapter.
4. In procurements by other than competitive sealed bidding, the Procurement Officer may negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

B. Selecting Contract Types

1. The type of contract to be used should be determined prior to the solicitation, and the solicitation should inform bidders of the type of contract that will be used.
2. When procurement is by competitive sealed bidding, the Procurement Officer must use a firm fixed-price contract.
3. Except when procurement is by competitive sealed bidding as required by law, the Procurement Officer should select the most effective contract type and should consider contract type together with the issues of price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier.
4. The Procurement Officer should avoid the continued use of a cost reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.
5. The Procurement Officer should include documentation in each contract file to show why the particular contract type was selected, except for purchase orders under the small purchase threshold.

C. Fixed-Price Contracts

1. Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.
2. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price will be subject to

adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

3. A firm-fixed-price contract should provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
4. A firm-fixed-price contract should be used for acquiring commercial products or commercial-type products, or for acquiring other supplies or services, on the basis of reasonably definite functional or detailed specifications if the Procurement Officer can establish fair and reasonable prices at the outset, including the following circumstances:
 - a. When there is adequate price competition;
 - b. When there are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis;
 - c. When available cost or pricing information permits realistic estimates of the probable costs of performance;
 - d. When performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm-fixed-price contract; or
 - e. When required by law unless a sole source exception applies.

D. Cost Reimbursement/Cost-Plus-Fixed-Fee Contracts

1. Cost reimbursement contracts provide for payment of the contractor's reasonable, allocable and allowable incurred costs plus a negotiated fixed fee, to the extent prescribed in the underlying contract and Federal Acquisition Regulation (FAR) Part 31.
2. A cost reimbursement contract establishes an estimate of total cost for the purpose of obligating funds and establishing a ceiling on expenditures that the contractor may not exceed without the approval of the [Agency Commission](#).
3. Cost reimbursement contracts are suitable for use when the uncertainties of performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.
4. The [Agency Commission](#) must determine the adequacy of the contractor's accounting system for cost-type contracts before awarding such a contract.

E. Time-And-Materials Contracts

1. A time-and-materials contract should include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.

2. The user department/project manager should ensure that there is adequate surveillance of contractor performance when a time-and-materials type contract is used.

1.3. For federally funded procurements, A a time-and-materials contract should be used only after the Procurement Officer determines:

- a. In writing, that no other type of contract is suitable; and
- b. A ceiling price to be included in the contract that the contractor shall not exceed except at its own risk.

2.4. For federally funded procurements, Aa time-and-materials contract should be used only when it is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty or confidence.

~~3. A time-and-materials contract should include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.~~

~~4. The user department/project manager should ensure that there is adequate surveillance of contractor performance when a time-and-materials type contract is used.~~

F. Labor-Hour Contracts

1. When materials are not required, the Procurement Officer may use a labor-hour contract, a variation of the time-and-materials contract.
2. The use of a labor-hour contract should be in accordance with the above-referenced provisions related to time-and-materials contracts.

G. Letter Contracts (Letter Of Intent Contracts)

1. A letter contract is an interim type of contractual agreement that gives the contractor a limited notice of award for the delivery of the required goods/supplies or the performance of services.
2. The Procurement Officer may use a letter contract when the Agency's Commission's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract should be as complete and definitive as possible under the circumstances and should include clauses approved and required by the Procurement Officer.
3. The estimated cost of the definitive contract should determine the type and level of review and approval required for approval of a letter contract.
4. A letter contract may not be entered into without competition except as provided for under Non-Competitive and/or Emergency Procurements provisions of this Manual.

5. A letter contract may not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment should be subject to the same requirements as a new letter contract.
6. The total value of the letter contract should be the estimated sum necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the total value of a letter contract should not, under any circumstances, exceed fifty percent (50%) of the overall price ceiling for the term of the final negotiated (i.e., definitive) contract.
7. A letter contract should contain a negotiated schedule for execution of the definitive contract, including dates for submission of the contractor's price proposal, cost or pricing data (if required), a date for start of negotiations, and a target for execution of the definitive contract.
8. The letter contract should provide that if the Procurement Officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee: 1) the Procurement Officer may terminate the letter contract; or 2) if a "contract definitization" clause is included in the letter contract, the Agency ~~Commission~~ may unilaterally require the contractor to continue the work and the Procurement Officer may, with the approval of the Executive Director, determine a reasonable price or fee.

H. Multiple Year Contracts

Multiple year contracts may be used with competitive sealed bids, competitive proposals, or by non-competitive procurement. The contract term, and any extensions thereof, shall be established based on sound business judgment of the Commission Agency. Multiple year contracting is a method by which the Commission Agency awards a contract for a base period of one or more years, with option provisions for future years' requirements. The option provision in the contract should provide for unilateral exercise at the discretion of the user department/project manager, as additional requirements and funding become available. See below under Section 5.0 of this Chapter for further information regarding Options.

For federally-funded procurements, the procurement file shall document the rationale for determining the term. Considerations should include the time necessary to accomplish the purpose of the contract, competition, pricing, and fairness.

I. Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracts

1. The Procurement Officer may use an ID/IQ type of contract when the Commission Agency anticipates a recurring requirement, but cannot predetermine the precise quantities of supplies or services at the time of contract award.

2. FHWA or Caltrans funded ID/IQ on-call contracts and FTA funded ID/IQ contracts for rolling stock and replacement part contracts may not exceed five (5) years.
3. ID/IQ contracts should specify maximum or minimum estimated quantities that the [CommissionAgency](#) may require during the term of the agreement. An ID/IQ contract should make no promise of exclusivity and may in fact be one of several (multiple) contracts awarded for the same item or service.
4. There are several types of ID/IQ contracts, including:
 - a. Definite-quantity contracts
 - b. Requirements contracts
 - c. Indefinite quantity (IQ) contracts (commodities)
 - d. Task order contracts (services)
5. If possible under the circumstances, the Procurement Officer should ensure that original solicitation and resultant ID/IQ contract contain both a minimum and a maximum quantities, which represent the reasonably foreseeable needs of the parties to the solicitation, and a clause stating that the estimate is not a representation to a bidder, offeror, or consultant that the estimated quantity or dollar amount above the estimated minimum will actually be required or ordered by the [AgencyCommission](#).
6. For task orders contracts, the procurement documents and executed contracts must specify the procedures to be used in awarding task orders. Such procedures must comply with state and federal regulations, as applicable.

5.0 OPTIONS

A. General

1. When it is in the best interest of the [AgencyCommission](#), a contract option may be included providing the [AgencyCommission](#) the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract.
2. Any written findings required for a contract option shall specify both the base requirement(s) and the increase permitted by subsequent options. Contract provisions setting forth the cost of the option may include, but are not limited to, the following:
 - a. A specific dollar amount;
 - b. An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

- c. In a cost-type contract, a stated fixed or maximum fee, or a fixed or maximum fee amount determinable by applying a formula contained in the basic contract;
- d. A specific price that is subject to an economic price adjustment provision; or
- e. A specific price that is subject to change as a result of changes to the prevailing labor rates provided by the U.S. Department of Labor (DOL) or the California Department of Industrial Relations (DIR) prevailing rates, whichever is applicable.

B. Solicitation of Contracts with Options

- 1. If a contract provides for an option, the solicitation should include appropriate option clauses.
- 2. Each contract should state the period within which an option may be exercised.
- 3. In order to meet the requirements of this Manual for full and open competition, the option should be evaluated as part of the initial competition and be exercisable at an amount specified from the terms of the basic contract. When options have not been evaluated as part of the award, the exercise of such options will be considered a non-competitive procurement and must comply with the non-competitive procurement policies in described in this Manual.

C. Exercise of Options

- 1. The user department/project manager, in cooperation with the Procurement Officer, should initiate the exercise of an option only after determining the following [for the Agency](#):
 - a. That sufficient budget authority is available;
 - b. That the requirement covered by the option fulfills an existing [Agency Commission](#) need; and
 - ~~c. That the exercise of the option will be the most advantageous method of fulfilling the [Agency Commission's](#) needs, when price and other factors are considered.~~
- 2. The Procurement Officer, after considering price and other factors, should make the determination whether to recommend exercising the option on the basis of one of the following:
 - a. A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option; provided, that if it is anticipated that the best price available is the option price (or that the option provides the more advantageous offer), the Procurement Officer should not use this method to test the market;

- b. An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the most advantageous offer; or
 - c. The short time between the award of the contract containing the option and the exercise of the option indicates that the option price is the lowest price obtainable or the most advantageous.
3. The contract modification or other written document, which notifies the contractor of the exercise of the option, shall cite the option provision as authority for the action and should be issued within the time period specified in the contract.

6.0 COOPERATIVE AGREEMENTS

A. Policy on Intergovernmental or Inter-entity Agreements

To promote economy and efficiency, ~~the~~ [the Commission Agency](#) may enter into state and local intergovernmental agreements or inter-entity agreements, where such agreements are in the best interest of the [Commission Agency](#) and are appropriate for procurement or use of common or shared goods and services. The use of purchasing schedules may be prohibited for federally funded procurements. Out-of-state purchasing agreements are prohibited for FTA-funded procurements.

B. Memorandum of Understanding

A memorandum of understanding (MOU) is a contract document describing a bilateral or multilateral agreement outlining the terms and details of an arrangement between the parties to the MOU, including each party's requirements and responsibilities. An MOU is used when substantial involvement is expected between ~~the Agency the Commission~~ and another agency or entity when carrying out the activity contemplated in the MOU, and there exists some public or mutually beneficial purpose in carrying out this activity.

C. Piggybacking

- 1. Piggybacking is the post-award use of an acceptable contract/solicitation process that allows an entity not contemplated in the original procurement to purchase the same supplies or equipment under the original contract/solicitation process.
- 2. Piggybacking is permissible when:
 - a. The underlying solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded; and
 - b. For federally funded agreements, the original solicitation and resultant contract contain a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation.

D. California Multiple Award Schedule and State Master Agreements

1. A California Multiple Award Schedule (CMAS) and State Master Agreements are agreements established between the California Department of General Services (DGS) and multiple vendors who agree to the State of California terms and conditions, and may be used by the [CommissionAgency](#).
2. Acquisitions based on CMAS or State Master Agreements shall be competitively bid so as to result in offers from three or more vendors including one small business, if available. If less than three offers are received, documentation of solicitation methods must be included with the contract documentation.
3. Three offers are not required for CMAS and State Master Agreements based on competition, such as Cal-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc. Information on specific CMAS and State Master Agreements are available on DGS-PD's website at: www.dgs.ca.gov/pd.
4. Notwithstanding PUC section 130232(a), ~~Public Contract Code (PCC)~~ sections 10298(b) and 10299(a) provide authority for the Commission to use CMAS or State Master Agreements for acquiring supplies, equipment and materials that exceed \$25,000 without engaging in further competitive bidding.

7.0 RECURRING CONTRACTS

- A. ~~Each~~[The CommissionAgency](#) may, on an annual basis, evaluate existing contracts for professional services that are due to expire within the next fiscal year. While some of these contracts may be placed on the calendar for a new procurement solicitation or allowed to expire because they are no longer required, notwithstanding any other provision herein, some contracts may be included in an annual recurring contracts list that must be approved by the [applicable CommissionAgency](#). Most contracts for professional services should be subject to a competitive process; however, there may be limited circumstances in which staff believes it is more efficient and cost effective to retain such consultants on the recurring contracts list rather than rebidding the services. Those circumstances generally are due to the consultant's historical knowledge, unique experience, and understanding of the [applicable CommissionAgency](#) and/or specific [CommissionAgency](#) projects. Approval of the recurring contracts list allows ~~each~~[the CommissionAgency](#) to continue work on existing projects without interruptions and maintain consistency.
 1. State or federally-funded contracts may not be included in the annual recurring contracts list.

CHAPTER 2 – PROCUREMENT GENERALLY

1.0 IMPLEMENTATION BY EXECUTIVE DIRECTOR; COMMISSION CONTROLS AND LIMITATIONS

- A. Final authority for purchasing actions and decisions rests with ~~each~~ the Agency Commission, except as delegated by the Agency Commission to the Executive Director.
- B. ~~The Commission~~ Each Agency, respectively, authorizes the Executive Director to execute contracts approved by the Agency Commission. The Executive Director may designate the Deputy Executive Director, Chief Financial Officer or Directors to execute contracts under his or her signature authority on his/her behalf.
- C. The policies set forth herein will be implemented by the Chief Financial Officer. The Chief Financial Officer has primary responsibility for ensuring that ~~each~~ the Agency Commission's procurement process is in accordance with applicable laws and regulations, as interpreted by the General Counsel and Agency Commission policy.
- D. The Executive Director is authorized to approve and enter into contracts on behalf of the Agencies Commission under his/her single signature authority as follows:
1. For the Commission: When the expenditure is less than fifty thousand dollars (\$50,000) for the purchase of all supplies, equipment, materials and for the construction of all facilities and works in accordance with PUC § 130232; and
 2. For the Commission: When the expenditure is less than two hundred fifty thousand dollars (\$250,000) for the purchase of services; however, (i) the aggregate amount of contracts executed under the single signature authority shall not exceed ~~\$1,52,000,000~~ in any given fiscal year; (ii) the aggregate value of all contracts awarded to any one entity under the Executive Director's single signature authority shall not exceed \$250,000 in any fiscal year; and (iii) the Executive Director may execute contract amendments that do not exceed \$250,000 for existing contracts ~~that do not exceed \$250,000. Such authority however, may not be exercised more than once during the life of any contract and may not be used to amend contracts originally executed under the Executive Director's single signature authority.~~ The Commission's fiscal year is from July 1 to June 30.
 3. For Authority: When the expenditure is less than \$100,000; however, (i) the aggregate amount of contracts executed under the single signature authority shall not exceed \$300,000 in any given fiscal year; (ii) the aggregate value of all contracts awarded to any one entity under the Executive Director's single signature authority shall not exceed \$100,000 in any fiscal year; and (iii) the Executive Director may execute contract amendments that do not exceed \$100,000 for existing contracts that do not exceed \$100,000. The Authority's fiscal year is from July 1 to June 30.

- E. The powers of the Executive Director pursuant to Paragraph “D” above are subject to: (i) the existence and provisions of an ~~an-Commission~~ approved budget for the applicable Agency; and (ii) applicable laws and regulations.
- F. The Executive Director must provide each Agency ~~the Commission~~ with a quarterly regular report of all contracts entered into pursuant to the single signature authority provided in Paragraph “D” above by that Agency, and must report to the applicable Agency-Commission at its next regularly scheduled meeting each new contract awarded on an emergency basis or other contracts in excess of the Executive Director’s single signature authority.

G. Approval Limits and Solicitation Types

1. Commission- Supplies, Equipment, and Materials (PUC § 130232).

PURCHASE AMOUNT	SOLICITATION TYPE	SOLICITATION PROCESS	APPROVER
Less than \$1,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors	Procurement Officer*
\$1,000 to \$25,000	Small Purchase	<u>Informal</u> : Three (3) Quotes	Procurement Officer*
\$25,001 to \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Competitive Sealed Bids	Executive Director
Greater than \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Competitive Sealed Bids	Commission

2. Commission Public Works (PUC § 130232).

PURCHASE AMOUNT	SOLICITATION TYPE	SOLICITATION PROCESS	APPROVER
Less than \$1,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Non-Collusion Declaration, Insurance	Procurement Officer *
\$1,000 to \$25,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Prevailing Wage, Clauses, Insurance, License, Non-Collusion Declaration	Procurement Officer*
\$25,001 to \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Executive Director
Greater than \$50,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration	Commission

* As delegated by the Executive Director

3. Commission Services.

PURCHASE AMOUNT	SOLICITATION TYPE	SOLICITATION PROCESS	APPROVER
Less than \$10,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Insurance	Procurement Officer*
\$10,000 to \$50,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance	Procurement Officer*
\$50,001 to \$250,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance; <i>or</i> <u>Formal</u> : Advertisement, Clauses, Insurance, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Executive Director
Greater than \$250,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Insurance, Certifications, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	Commission

4. Authority Public Projects (Public Contract Code PCC §20160, et. seq.).

<u>PURCHASE AMOUNT</u>	<u>SOLICITATION TYPE</u>	<u>SOLICITATION PROCESS</u>	<u>APPROVER</u>
<u>Less than \$1,000</u>	<u>Micro-purchase</u>	<u>Informal</u> : <u>Commercial availability, Rotate Vendors, Non-Collusion Declaration, Insurance</u>	<u>Procurement Officer *</u>
<u>\$1,000 to \$5,000</u>	<u>Small Purchase</u>	<u>Informal</u> : <u>Three (3) Quotes, Prevailing Wage, Clauses, Insurance, License, Non-Collusion Declaration</u>	<u>Procurement Officer*</u>
<u>\$5,001 to \$100,000</u>	<u>Formal Procurement</u>	<u>Formal</u> : <u>Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration</u>	<u>Executive Director</u>
<u>Greater than \$100,000</u>	<u>Formal Procurement</u>	<u>Formal</u> : <u>Advertisement, Clauses, Prevailing Wage, Insurance, License, Competitive Sealed Bids, Payment Bond, Non-Collusion Declaration</u>	<u>Authority</u>

5. Authority Supplies, Equipment, Materials and Services.

PURCHASE AMOUNT	SOLICITATION TYPE	SOLICITATION PROCESS	APPROVER
Less than \$10,000	Micro-purchase	<u>Informal</u> : Commercial availability, Rotate Vendors, Insurance	Procurement Officer*
\$10,000 to \$50,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance	Procurement Officer*
\$50,001 to \$250,000	Small Purchase	<u>Informal</u> : Three (3) Quotes, Clauses, Insurance; <i>or</i> <u>Formal</u> : Advertisement, Clauses, Insurance, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	<u>Under \$100,000:</u> Executive Director <u>Over \$100,000:</u> <u>Authority</u>
Greater than \$250,000	Formal Procurement	<u>Formal</u> : Advertisement, Clauses, Insurance, Certifications, and Negotiated Agreement, or Competitive Sealed Bids, or A/E Contract procedures	<u>Authority Commission</u>

* As delegated by the Executive Director

H. In addition to the authority granted above, and except as otherwise prohibited by applicable state or federal law, the Executive Director is authorized to approve and enter into contracts on behalf of the Commission, where the relevant contract is directly related to and necessary to implement a project that has been approved by the Commission, the contract is within the approved project budget and, based on the circumstances, exercise of this authority is in the best interest of the Commission.

2.0 PROCUREMENT OFFICER—DESIGNATION AND DELEGATION

A. The Deputy Director of Financial Administration ~~Chief Financial Officer~~ is the designated “Procurement Officer” for the Agencies Commission. The Deputy Director of Financial Administration ~~Chief Financial Officer~~ may delegate all or part of the Procurement Officer duties described in this Manual.

3.0 PROCUREMENT OFFICER—DUTIES

A. The Procurement Officer has the duty to oversee all procurement activities of the Agencies Commission, and to implement the policies and standards set forth in this Manual, subject to the limitations of the authority that has been delegated to the Procurement Officer by the applicable Agency Commission or the Executive Director.

- B. The Procurement Officer may issue instructions for the implementation of each Agency's Commission procurement policies.
- C. The Procurement Officer has the duty to ensure each Agency's Commission contracts, purchase orders, modifications, and supplemental agreements are executed in accordance with established thresholds and delegated authority.
- D. The Procurement Officer, subject to the review of the Agency Commission's General Counsel, has the authority to draft and determine the final form of the contract to be used for each procurement.
- E. The Procurement Officer should ensure that a complete record of each procurement action is maintained in accordance with each Agency's the Commission's records retention policy by establishing files containing the records of all major procurements and contractual actions pertinent to that office's responsibilities.
 - 1. The Procurement Officer is responsible for maintaining the original contract file pursuant to applicable state and/or federal records retention policies.
 - 2. The documentation in each contract file maintained by the Procurement Officer should be sufficient to constitute a complete history of the transaction for the following purposes:
 - a. Providing a complete background as a basis for informed decisions at each step of the procurement process;
 - b. Supporting actions taken;
 - c. Providing information for reviews, audits, and investigations; and
 - d. Furnishing essential facts in the event of litigation.
- F. The Procurement Officer has the duty to ensure Commission staff engaged in procurement activities are trained in the procurement requirements set forth in this Manual.

4.0 IMPLEMENTATION OF PROCUREMENT PROCEDURES AND GUIDELINES

- A. The Procurement Officer, in his or her discretion and subject to the review and concurrence of Agency the Commission's General Counsel, may adopt procurement and materials management procedures and guidelines needed to implement and supplement the policies and standards set forth in this Manual. Any such procedures and guidelines shall:
 - 1. Provide for timely review and processing of all procurement actions;
 - 2. Ensure that procurements proceed timely, efficiently and economically;
 - 3. Ensure that procurements adhere to principles of good public policy practices and sound business judgment; and
 - 4. Prohibit arbitrary actions. An example of an arbitrary action is the award of a construction contract, using the competitive sealed bids method of procurement, to a bidder other than the lowest responsive, responsible bidder.

5.0 AUTHORIZED METHODS OF PROCUREMENT; SELECTION

A. Selection

As part of the procurement initiation process, the Procurement Officer will determine which method of procurement is appropriate.

B. Authorized Methods

The following methods of procurement may be used, as appropriate, in accordance with the policies and procedures included in the Procurement Manual for all federal and non-federal procurement actions contemplated under this Procurement Manual:

1. Micro Purchase Procedures, pursuant to Chapter 6 of this Manual;
2. Small Purchase Procedures, pursuant to Chapter 6 of this Manual;
3. Competitive Sealed Bid (“Low Bid”), pursuant to Chapter 3 of this Manual;
4. Competitively Negotiated Procurement, pursuant to Chapter 5 of this Manual;
5. Non-Competitive and Emergency Procurement, pursuant to Chapter 7 of this Manual; and
6. Alternate Delivery, pursuant to Chapter 4 of this Manual.

6.0 INDEPENDENT COST ESTIMATE

A. An independent cost estimate is a determination of price reasonableness. An estimate shall be completed prior to the receipt of bids or proposals. Key elements of the independent cost estimate include, but are not limited to:

1. Date of the independent cost estimate;
2. Basis for the independent cost estimate, including applicable supporting documentation; and
3. The value determined by the independent cost estimate.

B. The method and means of establishing the estimate may vary based on the circumstances and can range from checking historical records or published price guides to a detailed estimate in the same level of detail that is required for contractors submitting proposals. Estimates can be obtained from a design firm or in-house technical personnel for construction work or from independent third-party staff (not impacted by final procurement).

C. The estimate provides the Procurement Officer with essential input during the solicitation process. Independent cost estimates may be used by the [Agency Commission](#) to:

1. Provide a determination of value (i.e., do benefits warrant the cost);
2. Support procurement planning;
3. Determine the appropriate solicitation type and process based on the approval limits set forth in Chapter 2, 1.0(G);

4. Establish the competitive range and supplement the evaluation process;
5. Provide a basis for a price analysis, which may eliminate the need for a more burdensome cost analysis;
6. Provide a basis for development of a pre-negotiation objective;
7. Support ~~the Agency's~~the Commission's negotiation position with contractor; and/or
8. After contract award, provide essential input with respect to contract amendments, change orders and claims.

7.0 COST/PRICE ANALYSIS

- A. A cost/price analysis shall be performed in connection with every federally funded procurement action, including contract modifications, and should be conducted for non-federally funded procurements. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.
- B. If the contract being awarded is a cost-reimbursement type, the cost/price analysis shall address the *realism* of the various cost elements proposed, and where the costs are unrealistically low, an adjustment shall be made to reflect what the ~~Agency~~Commission believes the effort will actually cost given that offeror's specific technical approach as well as its direct and indirect cost rates.
 1. The ~~Agency -Commission~~ shall, when applicable, or must, if required by law, utilize the guidelines provided in the FAR Part 31 to determine whether of the contractor's proposed costs are reasonable, allowable and allocable.
- C. As applicable, the ~~Agency~~Commission shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all applicable cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

8.0 VENDOR CONTACTS PRIOR TO ISSUANCE OF A SOLICITATION

- A. Informational and market research contacts with prospective contractors/vendors should be circumscribed based upon legitimate, identifiable business purposes and guided by the exercise of sound judgment. The primary pitfalls to be avoided are promises or implications from Commission staff of a future contract, development by a vendor of a specification or scope of services to be used as part of an ~~Agency~~Commission solicitation that vendor intends to participate in, requests from Commission staff for complimentary services or supplies, and other activities that may create a real or apparent conflict of interest or the impression of an obligation on the part of ~~either Agency.the Commission.~~

9.0 ADVERTISING/PUBLICIZING PROCUREMENTS

- A. The Procurement Officer should use the most efficient and effective means to publicize contract actions to increase competition in accordance with the requirements of the specific procurement.
- B. PUC § 130232, applicable to the purchase of all supplies, equipment, materials and for the construction of all facilities and works by the Commission when the expenditure exceeds twenty-five thousand dollars (\$25,000), requires that notice requesting bids shall be published at least once in a newspaper of general circulation. The publication must be made at least 10 days before the date for the receipt of the bids. The Commission, at its discretion, may reject any and all bids and re-advertise.
- C. PUC § 130238 for the purchase by the Commission of computers, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus that is not available in substantial quantities to the general public requires (i) the procurement be conducted through competitive negotiation, after a finding by the Commission by a two-thirds vote that this particular procurement qualifies under PUC § 130238, and (ii) notice of the request for proposals be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.
- ~~C.D.~~ PCC § 20161 defines public projects of the Authority as (i) the erection, improvement, painting, or repair of public buildings and works; (ii) work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; (iii) street or sewer work excluding maintenance or repair; or (iv) purchase of supplies or materials for any of the foregoing, as well as maintenance or repair of streets or sewers, when the expenditure exceeds five thousand dollars (\$5,000). PCC § 20164 requires that for Authority public projects, notice requesting bids shall be published at least twice in a newspaper of general circulation, not less than five days apart. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.
- ~~D.E.~~ Federal Transit Administration
- Section 9.c of FTA Circular 4220.1F requires that invitations for bids are to be "publicly" advertised, and Section 9.d of FTA Circular 4220.1F requires that requests for proposals are to be publicized.
- ~~E.F.~~ Caltrans and Federal Highway Administration (FHWA)
- Chapter 15, paragraph 15.4 Project Advertisement, of the Caltrans Local Assistance Procedures Manual provides detailed guidance regarding advertising of FHWA- and/or Caltrans-funded projects.
- ~~F.G.~~ Pre-solicitation advertising prescribed in this section is not required for non-competitive, sole source, or emergency procurements processed in accordance with this Manual.

10.0 NON-DISCRIMINATION IN PROCUREMENT

- A. All formal contracts entered into by the ~~Agency Commission~~ should contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

11.0 ORGANIZATIONAL CONFLICTS OF INTEREST

- A. An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor itself developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with applicable state and federal laws and regulations, a contractor that develops or assists in developing specifications, requirements, statements of work, invitation for bids, and/or request for proposals for an ~~Agency Commission~~ procurement is excluded from competing for the resultant procurement, unless an appropriate waiver is issued by the ~~Agency Commission~~. All waivers will be assessed by the ~~Agency Commission~~ on a case-by-case basis.

12.0 DUTIES OF COMMISSION STAFF REGARDING PROCUREMENTS

A. General

Procuring goods, services, and contracts for the ~~Agencies Commission~~ must be a cooperative effort, and it will be the responsibility of all Commission staff involved in procurement to employ sound business judgment and appropriate standards of ethics and fairness to procure goods and services in a manner most advantageous to ~~each Agency the Commission~~. All employees and departments are instructed to follow the procedures set forth in the Manual, as well as any instructions issued by the Procurement Officer regarding procurements.

1. For FTA-funded procurements, the user department should consider use of the FTA checklists provided in FTA Circular 4220.1F, Appendix C, which address, among other things, undue restrictions on competition, when use of brand name or equal is permitted, and other FTA requirements and limitations.
 2. For FHWA and Caltrans-funded procurements, the user department shall use the Caltrans' Local Assistance Procedures Manual for guidance and shall ensure that appropriate ~~Agency Commission~~ procurement and contract forms for the relevant funding source are used.
- B. In order to initiate a procurement action (including amendments, procurements, exercising of available options, etc.), the user department/project manager should, at a minimum, provide the Procurement Officer with the following items, as applicable:
1. Specification, Scope of Services, or Statement of Work. For a new procurement, a complete and clearly written specification, purchase

description, or statement of work suitable for either competition or for negotiation with a sole source contractor, if justified.

For competitive procurements, the description must not (for federally funded procurements) and should not (for non-federally funded procurements) contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. For federally funded procurements, detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must (for federally funded procurements) and should (for non-federally funded procurements) be clearly stated.

2. Changes. Changes to existing contracts, including amendments and construction change orders, must be documented pursuant to a written amendment or written construction change order, as applicable, executed by the appropriate parties, and should comply with the following.

- a. Amendments

If a contract amendment has been negotiated based upon an existing advanced pricing arrangement or labor rates/categories included in the underlying agreement, the user department/project manager should provide the Procurement Officer with a copy of the final negotiated scope of services for the extra work, associated pricing terms, and/or schedule.

- b. Construction Change Orders

Construction change orders should follow the procedures established by the Capital Projects Department, [including the Toll Program](#), and applicable contract specifications. Documentation of the change order does not need to be provided to the Procurement Officer, but should be maintained by the user department/project manager as specified herein. If a construction change order has been negotiated based upon an existing advanced pricing arrangement or labor rates/categories included in the underlying agreement, the user department/project manager should maintain a record of the change order and supporting documentation in the project files including an independent cost estimate and cost and/or price analysis, as applicable.

- i. Any change order must be administered in accordance with its terms, and appropriate documentation must be generated and

maintained supporting payment in accordance with state or federal requirements, as applicable.

- ii. All change orders must be signed by a Commission employee who is a registered civil engineer.
- iii. Any change order in excess of \$100,000 also requires approval as follows:
 - a) \$100,000 to \$250,000 by the Project Delivery Director or Toll Program Director; or by the
 - a)b) Greater than \$250,000 by the Executive Director.
- iv. Any change order that will increase the total contract value to an amount that exceeds the contractual authority approved by the applicable Agency Commission may not be executed until additional contractual authority has been obtained through the Agency Commission.
- v. The Capital—Projects Delivery Director and/or Toll Program Director, as applicable, is responsible for determining that change orders are processed and approved in accordance with departmental and contractual requirements.

c. Changes to Federally Funded Contracts

For federally funded contracts, findings must be included in the project file that the change is in the general scope of the original contract. A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect the contractor is required to perform very different work from that described in the original contract, is considered a “cardinal change” or “tag-on” contract, and is not permitted unless it meets the requirements of Chapter 8, Section 3.0.

- 3. Agreement Summary Sheet. The user department/project manager must provide a complete and executed Agreement Summary Sheet for all procurement actions, including applicable small purchases, formal procurements, MOUs, agreements, change order modifications and the like. The Agreement Summary Sheet identifies the nature of funding for the subject goods/services, provides a record that the requirement was budgeted and properly approved before the procurement process began, and ensures that the procurement action is assigned a unique agreement number for purposes of contract administration, payment, and recordkeeping.
- 4. Cost Estimate. The user department/project manager shall provide the Procurement Officer with a cost estimate for the anticipated procurement of goods/services. See paragraph 6.0 above for additional guidance regarding the development of an independent cost estimate.

5. Justification for Sole Source/Non-competitive Procurement (if applicable).
The user department/project manager must prepare and submit to the Procurement Officer a written statement recording all the facts that provide justification for avoiding mandated competitive procurement practices explicitly defined in this Manual and/or required by relevant state and federal law in favor of a non-competitive/sole source award. The Procurement Officer must approve the sole source procurement methodology before the procurement can proceed. If the procurement is funded with state or federal funds, the appropriate findings required by the applicable funding entity must be made. For Caltrans or FHWA funded contracts, a Public Interest Finding (PIF) must be approved by the appropriate funding entity.

13.0 INSURANCE

- A. Contractors providing goods and services should be required to carry sufficient insurance to protect the Agency-Commission from third party lawsuits for personal injury (including death) and property damage. Insurance may also be required for damage to the Agency's Commission property and for errors and omissions in the provision of professional services.
- B. The following types of procurement actions should be reviewed by the Procurement Officer for appropriate levels, types and limits of coverage on a case-by-case basis:
 1. All operations and non-operational construction contracts.
 2. All professional services contracts.
 3. All contracts where work will be performed within "50 feet" of railroad.
 4. All environmental contracts, including engineering services.
 5. All procurement contracts and/or purchase agreements where outside vendors will be conducting work or performing installation services on Agency Commission premises.
 6. All procurement contracts and/or purchase agreements where outside vendors will be delivering products to an Agency-Commission facility.
- C. The contract documents should ensure that the Agency's Commission contractors will be required to comply with insurance requirements imposed by state and local governments.
- D. At a minimum, the contract documents should require the contractor and subcontractor to carry general liability, workmen's compensation, and automobile insurance coverages for public works contracts.
- E. In certain limited cases, the Procurement Officer may permit the contractor to substitute an approved program of self-insurance in order to obtain such approval. The contractor will have to demonstrate that it can sustain the potential losses being self-insured.

- F. The Procurement Officer should include insurance and indemnification provisions in equipment, supply, and services contracts in accordance with [the Commission](#) policies described herein.

14.0 SUBCONTRACTING

- A. The [AgencyCommission](#) may consider requiring a prime contractor to perform certain tasks or a minimum percentage of the work, in order to ensure that the prime contractor maintains a specified degree of control over the project.
- B. Approval of contractor proposed subcontractors usually involves an evaluation of three primary areas:
 - 1. Assurance that the prime contractor has included the required “flow-down” provisions (clauses) from the prime contract in the subcontract.
 - 2. The prime contractor’s compliance with the Disadvantaged Business Enterprise (DBE) requirements in its prime contract.
 - 3. Assurance that the prime contractor has selected its critical subcontractors in a prudent fashion, so as to protect the [AgencyCommission](#)’s interests.

15.0. DETERMINATION OF FAIR AND REASONABLE PRICE

- A. The Procurement Officer should determine, in writing, that the price to be paid to the successful offeror is fair and reasonable. Typically, adequate price competition is sufficient to establish price reasonableness; however, price reasonableness may also be established through:
 - 1. Prices established by law or regulation;
 - 2. Published catalog or market price for commercial product sold to the public in substantial quantities;
 - 3. Previous or relevant historical pricing for same or similar terms;
 - 4. Valid cost estimate;
 - 5. Value analysis; or
 - 6. Cost/price analysis.
- B. Single Offer/Lack of Adequate Competition
 - 1. Upon receiving a single bid or single proposal in response to a solicitation, the Procurement Officer should determine if competition was adequate.
 - a. Such determination should include a review of the specifications for undue restrictiveness and may include a survey of potential sources that chose not to submit a bid or proposal.
 - b. If the results of the review are that the scope of work was so restrictive that only one firm could have responded, then there is a lack of competition. The Procurement Officer should (1) cancel and re-procure the solicitation or (2) treat the solicitation as a sole source procurement, if it meets the requirements of Chapter 7 of this Manual.

- c. If the results of the review are that the scope of work was not restrictive and more than one firm could have responded, then there is adequate competition. The Procurement Officer may recommend an award of the agreement to the single offeror, as determined by the [Agency Commission](#), in accordance with this Manual and in accordance with applicable legal requirements.
2. When the price variance between multiple responses reflects a lack of adequate competition, the Procurement Officer may re-solicit quotes or, if appropriate, recommend an award of the agreement to the lowest or best offeror, as determined by the [Agency Commission](#), in accordance with this Manual and in accordance with applicable legal requirements.
3. A recommendation for award under either of the above circumstances should include a statement in the contract file giving the basis for the determination (e.g., that there was adequate competition and/or the pricing terms are fair and reasonable).

16.0 CONTRACT APPROVAL, AWARD, AND EXECUTION

- A. Following authorization for contract award by the [Agency Commission](#), the following actions should be taken:
 1. The Procurement Officer requests all ~~Agency Commission~~ required documents and contract contingency requirement (e.g., bonds, proof of insurance) from the successful contractor.
 2. The Procurement Officer conforms and sends copies of the final contract or amendment to the contractor for signature, and obtains the appropriate [Agency Commission](#) authorization by ensuring full execution of the contract.
 3. The contract or amendment may be executed in one or more counterparts. The Procurement Officer may accept facsimile signatures, including signatures transmitted via electronic mail, as original signatures. ~~If the Agency Commission adopts an e~~Electronic signatures may be used, and ~~policy,~~ the Procurement Officer may accept electronic signatures in accordance with adopted Agency policy.
 4. After full execution of the contract and the contractor's submittal of the required contract contingency items, unless otherwise agreed, the Procurement Officer coordinates with the user department/project manager to prepare a "Notice to Proceed" letter, if required.
 5. The Procurement Officer transmits a fully executed contract to the contractor. Conformed copies should be sent to the project manager for use in the administration of the contract.
 6. Contract Administration Responsibilities

- a. The user department/project manager conducts all further coordination on technical issues between the contractor and the Agency Commission, subsequent to the issuance of the “Notice to Proceed” letter.
- b. Issues affecting the business or legal terms in the contract and/or requests for modification or supplemental agreements to the contract should immediately be brought to the attention of the Procurement Officer.
- c. The contract and all documents pertaining thereto should be maintained by the Procurement Officer, except for construction change orders which will be maintained by the project management team.

17.0 PROTEST PROCEDURES

- A. Under formal procurement processes described under this Manual, an interested party that has timely submitted a bid or proposal in response to any procurement of the Agency Commission may file a protest, to the applicable Agency, objecting to the award of a contract.
- B. In order for a protest to be considered properly and timely filed, the protest must:
 - 1. Be filed in writing with the Executive Director ~~of the Commission~~, within seven (7) calendar days after (i) all requests for clarifications and requests for approved equals have been answered by the Agency Commission or, if no requests for clarification or approved equals are received, after the period for requests for clarifications or approved equals has closed; (ii) after the Agency Commission takes action, or such other time period as may be specified in the solicitation document; or (iii) the date certain contained in the solicitation for any solicitation for which a contract award is not made by the Agency Commission.
 - 2. Be filed by an actual bidder or proposer responding to the procurement and signed by a properly authorized representative. No other party has standing to protest or is considered an interested party.
 - 3. Identify the specific procurement number involved.
 - 4. Identify the specific recommended action or decision being protested.
 - 5. Specify in detail the grounds for the protest, the facts supporting the protest and the status of the protester.
 - 6. Include all relevant supporting documentation with the protest at the time of submittal.
 - 7. Describe the resolution to the protest desired by the protesting party.

If a protest does not comply with each of the seven (7) requirements listed above, the protest will not be considered and will be returned to the protester.
- C. The Procurement Officer will attempt to resolve a properly filed protest or perform additional fact-finding, including establishing a protest evaluation team to evaluate the merits of the protest. The Procurement Officer, in consultation with Agency the Commission's General Counsel, will prepare a recommended resolution of the

protest for consideration by the Executive Director. The Executive Director will review the recommendation of the evaluation team and will render a determination to uphold or deny the protest.

- D. If the Executive Director's decision is to deny the protest, the solicitation may be continued without further delay or the contract will be recommended to the applicable Agency Commission for award, or executed, if previously awarded by the Agency Commission subject to resolution of the protest. If the Executive Director's decision is to uphold the protest, a recommendation will be made to the applicable Agency Commission to amend the solicitation and the date for receipt of proposals or bids, reject all proposals or bids, cancel the request for proposals or invitation for bids and solicit new proposals or bids, award the contract to another proposer, or other such actions as he/she deems appropriate.
- E. The Executive Director's decision shall be final, and there shall be no further administrative recourse at the local level, except for protests related to federally funded procurements.
- F. The procedures set forth in this Chapter 2, Section 17.0 are not intended to reduce or restrict protest rights specifically provided under applicable funding agreements, or state or federal laws authorizing the use of money funding applicable contracts.
 - 1. In any procurement involving FTA funds, the Procurement Officer shall, if required by FTA, disclose information regarding the protest to FTA and ~~shall~~ keep FTA informed about the status of the protest.
 - 2. An interested party that has filed a protest must exhaust all administrative remedies with the Agency Commission before pursuing a protest with FTA.
- G. A debrief will be available for proposers to whom award was not made, for a period of ten (10) days following award of the contract by the Agency Commission.

18.0 PUBLIC RECORDS REQUESTS

- A. All requests for procurement related records and/or information must be submitted to the Clerk of the Board for appropriate action. Procurement related records should not be disclosed as public information until staff recommendation for award has been forwarded to all interested parties or as otherwise appropriate under the California Public Records Act and applicable state and federal laws, guidelines and requirements.

CHAPTER 3 – COMPETITIVE SEALED BIDS (“LOW BID”)

- A. PUC § 130232, applicable to the Commission, requires that the purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), must be by competitive sealed bidding, also known as “low bid”, contracting, with the contract let to the lowest responsive, responsible bidder. Notice requesting bids must be published in at least one newspaper of general circulation. The publication must be made at least ten (10) days before the date for receipt of bids; ~~however, based on the nature of the procurement, a longer period of time shall be provided, as necessary, to ensure that bidders are allowed adequate and sufficient time to prepare bids before the date of bid opening. The resulting contract will be a fixed price contract.~~
- B. PCC § 20160, et. seq. requires that public projects of the Authority, as defined in PCC § 20161 and as set forth in Chapter 2, Section 9.D of this Manual, when the expenditure required exceeds five thousand dollars (\$5,000), must be by low bid, with the contract let to the lowest responsive, responsible bidder. PCC § 20164 requires that for Authority public projects, notice requesting bids shall be published at least twice in a newspaper of general circulation, not less than five days apart. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids.
- C. Notwithstanding the notice periods above, based on the nature of the procurement, a longer period of time shall be provided, as necessary, to ensure that bidders are allowed adequate and sufficient time to prepare bids before the date of bid opening. The resulting contract will be a fixed price contract.
- ~~B-D.~~ In order for competitive sealed bidding to be most effective, the following conditions should be present in the development of an Invitation for Bids (IFB):
1. A complete, adequate and sufficiently generic specification is developed;
 2. Adequate competition is available in the marketplace (two or more responsive and responsible bidders will compete); and
 3. The procurement lends itself to a firm-fixed price contract.
- ~~C-E.~~ Discussions and Communications
1. Bids shall be evaluated without discussions with bidders.
 2. Information concerning proposed procurements should not be released outside the Agency Commission before an IFB is released, except for pre-solicitation notices and publicly available general project information.
- ~~D-F.~~ Pre-Bid Conferences
1. The Contracting Officer may use pre-bid conferences to explain procurement requirements.
 2. If the Agency Commission requires any type of mandatory pre-bid conference, site visit, or meeting, the IFB should include the time, date, and

location of the mandatory pre-bid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory pre-bid site visit, conference or meeting should be no sooner than a minimum of five (5) calendar days following the publication of the IFB.

E.G. Bid Addenda

1. If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other items, or to correct a defective or ambiguous IFB, the change should be accomplished by addendum of the IFB.
2. Addenda to an IFB should be identified as such and should require the bidder to acknowledge receipt of all addenda issued.

F.H. Time Of Bid Receipt

The IFB ~~must~~ should specify a time for receipt of bids. Bids must be received in the office designated in the IFB or be submitted electronically through the electronic bid management system used by the Agency for the applicable procurement not later than the time identified in the IFB. For electronically submitted bids, the Agency will only consider bids that have transmitted successfully and have been issued a confirmation number with a time stamp from the electronic bidding system indicating that the bid was submitted successfully.

G.I. Late Bids

Unless otherwise specified in a particular bid solicitation, bids are considered late based on the time clock at the 3rd floor Commission Receptionist Desk, located at 4080 Lemon Street, Riverside, CA 92501 or, as applicable, as determined by the electronic bid management system. Bids are considered late if the time stamped by the ~~Agency~~ Commission upon receipt of the bid is later than the deadline/time identified in the IFB. If the procurement is pursuant to an electronic bidding process, the electronic bid management system will not accept bids submitted later than the deadline/time identified in the IFB. Late bids will not be accepted by the ~~Agency~~ Commission, unless a bid is late owing solely to ~~Agency~~ Commission mishandling or some other legitimate extenuating factor, as determined in the ~~Agency~~ Commission's sole discretion.

H.J. Receipt Of Bids

As bids are received, the Procurement Officer should secure and safeguard the bids until the established time for bid opening. For electronic bids, the electronic bid management system ensures that the bids are not accessible until the time for bid opening.

I.K. Opening Of Bids

The Procurement Officer will coordinate the bid opening. Bids may be opened electronically through the electronic bid management system, or . ~~All bids over \$25,000 for supplies, equipment, and materials and the construction of all facilities~~

~~and works received prior to the bid submission deadline~~ will be publicly opened, read aloud to the persons present, and recorded. Bids may also be publicly opened via webconference or videoconference, as may be appropriate based on the circumstances. Bid opening documentation should include the date, time, and place of bid opening, if applicable, and a tabulation of bidder names and related bid amount. ~~Such bid opening documentation should include the signature of at least one witness.~~

J.L. Recording Of Bids

Construction bids over the small purchase threshold of \$25,000 for the Commission and \$5,000 for the Authority that are publicly opened will be recorded on a bid summary or bid tabulation sheet. The Procurement Officer should certify the accuracy of the bid summary sheet by placing his/her signature thereon. The ~~Commission's~~ Procurement Officer should ensure that these results are posted on the applicable Agency Commission internet site within a reasonable time after bid opening.

K.M. Tie Bids

If two or more responsible and responsive bids are received for the same total or unit price, quality and service being equal, the Agency Commission shall establish a date and time to draw lots, which shall be accomplished by tossing a coin or pulling bidder names out of a hat, to determine the winner. Using the lottery method, the Agency Commission shall:

1. Advise the tied bidders in writing that a tie has occurred, advise them a winner will be determined by drawing lots, and invite them to attend the drawing.
2. Conduct the drawing of lots on the date and time previously established with at least two individuals as witnesses. The procurement file should reflect the names, titles, and departments of the witnesses. If the witnesses are not Commission staff, the name, organization, address, and telephone number of the individuals should be listed.
3. Declare the winner of the drawing of lots as the apparent low bidder for bid evaluation and award purposes.

L.N. Alternative Sources of Procurement Authority

Notwithstanding the requirements of PUC § 130232 or PCC 20160, et. seq., and the provisions set forth in this Chapter, the Agencies Commission may use Cooperative Agreements (as described in Chapter 1, Section 6.0) where such use is otherwise permitted by law.

CHAPTER 4 – ALTERNATE DELIVERY CONTRACTS

1.0 PURPOSE

- A. For the purposes of this Chapter, “Design-Build” means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

For the purposes of this Chapter, “CM/GC” means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The structure of the contract for such services is within the discretion of the [AgencyCommission](#).

For the purposes of this Chapter, “Alternate Delivery Method” means Design-Build, CM/GC or any other alternate method of project procurement or delivery which the [AgencyCommission](#) is authorized by law to utilize.

- B. As set forth in PCC Section 6820, et. seq., the Commission is authorized to utilize Design-Build for projects on or adjacent to the state highway system, including related non-highway portions of the project, based on either best value or lowest responsible bid.
- C. As set forth in PCC Section 6700, et. seq., the Commission is authorized to utilize the Construction Manager/General Contractor (CM/GC) method, contingent upon delegation of authority by Caltrans, for two highway projects in Riverside County.
- D. As set forth in AB 115 (Chapter 20, Statutes of 2017), the Commission is authorized to utilize CM/GC for the 91 Toll Connector to Interstate 15 North project.
- E. As set forth in PCC Section 6700, et. seq., the Commission is authorized to utilize CM/GC method for certain expressways that are not on the state highway system, provided that the required findings are made, consistent with PCC Section 6701, and the Commission adopts the CM/GC method.
- F. As set forth in AB 115 (Chapter 20, Statutes of 2017), the Commission is authorized to amend or change any existing contract for the Interstate 15 express lanes construction project or the State Highway Route 91 express lanes to include work or services on the 91 Toll Connector to Interstate 15 North project, if the Commission, with the concurrence of Caltrans, finds that to be a cost-effective method to accelerate the delivery of that project.

2.0 PROCEDURES FOR ALTERNATE DELIVERY CONTRACTS

- A. The Executive Director may adopt any lawful methods, procedures and criteria that he or she determines are in the best interest of [each Agencythe Commission](#).

- B. The Toll Program Director, through coordination with the Procurement Officer, will prepare documents for the solicitation of proposals for highway-related Alternate Delivery procurements by the Commission.
- C. Where an Alternate Delivery Method does not require a solicitation of proposals, the Toll Program Director shall, through coordination with the Procurement Officer, prepare the contract documents for such procurement by the Commission.
- D. Contract documents for an Alternate Delivery Method to be used by the Authority shall be prepared as directed by the Procurement Officer.
- E. The documents prepared for Alternate Delivery procurements shall control over any conflicting provisions contained herein.
- ~~FE.~~ The Commission shall use a procurement method permitted by law and appropriate for the elements of the services (design v. construction) representing the preponderance of work and having the greatest cost, even though other necessary services would not typically be procured by that method. For example, the construction costs of a Design-Build project are usually predominant, so the Commission would use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures.
 1. The use of the Design-Build procurement method for FTA-funded projects shall comply with FTA Circular 4220.1F, Section VI.3.h.
 2. The use of the Design-Build procurement method for FHWA-funded projects shall comply, as applicable, with any requirements specified by Caltrans in the relevant project agreements.

CHAPTER 5 – COMPETITIVELY NEGOTIATED PROCUREMENTS

1.0 NEGOTIATED PROCUREMENTS—GENERAL

- A. This Chapter outlines the [Commission's](#) procedures for competitively negotiated procurements for contracts:
 - 1. Not legally required to be procured through the low-bid competitive procurement method pursuant to PUC §130232 [as applies to the Commission, or PCC § 20160, et. seq., as applies to the Authority](#); and
 - 2. Intended to be awarded on the basis of both price and non-price factors.
- B. A procurement is “negotiated” if discussions, negotiations, or other exchanges between the [AgencyCommission](#) and the offerors are anticipated and planned in order to maximize the [AgencyCommission](#)’s ability to communicate, understand, and obtain the best value for contract award.
 - 1. The exchanges involve bargaining, persuasion, alteration of assumptions and positions, and give-and-take applied to price, schedule, technical requirements, type of contract, and other proposed terms.
 - 2. The exchanges after establishment of the competitive range of price and terms are done with the intent of allowing the offeror to revise its proposal, once and potentially several times.
- C. Though not an all-inclusive listing, competitively negotiated procurements can be used for the following types of procurements:
 - 1. Professional services contracts for non-architect-engineer related services; miscellaneous service contracts;
 - 2. Architect-Engineer and related services contracts as further defined and subject to the limitations specified in Section 6.0 of this Chapter;
 - 3. Specialized equipment, computers, telecommunications equipment, microwave equipment and other related electronic equipment and apparatus; or
 - 4. Best Value, Alternate Delivery contracts described in Chapter 4.

2.0 SOURCE SELECTION TECHNIQUES

- A. The Procurement Officer can choose from a range of source selection techniques for the competitively negotiated process based on:
 - 1. What is suitable for the specific circumstances of a requirement, and
 - 2. Which technique provides the best opportunity to tradeoff price/cost and qualitative benefits in order to gain the best value for the [AgencyCommission](#).
- B. In acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, and excluding contracts for

Architect-Engineer and related services, cost or price may play a dominant role as a significantly important evaluation factor for award.

- C. On the other hand, the less definitive the requirement, a requirement for technical superiority, more development work required, or the greater the performance risk, then the technical or past performance considerations play a more dominant role as significantly important evaluation factors for award.
- D. The ~~Agency Commission~~ obtains best value in negotiated acquisitions by using any one or a combination of selection approaches wherein the relative importance of cost or price may vary with other non-cost or price factor(s). The Procurement Officer and user department/project manager shall select an approach that will provide the ~~Agency Commission~~ with the best offer based on the requirements, and on applicable legal requirements.
- E. All evaluation factors associated with a particular proposal shall be identified along with their relative importance. The Procurement Officer, in cooperation with the user department/project manager, may utilize explicit factors, price performance trade off, technically qualified/lowest price or other reasonable and appropriate means of evaluating proposers.
- F. Proposals will be solicited from an adequate number of qualified sources. In determining sources to solicit, the Procurement Officer should use all reasonable means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain maximum fair and open competition.

3.0 PROPOSAL EVALUATION

- A. The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of the Procurement Officer and/or the user department/project manager.
- B. The Procurement Officer shall establish a formal evaluation committee, of at least two persons, referred to as the "Evaluation Committee." The size of an evaluation committee should be (1) based on the size and complexity of the goods or services being procured and (2) well balanced and represented by individuals involved with the procurement and/or affected by the goods or services being procured. The Evaluation Committee will be charged with responsibility for evaluating proposals, short listing firms, establishing a competitive range, and/or recommending a firm or firms for contract award.
 - 1. Personnel engaged in the evaluation process shall not discuss or reveal information concerning the evaluations except to those individuals participating in the same proceedings and only to the extent that information is required in connection with such proceedings.

2. Divulging information during the evaluation, selection, and negotiation phases to offerors or to personnel not having a need to know is prohibited as it could jeopardize the evaluation process and resultant award.
- C. The Evaluation Committee will evaluate each proposal in accordance with the evaluation criteria in the solicitation. The Evaluation Committee's selection decision is subject to the final approval of the [applicable Agency Commission](#) or the Executive Director, as required under this Manual.

4.0 REJECTION OF PROPOSALS

- A. The Evaluation Committee may reject all proposals received that are determined not to be in the competitive range, including those proposals made by offerors who refuse to execute any reasonably required representations and/or certifications.
- B. The Executive Director may, in his or her discretion, do any of the following (i) reject any or all proposals received, (ii) cancel the procurement process, and/or (iii) direct commencement of a new procurement process for the same services because:
 1. All otherwise acceptable proposals received are at unreasonable prices;
 2. The proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
 3. For other reasons, rejection is clearly in the [Agency Commission's](#) best interest.

5.0 NEGOTIATION; SELECTION

- A. The methods and procedures for selection and negotiation will be determined by the Procurement Officer, in coordination with the user department/project manager, and set forth in the request for proposals.

6.0 SPECIAL PROVISIONS APPLICABLE TO ARCHITECT-ENGINEER AND RELATED SERVICES

- A. This Section prescribes guidelines and requirements for the procurement of Architectural-Engineering ("A-E") and related services. A-E Services are defined as professional services of an architectural or engineering nature that are required by law to be performed by a registered or licensed architect or engineer. Related services include: land surveying and construction project management. For the procurement of A-E and related services, the Procurement Officer shall follow the procedures set forth in this Section 6.0, in addition to the pertinent procedures set forth elsewhere in this Chapter.
- B. If the procurement is for A-E and related services, the selection must be based on the demonstrated competence and qualifications of prospective contractors, and shall comply with Government Code 4525, et seq., and, when applicable, the laws and regulations that govern the procurement of design-related services with federal funds (see e.g., Title 23 U.S.C. 112, Letting of Contracts and 23 CFR 172, Administration of Engineering and Design Related Service Contracts). These services shall be acquired based on a two-step, sealed bidding procedure, whereby

qualifications are presented in a separate sealed envelope from a firm's price proposal. The proposals shall be evaluated based on qualifications only, and price negotiations shall then be commenced with the proposer determined by the Agency Commission to be most qualified. If the Agency Commission is unable to negotiate satisfactory terms, at a fair and reasonable price, with the proposer considered to be most qualified, then negotiations shall be terminated with that proposer and commenced with the next most qualified proposer. This process shall be continued with successive qualified proposers until agreement is reached that is determined to be fair and reasonable.

CHAPTER 6 – SIMPLIFIED PURCHASE PROCEDURES

1.0 GENERAL

- A. Procurement of materials, supplies, or services by each Agency ~~the Commission~~ should adhere to the procedures in this Manual, as described in Chapter 2, Section 1.G. The procedures ensure that the appropriate authorizations are secured for the type of procurement made, and that the minimum requirements associated with the materials, equipment, supplies or services requested are procured in a fair and open manner.
- B. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. These purchases should be made competitively except where it is in the best interests of the Agency ~~Commission~~ to accomplish such purchases non-competitively. Justification for such non-competitive procurement should be made, in writing, and maintained in the procurement record.

2.0 REQUIREMENTS FOR MICROPURCHASES

- A. If the purchase price for required supplies, equipment, services and/or materials is considered a micropurchase as defined in Chapter 2, Section 1.G, then multiple quotes are not required; however, such purchases should be fairly priced using a purchase technique that best serves the needs of the Agency ~~Commission~~, and rotated among commercial vendors offering competitive pricing.
- B. Micropurchases may be accomplished by securing one proposal or quotation from a commercial vendor offering supplies, equipment or materials to the public in substantial quantities and the price is deemed to be fair and reasonable.
 - a. For federally-funded procurements, the determination that the price is fair and reasonable and how the determination was derived must be included as documentation in the procurement file.
- C. If oral quotes are obtained, written record of the quotes should be retained. The record should include, at a minimum, vendor name, telephone number and address, name of person providing the quote, and terms.

3.0 USE OF SMALL PURCHASE PROCEDURES

- A. For small purchases as defined in Chapter 2, Section 1.G, staff should obtain a minimum of three (3) written quotations with reasonable efforts to include at least one Disadvantaged Business Enterprise (DBE) vendor if federally funds are utilized and, when practicable and appropriate, an award should be made on the basis of lowest price.
- B. For Commission public works projects (i.e., maintenance, repair or construction work), Authority public projects, -as defined in Chapter 2, Section 9.D of this Manual, and planned solicitations for services defined as small purchases in accordance with Chapter 2, Section 1.G, review by the Procurement Officer prior to the solicitation of quotes is required in order to ensure compliance with relevant insurance requirements, applicable legal mandates, e.g., insurance, bonding, prevailing wage, and payroll records.

- C. The Procurement Officer should use and/or authorize the Small Purchase Procedures that are most suitable, efficient, and economical based on the circumstances of each procurement and determine that the price is fair and reasonable.

4.0 PROHIBITED USE OF SMALL PURCHASE PROCEDURES

- A. The Procurement Officer and or Commission staff may not divide, split or fragment a procurement totaling more than the ~~Agency~~Commission's small purchase limitation into several purchases that are less than the limit in order to use the Small Purchase Procedures.

CHAPTER 7 – NON-COMPETITIVE AND EMERGENCY PROCUREMENTS AND REMEDIAL MEASURES

1.0 NON-COMPETITIVE PROCUREMENTS

- A. The non-competitive procurement of non-federally funded goods and services, which otherwise require competitive procurement may be authorized under one or more of the following circumstances, subject to any minimum AgencyCommission vote required by applicable law, or any other requirements of applicable law:
1. The AgencyCommission has advertised the contract as required by this Manual and has undertaken reasonable efforts to solicit potential contractors, but has determined that competition is inadequate;
 2. There is only a single source of supply available, or only one contractor is qualified to provide the service or product;
 3. The goods or services are to be provided by a government or other public entity;
 4. The goods or services are to be provided pursuant to an amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than to extend the term and/or increase compensation to provide for the extended term or for additional goods/services to be provided under substantially the same terms of the original contract), provided that such renewal, extension or amendment is authorized or permitted by the contract;
 5. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;
 6. The item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier or is required to maintain system operational compatibility and connectivity with the existing system(s);
 7. The contract is for employment services;
 8. The contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered;
 9. The AgencyCommission is piggybacking on an existing agreement between a contractor and any public agency or entity within the County of Riverside and/or the County of San Bernardino, or other public entities if: (a) the proposed AgencyCommission contract is for the same material scope of work as the other contract; (b) the proposed AgencyCommission contract contains substantially the same terms as the other contract; ~~and~~ (c) the other contract was competitively procured in accordance with requirements applicable to such other agency's procurements; and (d) the procurement is otherwise in compliance with legal requirements applicable to Agency.

10. The provisions listed under Chapter 8, Section 3.0 regarding federally funded sole source, non-competitive, sole source procurements are applicable; or
 11. Except as may otherwise be limited by applicable law, the Agency Commission determines that a non-competitive procurement is in the public interest and in the best interest of the Agency Commission.
- B. Except as limited by applicable law, the Executive Director shall have authority to determine that non-competitive procurements are permitted under paragraph A, subparagraphs (1) through (11) for contracts for amounts less than or equal to \$250,000. Commission Approval of the applicable Agency is required for contracts over \$250,000. Each decision to proceed with a non-competitive procurement must be supported by a written justification that is approved by the Executive Director or Procurement Officer, as required under this Manual.
 - C. The Procurement Officer will take action, whenever possible and in coordination with the user department/project manager, to avoid the need to continue to procure the same supply, service, or construction without competition.
 - D. A non-competitive or sole source procurement, where competition is legally required, should not be justified on the basis of any of the following circumstances:
 1. The lack of adequate advance planning for the procurement of the required commodities, services, or other items;
 2. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
 3. Pending expiration of budget authority.
 - E. The Procurement Officer should ensure that each non-competitive contract contains all of the required clauses, representations, and certifications, in accordance with the applicable laws, regulations, or Agency Commission adopted policy.
 - F. The Procurement Officer should ensure that proper records of each non-competitive procurement are maintained.

2.0 EMERGENCY PROCUREMENTS; REMEDIAL MEASURES

- A. The Agency Commission may award a contract on an emergency basis if the requirement is essential to deal with an existing emergency condition, as defined below in Paragraph “B”, and the Executive Director may award a contract when necessary as a remedial measure as defined below in Paragraph “C” or when permitted under Paragraph “D”. Such award by the Commission shall be made in compliance with PUC § 130234, as applicable. The emergency procurement of supplies or services and procurements as a remedial measure should be limited to quantities and time periods sufficient to meet the immediate threat and should not be used to meet long-term requirements.
- B. For purposes of an emergency procurement under this Chapter, an “emergency condition” is a situation (such as a flood, epidemic, riot, equipment failure, or any

other reason declared by the [Agency Commission](#)) which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:

1. The health or safety of any person;
2. The preservation or protection of property;
3. The continuation of necessary [Agency Commission](#) functions; or
4. Contract delays that could result in an increase to the cost of the project.

In the case of contracts for services, the Executive Director may declare the emergency condition.

- C. The Executive Director may authorize the expenditure of funds previously appropriated by the Commission for the direct purchases of goods and services, without following bid requirements (i) when a finding is made that immediate remedial measures are necessary to avert or alleviate damage to property, or to replace, repair, or restore damaged or destroyed property, of the Commission and are necessary in order to ensure that the facilities of the Commission are available to serve the transportation needs of the general public, and upon determining that available remedial measures, including procurement or construction in compliance with PUC § 130232, 130233, and 130234, are inadequate.

D. In addition, for procurements that are not subject to the PUC for the Commission, or the PCC for the Authority, the Executive Director may authorize and complete Agency procurements on a noncompetitive, emergency basis as necessary to address emergency conditions, as described herein.

~~D.E.~~ A contract procured on an emergency basis or as a remedial measure should not be modified to expand the scope or extend the time of the procurement unless a limited number of additional commodities, services, or other items are needed to fill an ongoing emergency requirement until regular procurement action procedures initiated under other Chapters in this Manual can be completed.

~~FE.~~ The Executive Director must, after an emergency expenditure in excess of his/her delegated signature authority, and after an expenditure necessary as a remedial measure, submit to the [Agency Commission](#) a procurement summary explaining the necessity for the expenditure.

~~GF.~~ The Procurement Officer should ensure that each emergency procurement contract and/or contract entered into as a remedial measure contains the required clauses, representations, and certifications, in accordance with the requirements of this Manual.

H. The Procurement Officer should ensure that proper records of each non-competitive procurement are maintained in accordance with the requirements of this Manual.

H.I. For a public project of the Authority, as defined in Chapter 2, Section 9.D of this Manual, the provisions above shall not apply. In such case, the Authority shall

comply with the provisions set forth in PCC § 20168 applicable to emergencies requiring the immediate expenditure of public money to safeguard life, health, or property.

3.0 WRITTEN JUSTIFICATION FOR EMERGENCY AND OTHER NON-COMPETITIVE PROCUREMENTS

- A. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the user department/project manager is required to prepare a written statement recording all of the facts that provide justification for proceeding with the non-competitive or emergency procurement.
- B. The Procurement Officer must approve the justification for all non-competitive procurements described under this chapter before such a procurement can proceed.

CHAPTER 8 – REFERENCES TO APPLICABLE LAWS /REGULATIONS

1.0 GENERAL

- A. This Manual lists references to the various federal, state, and local regulations, to which the Manual was written to conform and/or comply.
- B. The Procurement Officer will be responsible, in cooperation with the [Agency Commission's](#) General Counsel, for reviewing these references from time to time in order to review new requirements and to note updates to the existing regulations. Notwithstanding any provision of this Manual, updates or changes to existing law shall apply regardless of whether the Manual has been changed.
- C. The majority of Chapter 8 of this Manual applies to FTA and FHWA funding. Since the Authority does not use these funding sources, these sections are applicable to the Commission only. The Procurement Officer, in cooperation with General Counsel, will ensure that the Authority complies with procurement funding requirements applicable to any state or federal grants received by the Authority.

2.0 REFERENCES

- A. For the Commission capital projects and contracts for goods and services utilizing FTA or FHWA funds, the provisions included in the Manual will apply only to the extent that they do not conflict with FTA or FHWA requirements, including the standards of FTA Circular 4220.1F, or the most current version thereof, entitled “Third Party Contracting Requirements” or FHWA Form FHWA-1273 entitled “Required Contract Provisions Federal-Aid Construction Contracts.” In case of any conflict, the applicable federal standards shall govern. The foregoing documents, though not all-inclusive, set forth requirements that the Commission must comply with in the solicitation, selection and administration of contracts funded by the FTA and FHWA, respectively.
- B. For projects funded by Caltrans and/or FHWA, the selection process shall be in accordance with Caltrans’ Local Assistance Procedures Manual.
- C. FTA Circular 4220.1F (or the most current version thereof) sets forth the requirements the Commission must adhere to in the solicitation, award, and administration of its third party contracts. FTA Circular 4220.1F applies to all FTA grantees and subrecipients that contract with third parties under FTA assistance programs.
 - a. In addition to the requirements set forth in this Chapter 8, the FTA standards for competition are set forth generally in Chapter 1 hereof and the FTA procedures for competitive sealed bid (“low bid”) procurements and competitively negotiated procurements are set forth in Chapters 3 and 5 hereof, respectively.
- D. Some of the requirements include the following:
 - 1. Pre-Award Audits. A pre-award (pre-negotiation) audit shall be completed, as required based on the participating state or federal funds, for each consultant contract.

2. Brooks Act Provisions. The provisions of the Brooks Act (40 U.S.C. 544) require local agencies to award federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR, Section 172).
3. Required Contract Provisions/Forms.
 - a. Disadvantaged Business Enterprise
 - i. Notice to Proposers Disadvantaged Business Enterprise Information
 - ii. Standard Agreement for Subcontractor/DBE Participation
 - iii. Local Agency Proposer DBE Commitment (Consultant Contracts)
 - iv. Local Agency Proposer DBE Information (Consultant Contract)
 - v. Final Report-Utilization of DBE, First-Tier
 - vi. Subcontractor Listing
 - b. Federal Lobbying Restrictions, Title 31 U.S.C. Section 1352
 - i. Non-lobbying Certification for Federal-aid Contracts
 - ii. Disclosure of Lobbying
 - c. Financial Provisions.
 - i. Compliance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - ii. Compliance with 48 CFR, Chp. 1, Part 31, Contract Cost Principles and Procedures.
 - iii. Provisions required by Caltrans Master Funding Agreement. Caltrans/FWHA Authorization to Proceed. FHWA or Caltrans acting in FHWA’s behalf must give the local agency an “Authorization to Proceed” with a project prior to the performance of any work for which federal reimbursement is to be requested, including the pre-award audit. Copies of the “Authorization to Proceed” and the consultant contract must be retained in the project files for future audit purposes.
5. Veterans Employment. Pursuant to 49 U.S.C. 5325(k), the Commission shall ensure that contractors working on an FTA-funded capital project give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an

individual with a disability, or former employee. For FHWA-funded capital projects, the Commission shall comply with the veteran’s preference requirement, as set forth in 23 U.S.C. 114.

- E. Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to Agency contracts funded with federal or state funds, dependent on the specific funding source. ~~Commission contracts:~~

Federal Statute, Regulations, Policies, and Agreements	Subject
2CFR Part 200	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
49 CFR Part 26	Participation by Minority Business Enterprises; DBE Program
FAR Part 31	Contract Cost Principles and Procedures
FTA Circular 4220.1x	Third Party Contracting Requirements
FTA Circular 5010.1x	Grant Management Guidelines
FTA Master Agreement	Terms & Conditions of Grantee Administration of Projects Supported & Funded by the FTA
Caltrans Local Assistance Master Agreement	Terms & Conditions of Grantee Administration of Projects Supported & Funded by the FHWA or Caltrans
23 U.S.C. 114 / 23 CFR 633 23 U.S.C. 315 / 49 CFR 1.48	Form FHWA-1273 entitled “Required Contract Provisions Federal-Aid Construction Contracts.”
23 CFR 172	Procurement, Management, and Administration of Engineering and Design Related Services

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to both Agencies.

CA State Codes	Section(s)	Subject
Civil Code	9550-9566	Payment Bond
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	4525 et seq.	Architect & Engineering Services
Government Code	6250 - 6270	Public Records Disclosure
Government Code	5956 et seq.	Infrastructure Projects
Labor Code	1777.1	Debarment by California Labor Commissioner
Labor Code	1770-1780	Prevailing Wage, Work Hours, Certified Payroll Records, Apprentices
Public Contract Code	1103	Responsibility on Public Works Contracts
Public Contract Code	1104	Plans and Specifications
Public Contract Code	3300	Contractor’s License
Public Contract Code	3400	Brand Name OR Equal; Restrictive Clauses

CA State Codes	Section(s)	Subject
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	5100 - 5107	Relief of Bidders
Public Contract Code	6100 - 6610	Awarding of Contracts
Public Contract Code	6700 et. seq.	Construction Manager/General Contractor Authority
Public Contract Code	6820 et seq.	Design/Build Authority (applicable to Commission)
Public Contract Code	7100 - 7200	Contract Clauses, Non-Collusion Affidavit
Public Contract Code	9201 - 9204	Claims and Disputes
Public Contract Code	10335 et seq.	Service Contracts
Public Contract Code	20101	Prequalification
Public Contract Code	20103.6	Limitation on Architect's Indemnity Obligation
Public Contract Code	20103.8	Alternative Bids
Public Contract Code	20104-20104.6	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	22300	Substitution of Securities
CA State Codes	Section(s)	Subject
Public Utilities Code	130232 130239	Award of Contracts Based On Price or Price and Other Factors; Bid Security; Emergency Procurements; Advertising; Immediate Remedial Measures; Rejecting Bids
Public Utilities Code	130232(e)	Authorization of Executive Director for Bid Expenditures <\$50,000.
Public Utilities Code	130232(d)	Bid Security for Construction Work >\$25,000

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to the Commission only.

CA State Codes	Section(s)	Subject
<u>Public Contract Code</u>	<u>6820 et seq.</u>	<u>Design/Build Authority</u>
<u>Public Utilities Code</u>	<u>130232 - 130239</u>	<u>Award of Contracts Based On Price or Price and Other Factors; Bid Security; Emergency Procurements; Advertising; Immediate Remedial Measures; Rejecting Bids</u>
<u>Public Utilities Code</u>	<u>130232(c)</u>	<u>Authorization of Executive Director for Bid Expenditures <\$50,000.</u>
<u>Public Utilities Code</u>	<u>130232(d)</u>	<u>Bid Security for Construction Work >\$25,000</u>

Though not an all-inclusive listing, the following laws, regulations and code sections are applicable to the Authority only.

CA State Codes	Section(s)	Subject
Public Contract Code	20160, et. seq.	Low Bid Procurement of Public Projects; Bid Security; Emergency Procurements; Advertising; Rejecting Bids
Public Contract Code	22050	Emergency Contracting Procedures

3.0 FTA/FHWA-FUNDED PROCUREMENT BY NON-COMPETITIVE (SOLE SOURCE) PROPOSALS

- A. Notwithstanding any other provision herein, federally funded contracts must comply with the federal requirements for non-competitive or sole source procurements. Non-competitive or sole source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that amounts to a “cardinal change” or a “tag-on” as defined in FTA Circular 4220.1f that involves a major deviation from the original purpose is considered a sole source procurement on a federally funded contract that must comply with this paragraph.
1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, competitive sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. FTA/FHWA, as applicable, authorizes noncompetitive negotiations—e.g., if FTA/FHWA, as applicable, provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
 - d. After solicitation of a number of sources, competition is determined inadequate;
 - e. The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:
 - i. that such manufacturer or supplier is the only source for such item; and
 - ii. that the price of such item is no higher than the price paid for such item by like customers; or
 - f. Any other circumstance justifying sole source procurement set forth in the applicable federal rules and regulations.

2. For Caltrans or FHWA funded procurements, a PIF has been approved by the applicable funding entity.
3. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

4.0 DISADVANTAGED BUSINESS ENTERPRISE AND OTHER REQUIREMENTS

- A. In order to ensure the Commission’s compliance with the federal DBE Program on all applicable procurements funded with United States Department of Transportation (DOT) dollars, the Commission will make reasonable efforts to utilize disadvantaged business enterprises in compliance with applicable federal regulations.
- B. The Commission’s procurement process is structured to ensure that its DBE Program supports the Commission’s commitment to promote, foster and utilize disadvantaged business enterprises as required and defined by applicable federal regulations.
- C. As a condition of funding assistance, and in accordance with DOT DBE regulations published in applicable federal regulations, the Commission is required to submit for approval a DBE Program and regular DBE goals, which it will make good faith efforts to achieve through procurement actions carried out under this Manual.
- D. Pursuant to 2 CFR Part 200.321, the Commission shall also take affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible on federally funded projects.

5.0 GEOGRAPHICAL PREFERENCES

- A. For any federally-funded contracts, except when procuring A-E services, the Commission is prohibited from using statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals unless federal statutes expressly mandate or encourage geographic preference.

6.0 REVENUE CONTRACTS

- A. The Commission may enter into revenue contracts with a third party whereby the primary purpose is to either generate revenues in connection with a transit-related activity or create business opportunities utilizing an FTA-funded asset. The FTA requires such third party revenue contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the Commission.

7.0 STATUTORY AND REGULATORY REQUIREMENTS

- A. The Commission shall comply with applicable federal statutory and regulatory requirements (such as Davis-Bacon Act, DBE, Debarment and Suspension, Clean Air, Environmental and Conservation Requirements, Buy America and Cargo Preference) in carrying out federally-funded procurement actions under this

Manual. Below is a contract clause matrix that is applicable to third-party contract provisions for federally funded contracts, excluding micropurchases and except for Davis-Bacon requirements which apply to construction contracts exceeding \$2,000. The matrix should be reviewed at least annually for any regulatory changes.

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling - Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.	>\$10,000 if 2 CFR Part 200 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All >\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
* Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.
Veterans Hiring Preference				All	

Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
<u>TYPE OF PROCUREMENT</u>					
<u>Professional Services/A&E</u>	<u>Operations/Management</u>	<u>Rolling Stock Purchase</u>	<u>Construction</u>	<u>Materials & Supplies</u>	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
*Transit Employee Protective Arrangements		Transit operations.			
* Charter Service Operations		All			
* School Bus Operations		All			
* Drug Use and Testing		Transit operations.			
* Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

* Applies only to FTA funding

Caltrans Fiscal Provisions Checklist
All contract fiscal provisions must utilize the language specified by Caltrans and set forth in the LAPM sample contract language form. The clauses that must be used verbatim are for the items specified below (except as otherwise noted). Consult the LAPM form, and the latest RCTC model contract for Caltrans/FHWA funded projects.
Performance Period: Beginning date cannot be prior to the date Caltrans issues the conformance letter, if applicable.
Allowable Costs and Payments: The contract method of payment must be one of the four methods required as listed in Section 10.2 of the LAPM.
Termination: The provision must contain language regarding termination for cause and convenience Per 23 CFR 172.9 (c)(1)(xii).
Cost Principles and Administrative Requirements.
* Travel and subsistence in accordance with DPA regulations
* Maintain an accounting system that accumulates and segregates project costs
* Accounting system must conform to GAAP
Retention of Records/Audit.
Audit Review Procedures, including the Audit Clause. Ensure use of appropriate clauses for (i) contracts \$150,000 or greater; or (ii) contracts \$3,500,000 or greater.
Subcontracting
Equipment Purchase
State Prevailing Wage Rates.
Conflict of Interest.
Rebates, Kickbacks, or other Unlawful Considerations.
Prohibition of Expending State or Federal Funds for Lobbying.

* Specific provisions addressing these items are not included in LAPM form, but are required and are included in the RCTC model contract.

CHAPTER 9 – DISPOSAL OF SURPLUS PERSONAL PROPERTY

1.0 DEFINITIONS

- A. “Surplus personal property” shall mean personal property of the Agency Commission which is no longer needed or fit for its intended purpose or has exceeded its useful life.
- ~~B. “Surplus real property” shall mean real property of the Commission which is no longer needed for a specified project.~~

~~2.0 DISPOSAL OF SURPLUS REAL PROPERTY~~

- ~~A. Upon recommendation by the Executive Director, designated Commission staff may dispose of surplus real property in accordance with the RCTC Right of Way Policies and Procedures Manual.~~

23.0 DISPOSAL OF PERSONAL PROPERTY

- A. Upon recommendation by the Executive Director and in accordance with applicable state or federal funding requirements, designated Commission staff may dispose of all surplus and obsolete personal property by donation, bid, auction, negotiated sale or exchange. If the disposal of such items is conducted by bid, the sale shall be conducted in accordance with generally accepted best practices and applicable laws and regulations. The Commission staff shall attempt to obtain the best value for the property that can reasonably be obtained.

CHAPTER 10 – OTHER PROCUREMENT MATTERS

1.0 DISPUTES, CLAIMS, AND CHANGES—DEFINITIONS

- A. Change Orders – the commercial and technical resolution of a contract modification. The change order document can be unilateral or bilateral in execution.
- B. Potential Claim – written notice provided to the [Agency Commission](#) by the contractor when the:
 - 1. Parties are unable to reach bilateral agreement on a change and the contractor is provided a unilateral change order (“protest”); or,
 - 2. Contractor perceives that it is entitled to additional compensation (time or money) for something it believes to constitute extra work performed or to be performed.
- C. Claim – differences that have developed during the contract, under protest or under notice of potential claim, which are not resolved at the time the contractor returns the proposed final pay estimate.
- D. Dispute – a disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a disagreement regarding a Claim or asserted default.
- E. Amendment – a modification considered outside the original contract scope or terms and formalized with a written agreement signed by both parties.

2.0 DISPUTES, CLAIMS, AND CHANGES—GENERAL

- A. The Procurement Officer is responsible for documenting negotiation activities for the record, and should be present at all professional services and construction contract negotiations.
- B. The Procurement Officer or project manager, as required, prepares the appropriate documentation (e.g., change order forms) for review and approval by the [Commission’s](#) Executive Director or [Agency Commission](#), prior to issuance to the consultant/contractor for signature. This document includes full definition of work scope, impact on DBE goals, definition of time and schedule impacts, and price. The change order language stipulates that the agreed-upon terms are all inclusive, and no other relief will be available regarding this work.
 - 1. For federally-funded contracts, any damages recovered must be credited to the project involved unless the FTA/FHWA, as applicable, permits otherwise.
 - 2. For federally-funded contracts, change orders that amount to cardinal changes or tag-ons shall comply with Chapter 8, Section 3.0(A).

3.0 TERMINATION

- A. All [Agency Commission](#) contracts exceeding \$25,000 should contain provisions enabling the [Agency Commission](#) to terminate such contracts for the convenience

of the [AgencyCommission](#), and all federally funded contracts must contain such provisions. These provisions should specify the manner in which such termination will be effected and the basis for settlement. There should also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default.

B. Terminations for Convenience of the [AgencyCommission](#)

1. [AgencyCommission](#) –contracts will be terminated for convenience only when this is determined to be in the best interests of the [AgencyCommission](#). In lieu of issuing a notice of termination for convenience, the Procurement Officer will effect a no-cost settlement agreement where possible and appropriate.
2. Formal written notice to the contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date, the extent of termination and instructions to the contractor to cease performance under the contract.
3. The Procurement Officer will negotiate a no-cost settlement with the contractor if possible. Otherwise, the Procurement Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the termination for convenience clause of the contract.

C. Terminations For Default

1. If a contractor's right to proceed is terminated for default, the [AgencyCommission](#) may take over and complete the work or cause it to be completed, and the contractor and ~~his-its~~ sureties, if any, shall be liable to the [AgencyCommission](#) for any increased costs caused thereby. The contractor and ~~itshis~~ sureties should, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.
2. If the Procurement Officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Procurement Officer shall not terminate the contractor's right to proceed, nor shall he/she charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.
3. Where the surety does not complete performance of the contract, the Procurement Officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation; whichever procedure is most appropriate under the circumstances. The Procurement Officer must use reasonable diligence to obtain the lowest price available for completion.

4. If, after due consideration, the Procurement Officer determines that termination is not in the best interest of the AgencyCommission although the contractor is in default, the Procurement Officer may permit the contractor to continue the work, and the contractor and ~~his-its~~ sureties shall be liable to the AgencyCommission for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.
5. Any provision for a liquidated damages assessment must be at a specific rate per day for each day of overrun and must be specified in the contract.
 - a. For FTA-funded contracts, any damages recovered must be credited to the project involved unless the FTA permits otherwise.

4.0 BONDS, OTHER SECURITIES AND INSURANCE

- A. The AgencyCommission should specify bonding, in compliance with applicable federal and state requirements for all public works contracts.
 1. In general, all construction contracts over \$25,000 require a payment bond in the amount of 100% of the contract value.
 2. All FTA-funded construction contracts over \$100,000 require a performance bond in the amount of 100% of the contract value and a bid guarantee in the amount of no less than 5% of the contract value.
 3. ~~B~~For Commission, bids for construction of facilities where the work is anticipated to exceed \$25,000 require bid security as set forth in PUC § 130232.
 4. For Authority, bids for public projects where the work is anticipated to exceed \$5,000 require security as set forth in PCC § 20171.
- B. The Procurement Officer may require any of the following types of security for any solicitation or contract subject to this Manual, other than a small purchase, regardless of the estimated amount of the contract:
 1. Bid bonds;
 2. Other bid or proposal security;
 3. Construction performance and payment bonds; and
 4. Performance or payment bonds or other security on non-construction contracts.
- C. Requirement for Bonds To Be Executed By An Admitted Surety Insurer
 1. California Code of Civil Procedure § 995.311 calls for any bond required on a public works contract to be executed by an admitted surety insurer.
 2. The AgencyCommission has a duty to verify that an admitted surety insurer executes the bond. The Procurement Officer should print out information from the website of the California Department of Insurance

(<http://www.insurance.ca.gov/docs/FS-CompanyProfiles.htm>) confirming that the surety is an admitted surety insurer and attach it to the bond.

- D. For federally funded procurements, the ~~Agency Commission~~ shall not require unnecessary experience or excessive bonding.

5.0 CONTRACT CLOSEOUT

- A. A completed contract is one which is both physically and administratively complete and in which all aspects of contractual performance have been accomplished, terminated, or otherwise disposed of by contract modification. A contract is physically complete only after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the ~~Agency Commission~~, including those articles and services for which no specific compensation may have been stipulated. A contract is administratively complete when all payments have been made and administrative actions accomplished.
- B. The project manager, in cooperation with the Procurement Officer, is responsible for review of the contract file and obtaining all necessary documentation to ensure that: (1) all deliverables and/or services (including any reports) required under the contract have been received and accepted; (2) the terms and conditions of the contract have been complied with; (3) disposition of accountable property under the contract has been accomplished; all necessary actions including final payment and releases required to close the contract are completed and documented.
- C. Small purchase files should be considered closed when the Procurement Officer receives evidence of receipt of property and final payment.
- D. A contract file should not be closed in any of the following situations:
 - 1. If the contract is the subject of a claim or dispute;
 - 2. If the contract is in litigation or under appeal;
 - 3. In the case of a termination, if all termination actions have not been completed;
or
 - 4. If state or federal approval is required and has not been received.

CHAPTER 11 – PAYMENT

1.0 AGENCYCOMMISSION PAYMENT PROCESS

- A. The AgencyCommission will promptly process all contract payments with necessary controls to assure compliance with all contract terms and conditions in accordance with internal procedures recommended by the Chief Financial Officer and authorized by the Executive Director.
- B. The Procurement Officer should clearly specify in solicitations and contracts the form and content of an acceptable invoice, including a requirement that invoices be sequentially numbered, that they contain a date and contract number and the services for which they are invoicing, the period of performance being invoiced, and to whom invoices are to be sent.

2.0 PROGRESS PAYMENTS

- A. The AgencyCommission may provide for progress payments under contracts that require long time periods to complete contract performance or if the use of progress payments contributes to the effective and efficient administration of consultant/contractor work. Progress payments will be made on the basis of allowable costs incurred by the consultant/contractor, and the stage of completion of the contract.
 - 1. Criteria. Contract clauses providing for progress payments should be used when the investment in work and progress is expected to be great enough to add substantial costs to the contract or strain the consultant/contractor's cash flow or ability to obtain financing. Under no circumstances should payments exceed the consultant/contractor's physical completion of the Work, nor should they amount to advance payments. Progress payments can be based on a periodic voucher for expenditures, a milestone, or the CommissionAgency's estimate of work accomplished as defined in the contract.
 - 2. For federally funded procurements, the AgencyCommission must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.
 - 3. For FTA-funded procurements, advance payments are prohibited unless prior written concurrence is obtained from the FTA.
- B. Progress Payments on Public Works

In accordance with PCC § 20104.50, the AgencyCommission must make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency Commission fails to make timely payment, the AgencyCommission may be required to pay interest to the contractor equivalent to the legal rate set forth in subdivision (s) of Section 685.010 of the Code of Civil Procedure.
- C. Progress Payments and Retentions on Architect, Engineer, and Land Surveyor Contracts

Pursuant to California Civil Code §3320, for any contract for public works or improvement, the AgencyCommission shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment, if applicable, within 45 days of receipt of a written demand for payment in accordance with the contract. If any amount is wrongfully withheld or is not timely paid, the prime design professional should be entitled to a penalty of 1½ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made.

3.0 PROMPT PAYMENT TO SUBCONTRACTORS—FEDERALLY FUNDED AGREEMENTS

- A. In accordance with 49 CFR Part 26, AgencyCommission contracts funded by the Department of Transportation above the small purchase threshold must require that the prime contractor or subcontractor shall pay to any subcontractor, not later than 7 days of receipt of each progress payment from the AgencyCommission, unless otherwise agreed to in writing, the respective amounts paid to the contractor on account for the work performed by the subcontractors, to the extent of each subcontractor's interest therein. The AgencyCommission contract may provide that, in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.
- B. The AgencyCommission must also require the prompt return of retainage payments from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed.

4.0 PAYMENT OF RETENTION ON PUBLIC WORKS CONTRACTS

- A. Pursuant to PCC § 7107, within 60 days after the date of completion of the work of improvement, the AgencyCommission must release any retention withheld except funds withheld to satisfy outstanding stop notices or otherwise properly withheld. In the event of a dispute between the AgencyCommission and the original contractor, the AgencyCommission may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

5.0 REQUEST FOR PAYMENT CERTIFICATION

- A. All contracts above the small purchase threshold may contain a clause, which requires the contractor to submit with each request for payment, a certification that the claim for payment is true, correct, and for services rendered and/or supplies delivered in accordance with the contract.
- B. The user department/project manager will disapprove and Accounts Payable will return unpaid any request for payment which does not contain the certification when required.

REVISION HISTORY:

Revision No.	Revisions	Adopted
0	Adopted by the Commission	7/11/12
1	Adopted by the Commission	12/12/12
2	Adopted by the Commission	9/9/15
3	Adopted by the Commission	12/13/17
4	Adopted by the Commission	6/13/18
<u>5</u>	<u>Adopted by the Commission</u>	<u>9/11/19</u>
<u>6</u>	<u>Adopted by the Commission</u> <u>Adopted by the Authority</u>	<u>2/ /21</u> <u>2/ /21</u>

AGENDA ITEM 6E

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY	
DATE:	February 17, 2021
TO:	Executive Committee
FROM:	Matt Wallace, Deputy Director of Financial Administration Jennifer Fuller, Financial Administration Manager
THROUGH:	Theresia Trevino, Chief Financial Officer
SUBJECT:	Adoption of Resolution No. 2021-006 to Amend Bylaws with Regard to the Executive Director’s Purchasing Authority and Other Administrative Changes

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Following the completion of the four-week noticing period required in Article XIII(B) of the Western Riverside County Regional Conservation Authority (RCA) Bylaws, approve the proposed amendments to the RCA Bylaws;
- 2) Adopt Resolution No. 2021-006, *“Resolution of the Board of Directors of the Western Riverside County Regional Conservation Authority Amending Its Bylaws with Regard to the Executive Director’s Purchasing Authority and Other Administrative Changes”*; and
- 3) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

RCTC Management Transition

The Riverside County Transportation Commission (RCTC) and the RCA entered into an Implementation and Management Services Agreement (Agreement) effective January 1, 2021. Under the Agreement, RCTC shall administer, coordinate, and supervise the activities of the RCA as set forth in the RCA Joint Exercise of Powers Agreement (JPA) and shall act for RCA in accomplishing its purposes. The County of Riverside provided management services for RCA under a prior agreement.

Among the reasons stated by the RCA Board for the management transition were management efficiencies, consolidation of administrative functions, and adding some of the professional practices of RCTC to the administration of RCA and the MSHCP. As stated in the staff report for the Agreement, “RCTC general administrative policies and processes, including procurement of consultant and vendor contracts, will be utilized.”

Staff has identified procurement policies as an immediate policy that is necessary to conduct business pursuant to the Board’s mandate. Doing so will enable streamlined administration while

maintaining accountability for expenditure of public funds. In many ways, bringing the RCTC Procurement Policy Manual to RCA will strengthen preexisting RCA procurement policies. However, in order for the new RCTC/RCA Procurement Policy Manual to be implemented, revisions to the RCA Bylaws are necessary.

Additionally, staff identified that the RCA Bylaws direct several instances of member agency communications to the Chair or Vice-Chair of the Board, including appointment of Board members and filling of vacancies. In practice, these notifications from member agencies have been sent directly to the Clerk of the Board, who coordinates Board administration matters with the Chair, Vice-Chair and Executive Director. RCTC has a robust and professional Clerk of the Board department. The bylaw provisions proposed for revision in this item reflect this RCTC management competency as well as the reality of how business is conducted.

RCA Bylaws

Pursuant to Section 17 of the JPA, the RCA has the power to adopt such rules and regulations as the RCA's Board of Directors may deem necessary for the conduct of the RCA's affairs. Pursuant to Article XIII of the RCA Bylaws, the RCA may amend its bylaws as necessary.

The revisions proposed to the RCA Bylaws are intended to be administrative in nature and fulfill two primary purposes:

- Enabling implementation of the RCTC/RCA Procurement Policy Manual;
- Centralizing member agency communications and Board administration matters through the Clerk of the Board; and
- Cleaning up and modernizing outdated language or references without making substantive changes to their meanings or effect.

DISCUSSION:

Summary of Proposed Revisions

The RCA Bylaws delegate procurement authority to the Executive Director in Article VII, Section C. Staff proposes updating that section to state that the Executive Director will authorize contracts in compliance with the RCTC/RCA Procurement Policy Manual and to remove the references to specific procurement authority levels from the bylaws.

Under the Agreement, staff performing work on behalf of the RCA are RCTC employees serving under the exclusive direction of RCTC. As such, Article IX, Section A.3. related to the authority of the Executive Committee has been amended to remove references to staffing.

The bylaws have also been amended for other administrative items as listed below:

- All references to Authority have been updated to RCA;

- All references to Chairman, Chairperson, Vice-Chairman, and Vice-Chairperson have been updated to Chair and Vice-Chair, respectively;
- All references to the California Department of Fish and Game (CDFG) have been updated to the California Department of Fish and Wildlife (CDGW) to correctly state the department's name;
- The Clerk of the Board has been designated as the focal point for correspondence concerning changes in Member Agency appointments and vacancies and member reporting of expenses to reflect current the practice;
- Article I, Section B has been updated to note the dates on which the JPA was updated for the inclusion of additional Member Agencies;
- Article V, Section B.3. has been updated to the most recent number of acres currently within the Criteria Cells in the incorporated areas;
- Article VIII references to time periods have been updated to be compliant with the Brown Act;
- Article X, Section D removes the statement "All ordinances shall take effect upon their adoption" to comply with California Government Code; and
- Other minor clarifications were made and typos were corrected as needed.

Notice Period and Vote to Approve

Article XIII(B) of the RCA Bylaws states: "All regular members shall receive at least four (4) weeks notice of any amendments to these Bylaws. Notice may be provided on a Board Meeting Agenda of the Board or by separate notice delivered by mail, e-mail, or facsimile to the regular member."

Notice was provided at the February 1 Board meeting as required in Article XIII(B). Therefore, the Board may approve the proposed bylaw revisions at its March 1, 2021 meeting and adopt Resolution No. 2021-006.

FISCAL IMPACT:

There is no fiscal impact from amending the RCA bylaws.

Attachments:

- 1) Resolution No. 2021-006
- 2) Redline Bylaws

RESOLUTION NO. 2021-006

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
AMENDING ITS BYLAWS WITH REGARD TO EXECUTIVE DIRECTOR'S
PURCHASING AUTHORITY AND OTHER ADMINISTRATIVE CHANGES**

WHEREAS, the Western Riverside County Regional Conservation Authority ("RCA") is a public agency of the State of California formed by a Joint Exercise of Powers Agreement ("JPA");

WHEREAS, pursuant to Section 17 of the JPA, the RCA has the power to adopt such rules and regulations as the RCA's Board of Directors ("Board") may deem necessary for the conduct of the RCA's affairs;

WHEREAS, pursuant to Article XIII of the RCA Bylaws, the RCA has presented to its members an amendment to the RCA Bylaws which amends the provisions regarding the election of RCA officers;

WHEREAS, the Board has determined that it is necessary at this time to revise the RCA's Bylaws with regard to the Executive Director's purchasing authority and other administrative changes, as set forth herein, as a result of the Board entering into an Implementation and Management Services Agreement with the Riverside County Transportation Commission (RCTC) on November 2, 2020; and

WHEREAS, notice of this change to the Bylaws has been provided as required in the Bylaws.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the Western Riverside County Regional Conservation Authority hereby resolves to amend its Bylaws as noted in the redline version attached here to as Exhibit "A."

This Amendment shall be effective upon the approval of this Resolution by the Board of Directors.

PASSED, APPROVED, AND ADOPTED by the Board of Directors of the Western Riverside County Regional Conservation Authority on this 1st day of March, 2021.

By: _____
Natasha Johnson, Chair
Western Riverside County
Regional Conservation Authority

ATTEST:

By: _____
Lisa Mobley, Clerk of the Board
Western Riverside County
Regional Conservation Authority

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

BYLAWS

ARTICLE I – NAME AND AUTHORIZATION

- A. NAME. The name of this agency shall be the Western Riverside County Regional Conservation Authority, hereinafter known as the RCA Authority.
- B. AUTHORIZATION. The County of Riverside (“County”) and the Cities of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Temecula, by that Joint Exercise of Powers Agreement dated as of January 27, 2004 (“Agreement”) created the RCA Authority for the purpose of acquiring, administering, operating, and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened, and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). The Agreement was amended on April 7, 2009, to add the Cities of Menifee and Wildomar, on May 5, 2011, to add the City of Eastvale, and on December 5, 2011, to add the City of Jurupa Valley.

ARTICLE II – PURPOSE, DUTIES & POWERS

- A. PURPOSE. The RCA Authority shall acquire, administer, operate, and maintain land and facilities to establish habitat reserves for the conservation and protection of species covered by the MSHCP and to implement the MSHCP after the MSHCP is approved by the County and Cities and appropriate permits are issued by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife Game.
- B. DUTIES AND POWERS. Duties and Powers of the RCA is Authority are set forth in local, state, and federal law and the Agreement, as may be amended from time to time. These duties and authorization include, but are not limited to, the following:
1. To make and enter into contracts;
 2. To employ agents, consultants, attorneys, and employees;
 3. To acquire property, and any interest in property, both real and personal by purchase, gift, option, grant, bequest, devise or otherwise, and hold and dispose of such property;

4. To conduct and direct studies and to develop and implement plans to complement, modify, or supplement the MSHCP;
5. To incur debts, liabilities, and obligations;
6. To sue and be sued in its own name;
7. To employ reserve managers and other personnel to operate, maintain, and administer the habitat reserves established through implementation of the MSHCP;
8. To be an applicant, make applications for, and receive grants from governmental and private entities and to participate in State bond issues;
9. To prepare project reports and applications, to qualify for grants, and to enter into grant contracts and to do all other things necessary to comply with State and Federal laws and regulations with respect to grants;
10. To borrow or receive advances of funds from its members or from such other sources as may be permitted by law;
11. To contract with its members and other entities who operate or will operate the habitat reserves established through implementation of the MSHCP;
12. To issue bonds, notes, warrants, and other evidences of indebtedness to finance costs and expenses to carry out the powers of the RCA Authority;
13. To acquire, hold, and dispose of equipment;
14. To lobby state and federal governments and their officials as well as private entities to obtain funding for implementation of the MSHCP and employ individuals or entities to conduct such lobbying activities on its behalf; and
15. To exercise all other powers common to the members not specifically mentioned above which may be necessary to carry out the purposes of this Agreement.

ARTICLE III – MEMBERSHIP

- A. **REGULAR MEMBERS.** The regular members of the Board shall be the five members of the Riverside County Board of Supervisors and one member from each incorporated city who is signatory to the Agreement. Written

notification of the appointment of a City representative shall be provided to the ClerkChairperson of the Board.

B. ALTERNATE MEMBERS:

1. Each member of the Riverside County Board of Supervisors may appoint an alternate member to the RCA Board of Directorsthe Authority and each City may appoint one alternate member to the RCA Board of Directorsthe Authority.
2. Each regular member and alternate member of a City must hold an elective office on the respective governing body appointing the regular or alternate member.
3. The Board of Supervisors ("BOS") may appoint a city council member of a member city to represent the member as an alternate at meetings of the RCA Board or committees. Notice of the alternate appointment shall be made in writing to the Clerk of the Board chairperson of the RCA Board. In no event shall the same person serve as a city representative and alternate for a BOS member at the same meeting.
4. In the absence of a regular member, the alternate member shall, if present, participate in a meeting of the Board or committee the same as if the alternate member were the regular member.

ARTICLE IV – TERM, VACANCIES AND COMPENSATION

- A. TERM. Regular members and alternate members shall serve on the Board during the term for which they were appointed or until their successor has been appointed or their appointment has been revoked, whichever is earlier. However, a regular or alternate member's position on the Board shall automatically terminate if and when the term of the elected public office of such regular or alternate member is terminated.
- B. VACANCIES. Any vacancy in the office of regular or alternate member, whether because of death, incapacity, resignation, loss of underlying office, removal or otherwise, shall be filled by the appointing authority for such member. When a vacancy occurs, it shall be the duty of the respective Party having the vacancy to promptly inform the Clerk of the
Board of the -name of the replacement regular or alternate member.
- C. RESIGNATION. Any regular or alternate member may resign at any time by giving written notice of such resignation to the Clerk of the Board Authority's Executive Director. Such resignation shall be effective at the time specified; acceptance of such resignation shall not be necessary to make it effective.

- D. REMOVAL. Any regular or alternate member may be removed, with or without cause stated, by the authority responsible for his or her appointment.
- E. COMPENSATION. Unless prohibited by law from accepting compensation, each regular and alternate member (when performing the duties of a regular member) of the RCA Authority shall be compensated at the rate of One Hundred Dollars (\$100) for any day attending to the business of the RCA Authority, but not to exceed Four Hundred Dollars (\$400) in any month, along with necessary traveling and personal expenses incurred in the performance of his or her duties as authorized by the RCA Authority.

ARTICLE V – VOTING

- A. QUORUM. A majority of the members of the Board shall constitute a quorum for the transaction of business and all official acts of the Board shall require the affirmative vote of a majority of the members of the Board. Each regular member or alternate member acting in the place of a regular member shall have one vote at meetings of the Board. However, any member of the Board, immediately after a vote of the Board and prior to the start of the next item on the agenda may call for a weighted vote.
- B. WEIGHTED VOTING. For an item to be passed by weighted vote, all of the following requirements shall be met:
 1. the item shall be approved by a majority of the Board members present at the meeting who represent the Riverside County Board of Supervisors, who each shall have one vote;
 2. the item shall be approved by a majority of the Board members present at the meeting who represent Cities, who each shall have one vote; and
 3. the item shall be approved by Board members present at the meeting who represent Cities representing a majority of an equal combination of 1) the population of the county living in incorporated areas within the boundaries of the MSHCP Plan area, and 2) the number of acres currently within the Criteria Cells in the incorporated areas as follows: *Banning – 78 acres; Beaumont – ~~10,10840,098~~ acres; Calimesa – ~~3,3733,380~~ acres; Canyon Lake – 303 acres; Corona – 2,315 acres; Eastvale – 1,024 acres; Hemet – ~~1,3721,158~~ acres; Jurupa Valley – 5,039 acres; Lake Elsinore – ~~14,57144,336~~ acres; Menifee – 249 acres; Moreno Valley – 2,325 acres; Murrieta – 8,726 acres; Norco – 733 acres; Perris – 3,181 acres; Riverside – ~~1,2171,201~~ acres; San Jacinto – ~~4,5814,580~~ acres; and Temecula – ~~3,9233,917~~ acres; and*

Wildomar – 4,151 acres. Population data shall be determined through California Department of Finance estimates, adjusted annually.

In addition, the Board may, through resolution, revise the above-referenced number of acres due to the addition of a new member entity or other appropriate adjustments as the Board deems necessary.

ARTICLE VI – NOMINATION AND ELECTION OF OFFICERS

- A. ELECTIONS. -The Board shall elect a Chairperson and a Vice Chairperson at its meeting every December, or as soon thereafter as practical. At least once every three years, the Chairperson or Vice Chairperson shall be a regular member of the Board who is a member of the Board of Supervisors. The term of the Chairperson and Vice Chairperson shall commence on the first day of the month following the selection, unless otherwise determined by the Board.
- B. NOMINATIONS. Any member of the RCA Authority may nominate any regular member for an office contemplated in Section A. An individual receiving the majority of the votes for any of the offices shall be deemed to have been elected. Different procedures and requirements apply to the office of treasurer and controller, pursuant to Section E. and the Agreement.
- C. RESIGNATIONS. In the event an officer resigns or ceases to be an officer, the Board shall select a replacement therefore at the next regular meeting of the Board, or as soon thereafter as practical.
- D. ABSENCES. In the absence or inability of the Chairperson to act, the Vice Chairperson shall act as Chairperson.
- E. APPOINTMENTS. The Board shall appoint the treasurer of a member agency to serve as the Treasurer. The Board shall also appoint the finance director of a member agency to serve as the Controller.

ARTICLE VII – DUTIES OF OFFICERS

- A. CHAIRPERSON. The duties of the Chairperson shall be to:
 - 1. Preside at all meetings of the RCA Authority, provided that the Board, by a majority vote of the members present, may overrule any decision under this Section A.1 by the Chairperson at or during the meeting;
 - 2. Call special meetings of the RCA Authority when necessary;

3. Appoint ad hoc committees, when necessary, including, without limitation, an Elected Officials Ad Hoc Committee described in the MSHCP.
- B. VICE CHAIRPERSON. The duties of the Vice Chairperson shall be to perform the duties and exercise the power of the Chairperson during the absence of the Chairperson.
 - C. EXECUTIVE DIRECTOR. The duties of the Executive Director shall be to administer the MSHCP, as defined above, in compliance with the duties and responsibilities set forth in Sections 5.0 and 6.0 of the MSHCP, and such other duties as may be prescribed by the Board, from time to time. The Executive Director shall perform such duties as prescribed by the Board including, without limitation, the administration of agency contracts. The Executive Director will authorize contracts in compliance with the RCTC/RCA Procurement Policy Manual.~~may, after consultation with the Chairperson, authorize contracts in an amount up to \$50,000 without prior Board approval. All such contracts shall be reviewed by legal counsel and shall be reported to the Board after execution. The Executive Director may not issue such contracts totaling more than \$50,000 1) to any one entity in any calendar year, or 2) to a group of entities working on a single project for the Authority. The Executive Director's authority for the purchase of supplies, materials, or equipment is limited to \$25,000.~~

ARTICLE VIII – MEETINGS

- A. AGENDA. Matters to be placed on the Agenda for any regular meeting or Committee meeting may be filed with the Executive Director of the RCA Authority by any member of the RCA Authority by the Thursday before such regular meeting or special meeting. The Agenda for each regular or special meeting shall be prepared under the control and direction of the Executive Director after consultation and concurrence by the Board Chairman or Vice Chairman, if the Chairman is not available. The Executive Director shall cause copies of the Agenda to be ~~mailed or~~ delivered to each regular and alternate member in compliance with the Brown Act at least three (3) working days prior to the regular meeting date. During a Board or Committee meeting, any member may bring to the Board's attention any item of new business or request for action. Action on any matter of business not listed Agenda shall be deferred until properly listed on the Agenda for a subsequent meeting unless properly added to the Agenda as an item of subsequent need in accordance with Government Code, Section 54954.2. Notwithstanding, the provisions of this section, individual members of the Board may provide a reference to staff or other resources for factual information, request staff to report back to the RCA Authority at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

- B. REGULAR MEETING. A schedule of regular meetings of the RCA Authority will be adopted by the Board annually. Regular meetings shall be held, to the extent feasible, at the County Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, or at such other location set by the RCA Authority. Regular meetings may be canceled by majority vote of the RCA Authority at a regular or special meeting prior to the meeting to be canceled. A regular meeting may also be canceled by the Chairperson for lack of a quorum or substantive agenda items. The Executive Director shall endeavor ~~to mail or~~ deliver notice of such cancellation to each regular member and alternate member at least twenty-four (24) hours prior to the time of the meeting.
- C. SPECIAL MEETINGS. A special meeting of the RCA Authority may be called at any time by the Chairperson, or in his or her absence by the Vice Chairperson, or by any four (4) regular members by delivering ~~personally or by mail~~ written notice to the Executive Director and each regular and alternate member. Such notice shall be so delivered at least twenty-four (24) hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be transacted at such meeting. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the Executive Director a written waiver of notice. ~~Such waiver may be given by telegram or telecopier.~~ Such written notice may also be dispensed with as to any regular or alternate member who is actually present at the meeting at the time it convenes.
- D. POSTING OF AGENDAS. The RCA Authority shall post agendas of all regular meetings, containing a brief general description of each item of business to be transacted or discussed at the meeting, in accordance with the Brown Act at least seventy-two (72) hours before such regular meeting. The agenda shall specify the time and location of the meeting and shall be posted at the County Administration Center, 4080 Lemon Street, Riverside, or at another location specified by the Chairperson that is freely accessible to members of the public and on the RCA website. No action shall be taken on any item not appearing on such posted agendas, except as permitted by state law.
- E. RALPH M. BROWN ACT. All meetings of the Board, including without limitation, regular, special and adjourned meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).
- F. ADDRESSING the RCA AUTHORITY ON AGENDA ITEMS. No person shall address the RCA Authority at any meeting until he or she has first been recognized by the Chairperson. The decision of the Chairperson to

recognize a person may be changed by vote of a majority of the members of the RCAAuthority present at the meeting. When addressing the RCAAuthority, each individual speaker will be limited to three minutes or less of public testimony on each agenda item. The RCAAuthority may, either at the direction of the Chairperson or by a majority vote of the RCAAuthority, waive this three (3) minute time limitation.

ARTICLE IX – STANDING COMMITTEES

A. FORMATION. The following Standing Committees of the RCAAuthority are hereby created:

1. The Funding Coordination Committee. This Committee shall provide recommendations to the Board on funding priorities and MSHCP Conservation Area acquisitions. Additionally, this Committee shall provide a forum to discuss land acquisition priorities of the U.S. Fish and Wildlife Service (“USFWS”) and California Department of Fish and WildlifeGame (“CDFWG”) and acquisitions by other entities using non-local sources of revenue. It is envisioned that this Committee will meet at least twice annually. The Committee is not intended to address the acquisition of specific properties. The Board shall establish policies under which the Funding Coordination Committee shall make recommendations to the Board. Such policies shall include conflict of interest guidelines for the Committee members. Members of this committee shall consist of the Executive Committee Members, and representatives of the USFWS, and the CDFWG. Member Agency Planning Directors shall be invited to participate in the meeting.
2. Reserve Management Oversight Committee. The Reserve Management Oversight Committee (RMOC) shall serve as the intermediary between the Reserve Managers and the decision makingdecision-making function of the RCAAuthority. The Executive Director or designee shall serve as Chairperson of the RMOC. The RMOC shall be composed of, at a minimum, one representative appointed by each of the following entities: USFWS, CDFWG, Riverside County Regional Parks and Open Space District, Bureau of Land Management, U.S. Forest Service, California Department of Parks and Recreation, the RCAAuthority, and up to five (5) other private or public agencies or entities that own or manage land within the MSHCP Conservation Area.
3. Executive Committee. The Executive Committee shall be composed of seven (7) members, and have at least two (2) and no more than three (3) representatives representing the County. The Board Chairperson, Vice Chairperson, and past Chairperson, if any, of the

RCA Authority shall be members of the Committee. Two members of the Executive Committee shall be selected by the Board at its first meeting in December, or as soon thereafter as practical. The remaining members shall be appointed by the Chairperson and ratified by the Board. The Executive Committee shall oversee RCA Authority administrative functions, ~~staff functions, recommend staff positions, job descriptions and salaries,~~ and consider such other matters as delegated to it by the Board. In the event of a vacancy in the Committee, the Chairperson shall appoint a replacement, and said appointment shall be ratified by the Board.

4. Stakeholders Committee. The Stakeholders Committee shall be appointed by the Chairperson and ratified by the Board. The Committee shall be composed of up to sixteen (16) members, whose members shall be drawn from the following:

- a. groups representing property owners affected by the MSHCP;
- b. groups representing environmental interests implicated by the MSHCP; and
- c. groups representing the building industry within the area affected by the MSHCP.
- d. Committee members shall not be permitted to appoint alternates. The Committee shall meet when requested to do so by the Chairperson or Board. The Committee shall meet as often as necessary; however, reasonable efforts shall be made to hold committee meetings at least twice yearly. The Executive Director shall chair the meetings and facilitate discussion. The Stakeholders Committee shall review implementation plans from a stakeholder perspective and perform such other duties as directed by the Board.

B. CONTROL AND SUPERVISION. In the performance of their duties and responsibilities, all Committees of the RCA Authority shall submit all policy matters coming before them to the RCA Board Authority for final consideration, unless otherwise specified by the Board. Committee members shall be appointed on an annual basis.

ARTICLE X – CORPORATE POWERS

A. SUCCESSION. The RCA Authority has perpetual succession and may adopt a seal and alter it at its pleasure.

- B. LITIGATION. The RCAAuthority may sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.
- C. CLAIMS. All claims for money or damages against the RCAAuthority are governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.
- D. MOTIONS, RESOLUTIONSREGULATIONS, AND ORDINANCES. The acts of the RCAAuthority shall be expressed by motion, resolution, or ordinance. ~~All ordinances shall take effect upon their adoption.~~ The enacting clause of all ordinances shall be as follows: "The Western Riverside County Regional Conservation Authority hereby ordains as follows: "All ordinances shall be signed by the Chairperson or by the Vice Chairperson of the RCAAuthority.

ARTICLE XI – CONTRACTS

The RCAAuthority may make contracts and enter into stipulations of any nature whatsoever either in connection with eminent domain proceedings or otherwise, including but not limited to, contracts and stipulations to indemnify and save harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers authorized by law. The RCAAuthority may contract with any Department or Agency of the United States of America, with any public agency (including, but not limited to, the County, WRCOG, CDFWG or USFWS), or with any person upon such terms and conditions as the RCAAuthority finds is in its best interest.

ARTICLE XII – REIMBURSEMENTS

- A. PERSONS SUBJECT TO REIMBURSEMENT PROVISIONS. These Reimbursement Provisions ("Provisions") shall be applicable to all members of the RCAAuthority's legislative bodies, as defined in Government Code section 54952, provided such persons receive compensation for actual and necessary RCAAuthority expenses ("Official"). Legislative Bodies include, but are not limited, to the Board of Directors, the Funding Coordination Committee, the Reserve Management Oversight Committee, the Executive Committee, and the Stakeholders Committee.
- B. PURPOSE. The purpose of these Provisions is to provide guidelines for the reimbursement of any Official for actual and necessary expenses incurred in the performance of their duties. Whenever issues of reimbursement arise, the RCAAuthority shall adhere to Government Code sections 53232.2 and 53232.3.

C. TRANSPORTATION

1. Use of Personal Vehicle. The RCA Authority shall reimburse for mileage incurred when personal vehicles are used to attend Board and Committee meetings and conferences or other meetings approved by the Board or Executive Director and in furtherance of the RCA Authority's affairs. RCA Authority will reimburse mileage for travel to and from the destination based upon the approved Internal Revenue Service rate in effect at the time of travel.
2. Rentals. The RCA Authority shall reimburse for actual and necessary vehicle rental expenses. The RCA Authority shall only reimburse economy or compact rate vehicles unless (i) such class of vehicle is unavailable; or (ii) such class of vehicles do not accommodate a disability. When an Official rents a vehicle, he or she shall obtain insurance for the vehicle at the RCA Authority's expense.
3. Shuttle, Bus, Taxi, and Public Transportation. Shuttle, bus, taxi, and public transportation may be used between an airport, hotel and conference site whenever it is available. Officials are encouraged to use the most efficient mode of transportation available.
4. Air Travel or Other Common Carrier Transportation. As necessary for the performance of their official duties, Officials may use air travel or other mode of common carrier transportation to and from the destination.

D. LODGING. Lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available. If a group rate is not available, the government rate of the provider of lodging shall be used. If neither the group nor government rates are available, the RCA Authority shall reimburse lodging at a rate not exceeding \$300.00 per night without Board approval. For lodging in high costs cities (e.g., San Francisco, New York, Washington., D.C.), the RCA Authority will reimburse at a rate not exceeding \$490.00 per night without Board approval. Lodging reimbursement rates will be adjusted annually according to the CPI in the applicable metropolitan statistical area.

E. MEALS. The actual costs of meals incurred while attending conferences or other meetings in furtherance of the RCA Authority's affairs are reimbursable provided the RCA Authority's staff is given a receipt. Meal costs shall be reimbursed at an amount not exceeding the greater of one hundred fifty dollars (\$150.00) per day or the applicable Internal Revenue Service rate.

F. PERSONAL EXPENSES AND OTHER EXPENSES NOT REIMBURSABLE. The RCA Authority shall not reimburse the cost of

transportation, lodging, meals, or other costs of travel when such costs are of a personal nature incurred in conjunction with the performance of official duties. Personal costs, not reimbursable by the RCA Authority, shall include, but not be limited, to the following: (i) alcoholic beverages; (ii) parking and traffic violations; (iii) entertainment; (iv) services provided by the provider of lodging; and (v) expenses incurred on behalf of a spouse, dependent, or traveling companion.

- G. CONFERENCES AND OTHER MEETINGS. Officials shall only receive reimbursement of travel, lodging, and meals for conferences or other meetings in furtherance of the RCA Authority's affairs. No other occurrences will be reimbursed.
- H. EXPENSES NOT INCLUDED WITHIN THESE PROVISIONS. Occurrences or expenses which do not fall within these Provisions or the Internal Revenue Service reimbursable rates must be approved by the Board in a public meeting before the expense is incurred.
- I. EXPENSE REPORTS. The RCA Authority shall not reimburse any expenses until an expense form is submitted to the Clerk of the Board Authority's administrative office no later than 45 days of the expenditure. Expense forms shall be accompanied by receipts documenting each expense. Furthermore, Officials will be required to provide a brief report on the conference or meeting attended at the next regular meeting of his or her respective legislative body.
- J. CPI INCREASE. The dollar limits referenced herein shall be automatically updated annually pursuant to reflect increases in the Consumer Price Index.

ARTICLE XIII – AMENDMENTS

- A. ADOPTION. These Bylaws may be amended at any meeting of the RCA Authority by a majority vote.
- B. PROPOSAL. Any RCA Authority member may propose a Bylaw amendment. Such proposal shall be in writing and shall be referred to the Chairperson who shall report the proposed amendment with recommendation to the RCA Authority. All regular members shall receive at least four (4) weeks notice of any amendments to these Bylaws. Notice may be provided on a Board Meeting Agenda of the Board or by separate notice delivered by mail, e-mail, or facsimile to the regular member.

Approved 06/07/04
Updated 03/07/05; Resolution No. 05-01
Updated 09/12/05; Resolution No. 05-07
Updated 12/05/05; Resolution No. 05-10
Updated 03/06/06; Resolution No. 06-01

Updated 04/03/06; Resolution No. 06-02
Updated 05/01/06; Resolution No. 06-03
Updated 09/10/07; Resolution No. 07-06
Updated 12/03/07; Resolution No. 07-11
Updated 10/06/08; Resolution No. 08-015
Updated 03/02/09; Resolution No. 09-001
Updated 03/07/11; Resolution No. 11-002
Updated 01/09/12; Resolution No. 11-008
Updated 06/02/14; Resolution No. 14-004
Updated 11/07/16; Resolution No. 2016-016
Updated 03/01/21; Resolution No. 2021-006

AGENDA ITEM 7

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

DATE:	February 17, 2021
TO:	Executive Committee
FROM:	David Knudsen, Legislative Affairs Manager
THROUGH:	Aaron Hake, Interim Regional Conservation Deputy Executive Director
SUBJECT:	2021 State and Federal Legislative Platform and Legislative Update

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Receive a presentation summarizing the RCTC Legislative Affairs program;
- 2) Receive and file an update on state and federal legislation;
- 3) Adopt the 2021 State and Federal Legislative Platform for Western Riverside County Regional Conservation Authority (RCA); and
- 4) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

The adoption of a State and Federal Legislative Platform provides the framework that guides the RCA’s advocacy efforts on state and federal policy and funding to advance the implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

DISCUSSION:

2021 State and Federal Legislative Platform

The draft 2021 RCA State and Federal Legislative Platform declares the Board’s policy priorities while providing staff and contract lobbyists with the agility to weigh in on critical legislative matters in a time-effective manner. In particular, the 2021 draft platform underscores RCA’s desire to maintain local control; protect its authority and revenue; and ensure the MSHCP is supported by policy, legislation, and funding. The draft platform recognizes that the MSHCP provides a conduit for permitting infrastructure and housing development in Riverside County, while also contributing to climate action policies.

State Update

On Friday, January 8, 2020, Governor Newsom submitted his 2021-22 State Budget proposal to the Legislature – a \$227.2 billion fiscal plan that provides funding for COVID-19 response and economic relief efforts and is approximately \$25 billion more than the \$202.1 billion spending

plan the Governor signed in June 2020. The Governor proposes using a portion of a one-time \$15 billion revenue windfall to fund “The Equitable Recovery for California’s Businesses and Jobs Plan,” a \$4.5 billion series of priority programs related to accelerating the state’s recovery and providing relief to the public. Within this Plan, the Governor proposes \$500 million through the Infill Infrastructure Grant Program (IIG) to add more than 7,500 new permanently affordable homes in California. IIG grants to local governments and developers bring the cost down for new housing by defraying costs for items like sewers, roads, and site preparation.

Natural Resources Agency Budget Outlook

The Governor’s budget proposal includes \$7.6 billion for the Natural Resources Agency, representing 3.3 percent of the overall state budget, as well as a nearly \$1 billion increase from last year. Part of the additional funding includes a one-time boost to the Department of Fish and Wildlife for strategic investments in equipment, technology, and process improvements to deliver more effective and efficient services. These investments will help implement the Governor’s land and biodiversity conservation Executive Order N-82-20.

State Legislature

The 2021-21 Legislative Session convened on December 7, 2020, and lawmakers delayed their return to Sacramento to January 11, 2021, due to the increase of COVID-19 cases across the state. Numerous bills have been introduced, and legislative hearings are underway, an effort that will carry through August. Legislative bill loads have been reduced to accommodate committees meeting under COVID-19 protocols.

Assembly and Senate leaders announced committee chair appointments for the new session. Assemblymember Luz Rivas (Arleta) will serve as Chair of the Assembly Committee on Natural Resources. Assemblymember Kelly Seyarto (Murrieta) will also serve on the Committee. Senator Henry I. Stern (Canoga Park) will serve as the Senate Natural Resources and Water Committee Chair. Both committees have jurisdiction on bills relating to land conservation.

The Legislature will continue to focus on COVID-19 relief and economic recovery. High profile legislative priorities remain, including in the areas of housing and climate action. Staff is following all relevant bill introductions and, over the coming months, will bring recommended bill positions for the Board to consider adopting.

Federal Update

In the final days of the 116th Congress, the House and Senate passed a \$1.4 trillion Omnibus Appropriations Bill, which funds the operations of the federal government through September 30, 2021. The Appropriations bill included program funding for the U.S. Department of the Interior (DOI), including:

- \$13.7 billion in discretionary funding for DOI, \$186 million more than in FY 2020
- \$1.67 billion in funding for the Bureau of Reclamation

- \$900 million for the Land and Water Conservation Fund, as required by the Great American Outdoors Act. \$405 million is for federal land acquisitions and \$495 million is for states to administer grants for projects that would increase access to outdoor recreation
- \$3.12 billion for the National Park Service and \$1.27 billion for the Bureau of Land Management, a decrease of \$44 million and \$28 million from FY 2020, respectively
- \$1.58 billion for U.S. Fish and Wildlife Service, an increase of \$22 million from FY 2020

Also, Congress passed a \$900 billion COVID-19 relief bill. While this relief bill did not include new direct federal assistance to states and local governments, Congress did give states and local governments additional flexibility with existing funds by adjusting deadlines related to the CARES Act funding.

The 117th Congress convened on January 3, 2021, with slim majorities in both the House and the Senate. The new Congress is discussing policies related to COVID-19 relief, economic stimulus, and environmental issues. The Senate continues to hold hearings on Biden Administration Cabinet appointments, including for DOI Secretary-designate Representative Deb Haaland (New Mexico). If confirmed, Representative Haaland would make history as the first Indigenous person to serve as a Cabinet secretary.

After being sworn in as the 46th President of the United States, President Biden continued to press forward with his \$1.9 trillion American Rescue Plan (Plan), which was announced a week before the inauguration. This package's priorities include aid to state and local governments, direct payments to individuals, expanded unemployment benefits, funding for vaccine distribution, rental relief, and small business assistance.

The next several weeks and months will be very busy in Congress with COVID relief, budget, appropriations, and possible economic stimulus legislation, taking place simultaneously. In the meantime, staff is moving forward to advance policy initiatives to enable the RCA to complete the MSHCP.

Attachment: Draft 2021 RCA State and Federal Legislative Platform

Purpose

The 2021 RCA State and Federal Legislative Platform is the framework that guides the Western Riverside County Regional Conservation Authority (RCA) advocacy efforts on state and federal policy and funding that will advance implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

The 2021 RCA State and Federal Legislative Platform declares the Board’s policy priorities while providing staff and contract lobbyists with the agility to weigh in on critical legislative matters in a time-effective manner on behalf of the Board.

Regional Control

- Land acquisition and planning authority for state and federal funds should be as local as possible, preferably in the hands of the Board with maximum flexibility, and consistent with its responsibilities under the MSHCP.
- State and federal rulemakings, administrative processes, program guidelines, and policy development activities should include meaningful collaboration with HCPs and NCCPs, individually and through the National Habitat Conservation Plan Coalition (NHCP) and California Habitat Conservation Plan Coalition (CHCPC).
- Policies should recognize the positive and enabling benefits that HCPs and NCCPs bring to the environment, infrastructure development, economic growth, and quality of life to the surrounding communities.
- Support efforts to preserve, stabilize, leverage, and increase state and federal funding for implementation of the MSHCP.

Protect Authority and Revenue

- Existing statutory authorities for the RCA, in its exercise of oversight responsibility of the MSHCP, should be preserved and protected.
- Oppose efforts to infringe on the RCA’s discretion in collecting and administering its revenue sources including, but not limited to: Local Development Mitigation Fees (LDMF), tipping fees, public project, and participating special entity fees.

Alignment of Responsibilities

- Support strong collaborative partnerships with state and federal agencies.
- Advocate that California Cap-and-Trade revenues be expended in a manner that enables the RCA to complete the land acquisition component of the MSHCP.
- Support efforts by the state and federal governments to meet their land conservation requirements, as initially intended by the MSHCP (one-third of the Additional Reserve Lands, respectively).
- Support establishment of the Western Riverside County National Wildlife Refuge.

- Ensure resources are available to state and federal oversight field offices to expedite MSHCP completion and permit issuance.

Multiple Species Habitat Conservation Planning

Land Acquisition

- Support policies that streamline RCA’s ability to compete for and expend state and federal grant funds in a timely and efficient manner to acquire and manage reserve lands, monitor habitat loss, and review applications for infrastructure or development projects.
- Pursue regulatory improvements to enhance timeliness, certainty, and successful transactions in the grant-financed land acquisition process and procedures at the state and federal levels, including, but not limited to, eliminating requirements for “willing seller” letters, unnecessary federal appraisal review practices, and advance approval of small parcel lists.
- Support a block grant approach for land acquisition for parcels already included within an approved HCP/NCCP boundary.
- Engage in policy discussions regarding the recently expanded federal Land and Water Conservation Fund (LWCF) trust for Section 6 and Refuge funding as authorized by the Great Americans Outdoors Act. Oppose efforts to reduce, redirect, or delay expenditure of this funding.
- Support Congressional action to continue and expand dedicated funding, such as the LWCF, for the Cooperative Endangered Species Conservation Fund (CESCF – Non-Traditional Section 6 grants) within the U.S. Fish and Wildlife (USFWS) of the U.S. Department of Interior (USDOI).
- Increase annually appropriated discretionary funding for the Endangered Species Act Section 6 Cooperative Endangered Species land acquisition grant programs to help fund local land acquisition and easements critical to the MSHCP.
- Support policies establishing land conservation in disadvantaged communities preserving open space under threat of development and environmentally sensitive.

Climate Change

- Support policies that promote MSHCPs as a tool providing increased long-term climate resilience to listed species and to promote climate stability through strategic land acquisition, carbon sequestration, and adaptive management actions that mitigate climate impacts.
- Ensure that the MSHCP is recognized and provided commensurate resources as the state implements strategies to use California land to fight climate change, conserve biodiversity, and boost climate resilience as outlined in Executive Order N-82-20.

Infrastructure Planning and Delivery

- Support policies that identify the MSHCP as mitigation for infrastructure development. Oppose efforts that would impose barriers on the MSHCP as a mitigation tool.
- Support the development and implementation of MSHCPs that serve to streamline endangered species permitting, facilitate public infrastructure and private development, conserve endangered species, and the ecosystems they depend on.
- Support efforts or initiatives that expedite the approval of MSHCPs or Special Area Management Plans (SAMP) for transportation projects, and reduce redundancy in state and federal permitting requirements.

Permit Authority

- Engage in federal and state concurrence of an extension of the 25-year window for required habitat acquisition for the Western Riverside County MSHCP.

Innovative Financing

- Pursue enactment of a Transportation Infrastructure Finance and Innovation Act (TIFIA) amendment, to authorize loans for habitat acquisition in conjunction with otherwise eligible infrastructure projects.

Regional and National Partnerships

- Collaborate and continue to play a leadership role with regional, state, and national habitat conservation planning coalitions to impact funding and regulatory policies to support habitat conservation via the expedited and expanded use of HCPs.

AGENDA ITEM 8

WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY	
DATE:	February 17, 2021
TO:	Executive Committee
FROM:	Aaron Hake, Interim Regional Conservation Deputy Executive Director
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Proposal for Creation of an RCA Legacy Home Rebate Program

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Discuss and recommend to the Board of Directors whether to adopt an RCA Legacy Home Rebate Program; and
- 2) Forward to the Board of Directors for final action.

BACKGROUND INFORMATION:

Previous Board and Executive Committee Action and Discussion

Last month, the Chair directed staff to return with ideas to offer fee relief for western Riverside County landowners who intend to build their own home on a parcel they owned, and which was legally created prior to the inception of the Multiple Species Habitat Conservation Plan (MSHCP).

The RCA Board of Directors adopted the 2020 Nexus Study Update (Nexus Study) on December 7, 2020, which increased the per unit Local Development Mitigation Fee (LDMF) on new residential construction for the first time since 2004. The motion to adopt the Nexus Study included direction to staff to analyze providing an exclusion from the fee increase for landowners whose possession of their residential lots predated the MSHCP, with the intent that RCA would not increase fees on those who have long wanted to build their own home in Riverside County.

Staff analysis presented to the Executive Committee on January 20, 2021, demonstrated that the financial impact of such an exclusion could be substantial; however, available data is limited, and it is difficult to create a precise forecast. Staff also identified potential concerns regarding precedent, administrative burden (considering previous feedback from member agency staff), and impact on MSHCP viability. The Executive Committee engaged in a robust discussion. Committee members expressed concerns regarding carving out exclusions for certain types of people as well as the responsibility of the RCA to fulfill the MSHCP. The Endangered Habitats League testified in opposition to creating a partial fee exclusion. Committee members also expressed a strong desire to offer a financial benefit to single-family home builders who were going to live in the house they build for themselves. The Executive Committee voted 4-2 to not

offer such an exclusion from the updated fee. Taking into consideration the feedback of the Committee, the Chair directed staff to return with an alternative proposal to lower costs for long-time owners seeking to build a single-family home.

Proposal: RCA Legacy Home Rebate Program

Staff proposes the Executive Committee consider a partial fee rebate pilot program. The staff-proposed concept for this pilot program is outlined in the attachment to this staff report. In short, the staff-proposed concept:

- Allows eligible homeowners to apply to RCA for a rebate in the amount of the difference between the LDMF at time of payment and LDMF as of June 30, 2021, adjusted for CPI.
- Requires applicants to submit proof they have occupied the home for at least one year.
- Sets aside \$70,050 (enough for 50 rebates) in the RCA budget beginning in FY 2023. If funds are exhausted, the Board may then either approve a mid-year budget adjustment to accommodate additional applicants or create a queue for the next fiscal year.
- Sets a timeline for RCA staff to review applications.
- Sunsets the program on June 30, 2025.

A rebate program does not contain several of the potential difficulties of the previous concept:

- *Better assurance benefits will go to intended recipients* – The Executive Committee reiterated its intent that the reduced fee should benefit individuals seeking to build and live in their own home as a primary residence, not investors or large developers. A rebate program that requires homeowners to demonstrate that they live in the home for at least one year provides greater accountability that benefits will be targeted to those who meet the Committee’s intent.
- *Better budget control* – Because the program will be run through RCA rather than cities or County, RCA will be able to better monitor how many homeowners are seeking the rebate, and therefore better manage its financial exposure. Staff’s proposal includes a recommendation to set aside \$70,050 in FY 2023, with the opportunity for the Board to enact a mid-year budget adjustment if necessary or waitlist applicants for the next fiscal year.
- *Reduced administrative burden* - A rebate program can be administered by RCA, rather than requiring cities and the County to adopt an additional fee rate for a narrow category of residential construction. RCA staff can model program implementation after how the County processes Homeowner Exemptions for property taxes.

Potential risks for the proposed pilot program include:

- Popularity of the program such that RCA funds are quickly exhausted, requiring the RCA Board to make additional budgetary decisions.
- Fraudulent applications.
- Rebate funds will decrease funding for core RCA functions, including habitat acquisition.

If the Executive Committee approves of the staff-proposed concept and forwards it to the full Board of Directors, staff will develop a more formal policy document for the Board to consider for adoption at the March 1, 2021 Board meeting.

LDMF Background

Since 2004, the LDMF has been indexed according to the Consumer Price Index (CPI). The LDMF is the primary source of funding for RCA to carry out its mission to acquire conservation lands and fulfill the obligations of the signatories to the MSHCP, which allow them to obtain coverage under the Endangered Species Act for development and transportation projects.

The current LDMF for a single-family home is \$2,234. The full fee that will be effective on January 1, 2022 pursuant to the Board-approved Nexus Study will be \$3,635. The difference between the current fee and the Nexus Study fee for a single-family homebuilder is \$1,401.

As outlined in the Nexus Study and presented to the Board, over the last 16 years, many of the assumptions underlying the original fee rate were not borne out by reality. Forces contributing to the unmet expectation include the Great Recession, less acreage dedicated to RCA by private landowners, and less state and federal funding than expected. The Nexus Study calculated the expected costs to complete the Additional Reserve Lands acquisition required by the MSHCP, manage the conservation lands in perpetuity via an endowment, and administration of the MSHCP. The Nexus Study then distributed the total costs among the estimated future development in Western Riverside County over a 24-year period on a per acre basis. The fee resulting from this longer period was the preferred scenario for the Board and the Building Industry Association, as it resulted in the lowest potential economic impact. A fee increase that assumed a shorter land acquisition period over a smaller universe of development projects would have resulted in a substantially higher fee. The Board also adopted a phased increase of the new fee, with 50 percent of the fee increase taking effect on July 1, 2021 and the remainder of the increase taking effect on January 1, 2022.

Expedited Review Process (ERP) for Single-Family Homes Under the MSHCP

Imposition of the MSHCP fee is a matter separate and apart from the development review and approval process through a city or the County. The MSHCP provides for an ERP for single-family homes or mobile homes whereby the home is placed in the least environmentally sensitive location on the lot. The Board's decision on the fee for single-family homes will not impact

reviews or approvals by the applicable land use jurisdiction. The RCA will not be impacted, as ERPs do not go through Joint Project Review.

FISCAL IMPACT:

If the RCA Board adopts the RCA Legacy Home Rebate Program as proposed by staff, there will be no current-year fiscal impact. In FY 2022, there may be minor fiscal impacts related to staff time to develop protocols for the program and preparing to process applications. Additional fiscal impacts are anticipated to begin in FY 2023 at no more than \$70,050 annually.

Attachment: Draft Conceptual Proposal: RCA Legacy Home Rebate Program

DRAFT CONCEPTUAL PROPOSAL - RCA Legacy Home Rebate Program

What

Rebate of the difference between the Local Development Mitigation Fee (LDMF) as of June 30, 2021, adjusted for inflation, and the LDMF at the time of application.

Why

Provide a financial benefit to western Riverside County landowners who have long dreamed of building their own home on land they owned prior to creation of the MSHCP when the LDMF did not exist.

Who

- Western Riverside County residents who:
 - Receive a building permit after June 30, 2021 for the construction of one home that is their primary residence,
 - On a parcel of land that:
 - They owned prior to June 30, 2004,
 - Was legally created prior to June 30, 2004,
 - Paid the full LDMF to the land use authority of jurisdiction, and
 - Have lived in the home for at least one year.

Where

Anywhere within the boundaries of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

When

July 1, 2021 – June 30, 2025

How

Eligible homeowners will submit simple application to the RCA after occupying their home for one year, along with the following documentation to establish eligibility:

- Copy of residential building permit
- Copy of proof of payment of full LDMF
- Copy of any three of the following:
 - Motor vehicle registration
 - Driver's license
 - Voter registration
 - Federal or State Tax Return (one page showing address)
 - BOE-266 -Homeowners' Property Tax Exemption Form
 - Utility bill

RCA staff will review application and documentation and notify applicant of determination of eligibility within 30 days of receipt.

RCA will budget \$70,050 – enough for 50 rebates – in the first year of the program. After the budget is fully expended, RCA will maintain a queue of eligible applicants and then process rebates to applicants in the queue as additional budget becomes available, either through mid-year budget adjustments approved by the Board or through the next fiscal year's budget allocation by the Board.