

**AGENDA  
KERN COUNCIL OF GOVERNMENTS**

**KERN COG CONFERENCE ROOM  
1401 19TH STREET, THIRD FLOOR  
BAKERSFIELD, CALIFORNIA**

**THURSDAY  
June 20, 2019  
6:30 P.M.**

**DISCLAIMER:** This agenda includes the proposed actions and activities, with respect to each agenda item, as of the date of posting. As such, it does not preclude the Committee from taking other actions on items on the agenda which are different or in addition to those recommended.

- I. **ROLL CALL:** Gurrola, B. Smith, Lessenevitch, Vallejo, Crump, Cantu, Mower, Alvarado, Krier, P. Smith, Reyna, Couch, Scrivner

Congestion Management Agency Ex-Officio Members: Kiernan, Green, Miller, Parra

- II. **PUBLIC COMMENTS:** This portion of the meeting is reserved for persons to address the Council on any matter not on this agenda but under the jurisdiction of the Council. Council members may respond briefly to statements made or questions posed. They may ask a question for clarification; make a referral to staff for factual information or request staff to report back to the Council at a later meeting. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD PRIOR TO MAKING A PRESENTATION.**

Disabled individuals who need special assistance to attend or participate in a meeting of the Kern Council of Governments may request assistance at 1401 19th Street Suite 300; Bakersfield CA 93301 or by calling (661) 635-2900. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials available in alternative formats. Requests for assistance should be made at least three (3) working days in advance whenever possible.

- III. **CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT:** All items on the consent agenda are considered to be routine and non-controversial by Kern COG staff and will be approved by one motion if no member of the Council or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in the listed sequence with an opportunity for any member of the public to address the Council concerning the item before action is taken. **ROLL CALL VOTE.**

A. **Approval of Minutes – May 16, 2019**

B. **Response to Public Comments**

C. **METROQUEST COMMUNITY ENGAGEMENT SOFTWARE** (Napier)

**Comment:** MetroQuest Digital Engagement Subscription Software provides a powerful, flexible, cost effective enhancement to existing public participation capabilities. It complements traditional techniques with digital engagement software delivered via the internet across multiple channels such as web-connected home computers, smartphones, kiosks and tablet computers to reach a broader, more diverse audience.

**Action:** Approve a Sole Source Purchase of the MetroQuest Subscription Software in the amount of \$32,000 and authorize the Executive Director to accept the Proposal. **VOICE VOTE**

**D. COST OF LIVING INCREASE (Napier)**

**Comment:** Proposal for a net 4 percent cost-of-living (COLA) adjustment for Kern COG staff. This item has been approved for recommendation to the full Board by the Executive Committee.

**Action:** Approve a net 4 percent COLA to be effective July 1, 2019. VOICE VOTE

**E. SOLE SOURCE PURCHASE OF MAPPING SOFTWARE SUPPORT (Heimer)**

**Comment:** Contract for \$19,600.00 to provide maintenance and support for ESRI mapping software.

**Action:** Approve sole source purchase not to exceed \$19,600.00 for maintenance and support from ESRI. VOICE VOTE.

**F. 2019-2050 GROWTH FORECAST CONSULTANT CONTRACT APPROVAL**

**Comment:** Requests for Proposals were distributed to over fifty consultants for updating Kern COG's regional growth forecast for 2019-2050. The consultant reviewing team selected The California Economic Forecast. A contract was prepared with a total budget not to exceed \$39,740. County Counsel is reviewing this contract.

**Action:** Approve the consultant selection of The California Growth Forecast to develop the 2019-2050 Growth Forecast Update, and authorize Chair to sign the contract. VOICE VOTE

**G. LOCAL CLEARINGHOUSE:**

Applicant: Self-Help Enterprises  
Address: P.O. Box 6520  
Visalia, CA 93291  
Contact: Susan Long, Director of Partner Services

Catalog No.: 10.433  
Title: Rural Housing Preservation Grant  
Description: Housing Preservation Grant Program for very low and low-income households, providing loans/grants for housing rehabilitation.  
Total Funds: \$337,491.00  
Impact Area: Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, and Tulare counties with a population fewer than 10,000.

**\*\*\* END CONSENT CALENDAR - ROLL CALL VOTE \*\*\***

**IV. BOARD APPOINTMENT OF AN ALTERNATE TO THE SAN JOAQUIN VALLEY POLICY COUNCIL**

**Comment:** Kern COG Board appointment of an alternate to the San Joaquin Valley Policy Council.

**Action:** Make an appointment of an alternate to the San Joaquin Valley Regional Policy Council.

**V. TRANSPORTATION AUTHORITY: (None)**

**VI. CONGESTION MANAGEMENT AGENCY: (None)**

**VII. KERN MOTORIST AID AUTHORITY: (None)**

**VIII. MEETING REPORTS: (None)**

**IX. EXECUTIVE DIRECTOR'S REPORT:** (Report on Programs and Projects in Progress)

- A. Warrant Register
- B. Timeline

**X. MEMBER STATEMENTS:** On their own initiative, Council members may make a brief announcement or brief report on their own activities. In addition, Council members may ask a question of staff or the public for clarification on any matter, provide a reference to staff or other resources for factual information, or request staff to report back to the Council at a later meeting concerning any matter. Furthermore, the Council, or any member thereof, may take action to direct staff to place a matter of business on a future agenda.

**XI. CLOSED SESSION: EXECUTIVE DIRECTOR'S EVALUATION**

**XII. ADJOURNMENT: NEXT MEETING** – The next scheduled meeting will be July 18, 2019.

KERN COUNCIL OF GOVERNMENTS

Minutes of Meeting for May 16, 2019

KERN COG BOARD ROOM  
1401 19TH STREET, THIRD FLOOR  
BAKERSFIELD, CALIFORNIA

THURSDAY  
May 16, 2019  
6:30 P.M.

The meeting was called to order by Chairman Bob Smith at approximately 7:34 p.m.

**I. ROLL CALL:**

**Members Present:** B. Smith, Lessenevitch, Crump, Mower, Reyna, Couch, Alvarado, Trujillo, Krier, Vallejo

**Congestion Management Agency Ex-Officio Members:** Miller, Kersey, Bello

**Members Absent:** Cantu, Scrivner, P. Smith, Dermody

**Others:** John Spaulding, Karen King, Dennis Fox, Yolanda Alcantar, Troy Hightower, Brian Godbe, Ray Scott

**Staff:** Ahron Hakimi, Rob Ball, Becky Napier, Veronica McCulloch, Bob Snoddy, Rachel Pacheco, Linda Urata, Greg Palomo, Peter Smith, Susanne Campbell

- II. PUBLIC COMMENTS:** This portion of the meeting is reserved for persons to address the Council on any matter not on this agenda but under the jurisdiction of the Council. Council members may respond briefly to statements made or questions posed. They may ask a question for clarification; make a referral to staff for factual information or request staff to report back to the Council at a later meeting. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD PRIOR TO MAKING A PRESENTATION.**

Chairman Smith asked for public comments. There were none.

- III. CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT:** All items on the consent agenda are considered to be routine and non-controversial by Kern COG staff and will be approved by one motion if no member of the Council or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in the listed sequence with an opportunity for any member of the public to address the Council concerning the item before action is taken. **ROLL CALL VOTE.**

**A. Approval of Minutes – April 18, 2019**

**B. Response to Public Comments**

**C. Public Information Policies and Procedures (Napier)**

**Comment:** Preparation of the 2019 Public Information Policies and Procedures. This item has been reviewed by the Regional Planning Advisory Committee.

**Action:** Approve the 2019 Public Information Policies and Procedures

**D. FY 2019-20 Final Overall Work Program (Napier)**

**Comment:** The Overall Work Program (OWP) is an annual administrative procedure, undertaken to meet state and federal guidelines. Projects requested by Local, state, and federal agencies that address regional issues and concerns are included in order to provide a comprehensive overview of the annual Kern COG program

**Action:** Adopt Kern COG's Final 2019-20 Overall Work Program and authorize the Chairman to sign Resolution No. 19-01.

**E. Agreement for Safety-Related Hazard and Obstruction Removal on State Highways**  
(Napier)

**Comment:** Consideration of a Memorandum of Agreement between Kern Council of Governments, Acting as the Kern Motorist Aid Authority, and the City of Bakersfield for safety-related hazard and obstruction removal on state highways within the City of Bakersfield in the amount of \$150,000. This item has been approved by County Counsel.

**Action:** Approve the Memorandum of Agreement between Kern Council of Governments, Acting as the Kern Motorist Aid Authority, and the City of Bakersfield and authorize the Chair to execute the Agreement.

**F. 2019 Community Survey Final Report** (Campbell)

**Comment:** Godbe Research was commissioned by Kern Council of Governments (COG) to conduct the 2019 Community Survey.

**Action:** Accept the 2019 Community Survey Final Report.

**G. LOCAL CLEARINGHOUSE:**

Applicant: County of Kern  
Address: 2700 "M" Street, Suite 250  
Bakersfield, CA 93301  
Contact: Mr. James Golden, Planner

Catalog No.: 14.218  
Title: Community Development Block Grant/Entitlement Grant  
Description: Serving the unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco. Program for the development of viable communities.  
Total Funds: \$4,933,453.00  
Impact Area: Unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco.

Catalog No.: 14.239  
Title: Home Investment Partnership Program  
Description: Serving the unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco. Program for the development of viable communities.  
Total Funds: \$2,173, 221.00  
Impact Area: Unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco.

Catalog No.: 14.231  
Title: Emergency Solutions Grant  
Description: Serving the unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco. Program for the development of viable communities.  
Total Funds: \$409,344.00  
Impact Area: Unincorporated communities of the County of Kern and Co-operative Cities of California City, Ridgecrest, Shafter, Tehachapi, and Wasco.

**\*\*\* END CONSENT CALENDAR - ROLL CALL VOTE \*\*\***

MOTION BY DIRECTOR MOWER, SECOND BY DIRECTOR REYNA TO APPROVE THE CONSENT CALENDAR, MOTION CARRIED WITH A ROLL CALL VOTE.

**IV. FINAL KERN COG FY 2019-2020 FINANCIAL PLAN (Palomo)**

**Comment:** Pursuant to policy, Kern Council of Governments (Kern COG) prepares and adopts an annual financial plan (budget) detailing estimated revenues and expenditures for the ensuing fiscal year. Staff has prepared a **final** Kern COG FY 2019-2020 Financial Plan that includes \$5,729,702 in estimated operating revenues and \$5,287,796 in estimated operating expenditures.

Chairman Smith opened the public hearing. There were no public comments and Chairman Smith closed the public hearing.

**Action:** Board Member Couch made a motion to adopt the Final Kern COG FY 2019-2020 Financial Plan; seconded by Board Member Vallejo, with all in favor.

**V. FINAL KMAA FY 2019-2020 FINANCIAL PLAN (Palomo)**

**Comment:** KMAA develops and annual financial plan or budget that includes detailed estimates of revenues and expenses for the upcoming fiscal year. The financial plan is reviewed and approved by the Council. The **final** KMAA FY 2019-2020 Financial Plan proposes operating revenues totaling \$769,833, and operating appropriations totaling \$577,328, with net operating surplus of \$192,505.

Chairman Smith opened the public hearing. There were not public comments and Chairman Smith closed the public hearing.

**Action:** Board Member Mower made a motion to adopt the Final KMAA FY 2019-2020 Financial Plan; seconded by Board Member Couch, with all in favor.

**VI. APPOINTMENT OF A THIRD MEMBER OF THE EXECUTIVE COMMITTEE (Napier)**

Ms. Napier stated that the Kern COG Policy Manual defines the makeup of the Kern COG Board Executive Committee. The Manual states: "The Executive Committee shall be comprised of the Chairman, the representative of the City of Bakersfield and one (1) representative of the County of Kern. In the event that the representatives of the City of Bakersfield and the County of Kern hold the positions of Chairman and Vice-Chairman, the third member shall be appointed by a majority vote of the Council".

The Chairman is the representative of the City of Bakersfield, the Vice-Chairman (Zack Scrivner) is absent; therefore Supervisor Couch will represent Kern County and the Board needs to select another individual to serve on the Kern COG Board Executive Committee.

Board Member Couch made a motion to nominate Board Member Vallejo to the Executive Committee, there being no objections, the motion carried.

**VII. TRANSPORTATION AUTHORITY: (None)**

**VIII. CONGESTION MANAGEMENT AGENCY: (None)**

**IX. KERN MOTORIST AID AUTHORITY: (None)**

**X. MEETING REPORTS: (None)**

**XI. EXECUTIVE DIRECTOR'S REPORT:**

Mr. Hakimi provided the following information to the Board:

- Report on San Joaquin Valley Annual Policy Conference – May 8 – 10 in Lemoore
- June 19 – 21 FHWA and FTA Federal 4 Certification Review
- SB 2 Planning Grants Program – OPR, HUD and Placeworks – Wednesday, June 5 at 1:30 in the Kern COG Board Room
- Working with the Kern County Public Works to replace the Debris Removal Contract that we had with the Sheriff's Department

**XII. MEMBER STATEMENTS: (None)**

**XIII. CLOSED SESSION: (None)**

**XIV. ADJOURNMENT:** Seeing no other comments the meeting adjourned at 8:05 p.m. **NEXT MEETING – June 20, 2019.**

Respectfully submitted,

ATTEST:

\_\_\_\_\_  
Bob Smith, Chairman

\_\_\_\_\_  
Ahron Hakimi, Executive Director

DATE: \_\_\_\_\_



## III. C. COG

June 20, 2019

TO: Kern Council of Governments

FROM: Ahron Hakimi  
Executive Director

BY: Becky Napier  
Deputy Director - Administration

SUBJECT: KERN COUNCIL OF GOVERNMENTS CONSENT AGENDA ITEM III. C.  
METROQUEST COMMUNITY ENGAGEMENT SOFTWARE

DESCRIPTION:

MetroQuest Digital Engagement Subscription Software provides a powerful, flexible, cost effective enhancement to existing public participation capabilities. It complements traditional techniques with digital engagement software delivered via the internet across multiple channels such as web-connected home computers, smartphones, kiosks and tablet computers to reach a broader, more diverse audience.

DISCUSSION:

The 2017 Transportation Plan Guidelines requires development of a Public Participation Plan to include consultation and coordination with all interested parties (Title 23 CFR Part 450.316) adopted by the Board at the May 2019 meeting. Title 23 CFR Part 450.316(a) states the following concerning participation and consultation:

“The Metropolitan Planning Organization (MPO) shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.”

A vigorous public information process not only serves Kern COG by meeting federal requirements, but also allows for a fruitful exchange of ideas while developing programs or projects that may be controversial such as the Regional Transportation Plan. The addition of the MetroQuest community engagement software will enhance Kern COG’s ability to engage members of the public and constituencies that may not participate in an open meeting format.

MetroQuest is widely recognized in the planning and engagement profession for delivering outstanding results on a multitude of planning and engagement initiatives for hundreds of government agencies and communities throughout the USA and Canada. Examples include: Regional Transportation Commission of Southern Nevada (Regional Transportation Plan); Nashville nMotion Transit Plan; Lancaster County, PA (Comprehensive Plan and Indianapolis MPO – Let’s Talk Transit: Hamilton County to name a few.



The MetroQuest Digital Engagement Subscription Software is offered at a cost of \$32,000 for the period of July 1, 2019 through June 30, 2020. Funds are budgeted in the 2019/2020 Fiscal Year Overall Work Program.

Staff has completed the Sole Source or Sole Brand Vendor Justification and Documentation as required by the Kern COG Policy Manual.

ACTION

Approve a Sole Source Purchase of the MetroQuest Subscription Software in the amount of \$32,000 and authorize the Executive Director to accept the Proposal. VOICE VOTE

ATTACHMENTS:

APPENDIX A - MetroQuest Proposal

APPENDIX B - MetroQuest Service Level Agreement

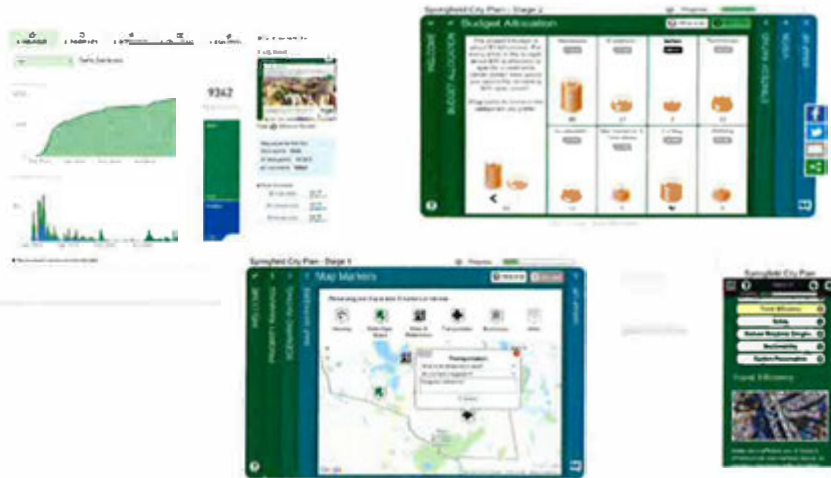
APPENDIX C - Sole Source or Sole Brand Vendor Justification

APPENDIX D - Sole Source Board Letter Documentation of Research

# APPENDIX A



## MetroQuest Subscription Software Proposal for Kern Council of Governments



Prepared by:

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[tara.macaulay@MetroQuest.com](mailto:tara.macaulay@MetroQuest.com)

## Proposal

Proposal #: 37647901

Date: 12-April-2019

For: Kern Council of Governments



## Introduction

MetroQuest is digital engagement software. It provides organizations with a powerful, flexible, cost effective enhancement to their existing public participation capabilities. It does this by complementing traditional techniques with digital engagement software delivered via the internet across multiple channels such as web-connected home computers, smartphones, kiosks and tablet computers to reach a broader, more diverse audience.

MetroQuest is provided via the Internet and runs in a browser based on a software-as-a-service (SAAS) model. Setting up MetroQuest to collect stakeholder input for a particular project, accessible via a unique web address (URL) such as <http://theproject.metroquest.ca>, is referred to as a MetroQuest Site.

MetroQuest is developed, owned and sold by **Envision Sustainability Tools Inc. ("Envision")**.

Envision is pleased to provide this proposal for **Kern Council of Governments ("Client")** to use MetroQuest to enhance community engagement for multiple projects throughout the period of the subscription based contract.

## Engagement Objectives

A key component of the work is to engage citizens in a meaningful way in the process.

In particular, the engagement objectives include:

- Engage a large number of participants that reflect the demographics of the project area;
- Provide multiple mechanisms and opportunities for citizens to participate in the process;
- Allow citizens to learn about the project as well as provide their feedback; and
- To gain insight into public opinion about the project.

## The Recommended MetroQuest Solution

In order to meet the engagement objectives, Envision is pleased to offer MetroQuest, which includes the following:

- a. Access to and remote training on MetroQuest Site Management System (MetroQuest Studio aka "Studio"), the system that enables Clients to setup a MetroQuest Site;
- b. Provide remote training for project team personnel on the use of the MetroQuest Data Center, allowing access to integrated data from all respondents;
- c. Provide the capability to use MetroQuest for online, workshop, peer to peer tablet, and smart phone engagement as needed; and
- d. Adhere to the relevant jurisdiction's privacy legislation for the collection and storage of private information.

## Proposal

Proposal #: 37647901

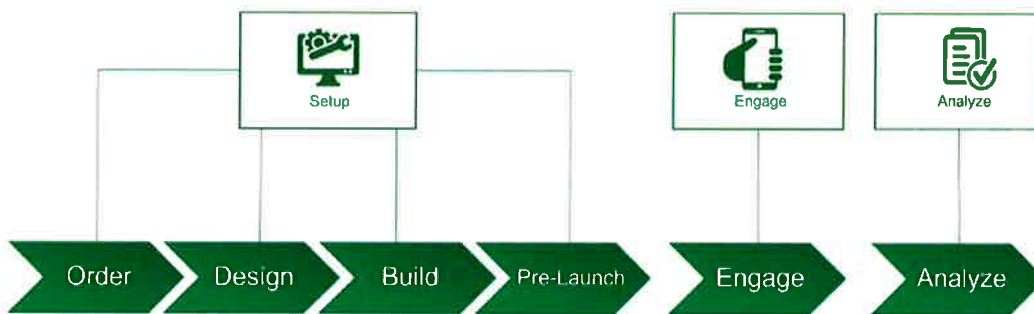
Date: 12-April-2019

For: Kern Council of Governments



## MetroQuest Set-up and Use

Envision will train and assist the client team to help them understand how best to use MetroQuest and what will be required to create a survey, referred to as a **MetroQuest Site** (“Site”), for each client engagement initiative. This begins during the Subscription Orientation Meeting at the commencement of the subscription period and continues through the subscription period as needed via the MetroQuest Support portal. The Orientation Meeting includes Client training on how to access and use MetroQuest Studio (“Studio”), the tool that will be used to setup a **MetroQuest Site**, as well as MetroQuest Data Center, the tool that will be used to see the survey results.



The Setup of a MetroQuest Site involves 4 steps:

1. **Order**
  - a. **Client** uses Studio to order new Site for a particular client initiative;
2. **Design**
  - a. **Client** uses Studio to identify which MetroQuest components, or screens will be used;
3. **Build**
  - a. **Client** inputs all required content (text and images);
  - b. **Client** inputs all required screen preferences (e.g. color);
4. **Pre-Launch**
  - a. **Client** reviews Site, inputting any necessary changes;
  - b. **Client** notifies **Envision Support** that Site is ready for testing;
  - c. **Envision Support** tests and launches and hosts the live Site.

**Additional Languages:** Should the client choose to add additional languages in the future; please note the following for additional languages.

The process to create and launch a “second language” Site requires the client to first complete the first language Site, then provide translation. MetroQuest will provide client with a “Translation Table” of all words/phrases for the client to provide the translated terms in the context of survey. MetroQuest Support Desk can then copy the original Site, apply Site Instruction Language Library (eg. Spanish

## Proposal

Proposal #: 37647901

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instructions) and upload the translated terms to create an identical Survey. The client has the option of placing buttons on each Site First Screen to allow the participant to quickly navigate the alternative language version

## Fees

Unlimited MetroQuest Subscription	Fee & Invoicing
Use of MetroQuest for an unlimited number of Standard Sites in <b>one language</b> (includes support for an unlimited period of public access for each MetroQuest Site via computer web browser, mobile, peer to peer iPad, and kiosks; hardware not included)	<b>\$32,000/Year (prepaid)</b>

## Terms and Conditions

### Term of the Agreement:

**Start Date:** DD-Month-YYYY (TBD)

**Expiry Date:** DD-Month-YYYY (TBD)

Expiry Date is the last date for which a MetroQuest Site can be launched in MetroQuest Studio. Once a MetroQuest Site is launched, it can remain open for public use indefinitely. Although a Site may be launched in Studio, the dates it's made available for public use are at the discretion of the client.

The use of MetroQuest to initiate and launch a MetroQuest Site, and to receive assistance and support from MetroQuest, is limited to **all employees of the Kern Council of Governments**.

For clarity, the client may have other departments or external third parties assist with their use of MetroQuest in a support capacity, but it is the client, as defined above, that will be registered for use in MetroQuest's internal systems and only the client will have access to the MetroQuest "Studio" to set-up and manage MetroQuest Sites. MetroQuest will not be responsible to train or provide support directly to (internal or external) parties outside the definition of the client.

Standard MetroQuest Site package assumes the Site contains 4 or 5 Screens. The Introduction and Exit screens are required. The additional 2 or 3 Screens are from the remaining 11 standard Screens in the MetroQuest Screen Gallery, using only the standard Site options.

All figures shown are in USA Dollars. Any applicable taxes are not included and will be borne by the Client.

MetroQuest software is provided based on the terms and conditions described in the MetroQuest Service Level Agreement (Version 7, USA, 2017).

This pricing is valid for 30 days.

**Proposal**

Proposal #: 37647901

Date: 12-April-2019

For: Kern Council of Governments



**Complete Agreement** This Agreement, the MetroQuest Service Level Agreement (Version 7, USA, 2017) and all other agreements and terms incorporated by reference herein or in which this Agreement is incorporated by reference comprise the complete and exclusive statement of the agreement between the parties.

**Payment Terms:**

- Payment is due upon receipt of the invoice and payable by check (no credit cards)

**Confirmation**

**Kern Council of Governments** agrees to acquire the offering provided by Envision Sustainability Tools Inc. as described above.

On behalf of **Kern Council of Governments**

On behalf of **Envision Sustainability Tools Inc.**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## MetroQuest Service Level Agreement

MetroQuest® community engagement software ("Software") is an internet application that is developed and provided by **Envision Sustainability Tools Inc.** ("Envision"). The Software is provided through a software-as-a-service ("SaaS") subscription model.

The provision of the SaaS subscription provided by Envision is dictated by the terms in two companion documents:

- i. A Service Level Agreement that describes what your organization ("Customer") can expect in terms of service levels and support from Envision (the "Service Level Agreement"); and
- ii. A proposal that describes the terms under which your organization agrees to pay for and use the Software (the "Proposal"), and together with the Service Level Agreement, the "Agreement".

### Definitions

#### Software

The Software is an internet application, meaning that it is delivered to the Customer via the internet and utilized via a web browser. The Software is housed on secure web server(s) and made up of two distinct components:

- i. A public-facing digital engagement platform that can be configured for a particular project and made available to the public and other persons to gather input, the ("Engagement Platform"); and
- ii. A set of web based administration tools used to setup the Engagement Platform for a particular project ("Site") and access visitor data, the ("Administration Tools").

**SaaS** – Customer does not install and run the Software on its own computers, but rather uses the Software via a web browser. The Software is maintained and provided by Envision via secure web servers for use via the internet.

**Project** – The planning project or other undertaking for which the Software will be used to collect input.

**Site** – An instance of the Software setup for a specific Project in a particular language.

**Visitor** – An individual who interacts with the Engagement Platform and provides input via a particular Site. Visitors are not authenticated (required to provide a username and password) by the Software

**Channel** – The different combinations of hardware and software that the Engagement Platform can be made available to Visitors. Currently the alternatives are Web, Smart Phone (each utilizing a Visitors device and internet connection) and peer-to-peer. Peer-to-peer is the use of

the Engagement Platform in face-to-face situations, such as workshops and town hall type meetings.

### **Supported Browsers**

The Engagement Platform has been tested and made compatible with the following web browser software:

Internet Explorer/Edge 9+, Firefox 3.6+, Chrome 3+, Opera 10+ for Windows and MacOS. Safari 3+ for MacOS.

Smart phones supported:

iPhone 4 or later running iOS 5 or later; Android devices running OS 4.0 or later; Windows Phone running OS 7.0 or later.

The Administration Tools have been tested and made compatible with the following web browser software:

Internet Explorer 10+, Chrome 3+ for Windows. Safari 3+ for MacOS.

### **Roles and Responsibilities**

Three elements are required to enable Visitors to interact with the Engagement Platform setup as a particular Site:

- i. MetroQuest Engagement Platform setup specifically for a Client's Project;
- ii. Specific hardware and software, which varies by Channel:
  - a. for the Web Channel, this would be a Visitor's device and the web browser on that device;
  - b. for the smart phone Channel, this would be a Visitor's smart phone and the web browser on that smart phone;
  - c. for Peer-to-Peer Channel, this would be the device and the web browser running on that device;
- iii. A connection to the internet.



The following table explains who is responsible for providing each element.

Elements	Responsibility by Channel		
	Web	Smart Phone	Peer-to-Peer
Engagement Platform	Envision	Envision	Envision
Visitor's Hardware and Software	Visitor	Visitor	Customer/Hardware provider <sup>2</sup>
Internet Connection <sup>1</sup>	Visitor	Visitor	Customer

1. Internet Connection is the sole responsibility of the Visitor or Customer. In the case of the Peer-to-Peer Channel, the Customer will provision an active internet connection that is available as long as the Peer-to-Peer Channel is required.
2. Hardware provider would be a third party vendor that rents hardware such as kiosks and/or tablets.

### MetroQuest Software Availability

Envision will ensure the MetroQuest Software is available 99.5% of the time, measured on a twenty four (24) hour clock, monthly. MetroQuest is hosted by Microsoft Windows Azure, a cloud based server technology which delivers a 99.95% monthly service level. (<http://www.windowsazure.com/en-us/support/sla/>). Microsoft Azure is one of the largest and most reliable cloud platforms in the world.

"Downtime" is defined as a system outage or the time(s) when the Software is unavailable as measured from the time a severity level 1, 2 or 3 incident is reported, to the time that incident is resolved.

The following table indicates the response and resolution time the Customer can expect, based on the type of incident, defined by "Severity Level" once Envision has been notified of an incident, as well as the remedy that will be provided in the unlikely event that service levels fall below 99.5%.

Severity Level	Software Component	Incident Type	Response Time	Resolution Time	Rebate
1	Engagement Platform	Full System Outage /or a reproducible error that causes the Engagement Platform to crash for a Visitor	1 hour	1 day	1 day credit for each 1 hour of downtime
1	Administration Tools	Full System Outage /or a reproducible error that causes the Administration Tools to crash for a Customer	1 hour	1 day	1 day credit for each 1 hour of downtime
2	Engagement Platform	Partial System Outage/ a reproducible error that has a workaround and does not cause the Engagement Platform to crash for a Visitor; or content or other information that are not displaying as agreed upon	4 hours	2 days	N/A
2	Administration Tools	Partial System Outage/ a reproducible error that has a workaround and does not cause the Administration Tools to crash for a Customer	4 hours	2 days	N/A
3	Either	Minor Incident / General Support	24 hours	5 days	N/A

### General Support and Maintenance

Envision will provide the following Support Services ("Support") for MetroQuest Software:

For Customers:

- (a) Support will be available to the Customer between the hours of 7:00 am to 5:00 pm Monday to Friday ("Support Days") Pacific Time, excluding New Years Day, Good Friday, Labor Day, and Christmas Day, via email, not including priority responses for system outages.
- (b) Support email requests from the Customer ("Customer Service Request") must be sent via email to support@metroquest.com.
- (c) In the event of a Customer Service Request, Envision will:
  - acknowledge the Customer Service Request upon receipt, via email;

- resolve or develop a resolution plan within 4 hours upon receipt of the first Customer Service Request; and
- prior to the Customer Service Request being closed, confirm with the Customer that the Service Request has been resolved.

For Visitors:

- (a) Support will be available to the Visitors between the hours of 7:00 am to 5:00 pm Monday to Friday ("Support Days") Pacific Time, excluding New Years Day, Good Friday, Labor Day, and Christmas Day, not including priority responses for system outages.
- (b) Support email requests from Visitors ("Visitor Service Request") must be sent via email to support@metroquest.com.
- (c) In the event of a Visitor Service Request, Envision will:
  - acknowledge the Visitor Service Request by the Visitor upon receipt via email;
  - notify the appropriate Customer of the Visitor Service Request;
  - work with the Customer to resolve or develop a resolution plan for the Visitor Service Request; and
  - prior to the Visitor Service Request being closed, confirm with the Customer that the Visitor Service Request has been resolved.

## **Backups and Recovery**

Envision will use reasonable endeavours to backup all data required to recover from a disaster within 3 business days. As Envision uses Microsoft Azure as its platform provider, this will involve backing up data both within the data center where the data resides (primary data center), as well as one other Azure data center within the United States. The data center to data center backup will occur daily.

In the event of a disaster, defined as a Severity Level 1 service outage for more than 12 hours in the primary data center, Envision will undertake a disaster recovery. Software availability will be restored within 3 business days of the start of the disaster recovery commencing.

## **Customer Data**

The Software utilizes two (2) types of Customer Data:

- i. Content provided by the Customer, such as text, images, numeric information ("Content Data");
- ii. Information collected from Visitors by the Software based on Visitors providing input to questions presented via the Engagement Platform, ("Usage Data").

### ***Content Data Ownership and Use***

Envision agrees that the Customer is the owner of any content, including Content Data and Usage Data uploaded to the Engagement Platform. Envision acknowledges that all Content Data is and remains the property of the Customer or the respective owner of the Content Data in the case where the Content Data belongs to another party. The Customer acknowledges that it has the right to use the Content Data that is provided to Envision as part of a public web site or has obtained permission from the respective owner to use the Content Data as part of a public website. Envision shall not be responsible for any copyright infringement claims by third parties relating solely to the use of Content Data provided by the Customer.

### ***Usage Data Ownership, Reporting and Delivery***

Envision acknowledges that all Usage Data is and remains the property of the Customer or their client in the case where the Usage Data is being collected on behalf of the Customer's client. Envision reserves the right to utilize all non-personal Usage Data collected for the sole purpose of determining trends and patterns in usage.

Access to Usage Data is provided via the reporting function that is part of the Administration Tools of the Software.

Usage Data is based on Visitor activity and Visitor responses collected during a Visitor Session. A Visitor Session is defined below for each Channel:

- i. A Web session is defined as all interaction with the Software from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to the Software in this new window constitutes a new session;
- ii. A Smart Phone session is defined as all interaction with the Software from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to the Software in this new window constitutes a new session;
- iii. A Peer-to-Peer session is defined as the duration of a single workshop event, from start to finish, from when the facilitator navigates to a workshop specific URL until the browser is closed;
- iv. A Peer-to-Peer session is defined as all interaction with the Software from an individual once the Customer provides access to a Site via the Customer's device for a Visitor, until the Visitor stops providing input.

At the completion of a Project, all Usage Data collected for all Sites used in the Project can be accessed via the Administration Tools.

### **Use of Personal Information**

For some Projects the Engagement Platform may be setup by the Customer and subsequently used to collect Personal Information such as names and email addresses. The decision to use the Software to collect Personal Information rests entirely with the Customer. In the event that Personal Information is collected, Envision warrants that it will never, under any circumstances, use this information for any purpose without the express written consent of the Customer that is undertaking the Project. This information will only be provided to the Customer. The Customer may request that Envision delete all Personal Information collected for a particular

Project once that Project is completed. Envision agrees to comply with such a request within thirty (30) business days.

### **System Security**

MetroQuest operated on the Microsoft Windows Azure cloud platform, one of the largest and most secure cloud platforms in the world. Our servers are located at one of Microsoft's data centers located in the continental United States and utilize security measures for the Hosting Environment, Operations and Personnel Security, Application-level Security, Fault-Tolerance Redundancy, Privacy and Updates. (<http://www.microsoft.com/online/legal/?langid=en-us&docid=11>)

Envision will notify Customer immediately upon discovering any breach or compromise of Envision's security protocols or measures or any unauthorized access to any personal information, and Envision shall promptly conduct an investigation and submit an oral report of its findings to Customer within forty-eight (48) hours, to be followed by a written report within seven (7) days. Envision will cooperate with Customer in connection with the investigation and incident management of any such event.

Envision logs all access to the Administration Tools and Engagement Platform. In addition, is maintains audit logs for all direct database access.

### **Administration Tools Security**

Envision utilizes Azure Active Directory to provide authentication services for authorized users of the Administration Tools.

### **Warranties**

Envision does not warrant that:

- (a) The Software will be uninterrupted or error free;
- (b) The Services will meet Customer's requirements, other than as expressly set out in this agreement; or
- (c) The Services will be free from external intruders (hackers), virus or worm attack, denial of services attack, or other persons having unauthorized access to the services or systems of the Customer.

Nothing in the above warranty exclusions negates any of Envision's agreements and representations expressly set forth in this Agreement.

### **Publicity, Publication and Usage Statistics**

In order to improve the Software, Envision computes general usage statistics. As part of promoting its product and services, Envision promotes certain customer Sites as examples of how to use the Software. In order to do so, Envision requests that the Customer grant Envision a non-exclusive, perpetual, worldwide, right to (i) use a non-data collecting copy of the

Customer's Site(s) for marketing and promotional purposes once the Site(s) has been made available publicly on the internet; (ii) to include the Customer's Usage data in the determination of general usage statistics and patterns.

### **Software Intellectual Property Rights and Ownership**

The Customer acknowledges that in the provisioning of the Service, Envision will use the Software to provide the Service and the Customer will use the Software to access Usage Data. The Customer acknowledges and agrees that all intellectual property contained in the Software is and will remain the property of Envision and that no part of this Agreement or any agreement that this Agreement becomes a component of, assigns any right, title or interest in the Software to the Customer.

### **Other General Terms**

#### **No Waiver**

A party's failure or delay to enforce a provision under these Terms is not a waiver of its right to do so later.

#### **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

MetroQuest® is a Registered Trademark of Envision Sustainability Tools, Inc.

APPENDIX C  
Kern Council of Governments

SOLE SOURCE OR SOLE BRAND VENDOR JUSTIFICATION

Requestor: Becky Napier

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1. Please indicate whether this procurement is a sole source or sole brand:

↑ Sole Source: If checked, please specify whether this procurement is for the purchase of 'goods' or 'services'.

↑ **Goods:** Item is available from one source only. Item is a one-of-a-kind and is not sold through distributors, only through the manufacturer who is the exclusive distributor of goods you wish to purchase.

↑ **Services:** This service can only be performed by one vendor. There are unique qualifications, rights, patents and/or licenses this vendor possesses which make this vendor exclusive.

OR

↑ Sole Brand: There is more than one source that can supply the specified model and brand. A competitive bid can be solicited for this requested brand only. This brand meets form, fit and function. Nothing else will do. (Skip #2 – proceed to #4 below)

2. Have you made a diligent and conscientious search to locate other vendors who can supply this item or service and no other vendor can be found?

↑ No – Please continue to search for other suppliers until you are convinced no other vendor exists that can provide this good/service or commit to a competitive bid process.

↑ **Yes – Please fill out the required vendor information below.**

3. The following vendor is the only vendor able to supply the sole source good or service requested:

Vendor Name: MetroQuest

Contact: Tara Macaulay

Address: 510-1111 Melville St.

Proposal #: 37647901

Vancouver, BC

Tel: 1-604-225-2007

Canada V6E3V6

Email: Tara.macaulay@MetroQuest.com

4. a. Provide a brief description of the goods/services to be purchased:

Digital Engagement Software that provides a powerful, flexible, cost effective enhancement to existing public participation capabilities. It complements traditional techniques with digital engagement software delivered via the internet across multiple channels such as web-connected home computers, smartphones, kiosks and tablet computers to reach a broader, more diverse audience.

- b. Why has the product and/or vendor been selected?

This produce/vendor has been selected because it provides the capability to use MetroQuest for online, workshop, and smartphone engagement and provide privacy for the collection and storage of information.

- c. For goods only: Are there unique performance features REQUIRED (not merely preferred) for this product/brand selected that are not available in any other product/brand?

MetroQuest is developed, owned and sold by Envision Sustainability Tools Inc. ("Envision").

- d. For services only: Are there unique qualifications, rights, patents or licenses that this vendor possesses?

- e. Why are these specific features/qualifications required?

Kern COG has been commissioning an annual statistically valid community survey since 2007. For the past several years an online option has been added to enhance the landline and cell phone capability with great success. Although MetroQuest will not be a statistically valid survey tool, it will greatly enhance Kern COG's capability to validate the statistically valid document as well as reach constituencies that may not be reached any other way.

- f. What are the advantages to Kern Council of Governments by acquiring this good/service from this vendor?

The engagement software includes access to and remote training on MetroQuest Site Management System, the system that enables Clients to setup a MetroQuest Site; provides remote training for project team peronnel on the use of the MetroQuest Data Center, allowing access to integrate data from all respondents; provides the capability to use MetroQuest for online, workshop, peer to peer tablet, and smart phone engagement as needed; and it provides privacy for the collection and storage of information because there is no mandatory registration or sign-up. The software includes 14 pre-built engagement survey templates, from which the agency can create its own surveys to support most any public engagement need while enabling the agency to apply its own content and branding.



- g. What other products/services have been examined and rejected?

**MangoApps** – this was primarily a software program that was meant for specific projects with a specific number of individuals participating. The cost was based on the number of users. Kern COG’s goal is to encourage numerous users not limit the number of users.

**Banqthetable** – this is an engagement tool that allows participants to engage with each other. Comments, images and ideas are visible to the community. Kern COG is looking for a tool that can present information and collect data concerning outcomes based on the information.

- h. Why are other sources that may be able to provide equivalent goods or services unacceptable? Provide a full meaningful explanation.

MetroQuest is widely recognized in the planning and engagement profession for delivering outstanding results on a multitude of planning and engagement initiatives for hundreds of government agencies and communities throughout the USA and Canada. Examples include: Regional Transportation Commission of Southern Nevada (Regional Transportation Plan); Nashville nMotion Transit Plan; Lancaster County, PA (Comprehensive Plan and Indianapolis MPO – Let’s Talk Transit; Hamilton County to name a few.

- i. What are the total costs for these goods/services? Include all cost details such as taxes, delivery, etc.

\$32,000/year includes an unlimited number of Standard Sites in one language (includes support for an unlimited period fo public access for each MetroQuest Site via computer web browser, mobile, peer to peer iPad, and kiosks; hardware not included).

5. Is there an unusual or compelling urgency associated with this project?

↑ **No**

↑ Yes – Please Explain:

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I hereby certify that:

1. I am an approved staff representative and am aware of Kern Council of Governments’ requirements for competitive bidding, as well as, the criteria for justification for sole source/brand purchasing.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment.
3. The information contained herein is complete and accurate.

4. There is justification for sole source/sole brand purchasing noted above as it meets the Kern Council of Governments' criteria.
5. A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.

Rebecca S. Napier 6/10/19  
 Requestors Signature Date

Alan Thi 6-10-19  
 Authorized Signature Date

*All costs as indicated below shall be considered the TOTAL complete acquisition cost which includes taxes, shipping etc.*

*Fill out this form for sole source requests of:*

- *One-time orders of a single item or non-professional service which cost \$1,000 - \$10,000*
- *One-time orders in which the total acquisition of goods or non-professional services costs less than \$10,000.*
- *Professional service agreements of less than \$10,000.*

*Orders exceeding these limits require Kern COG Board approval*

*The Executive Director will evaluate and approve or deny sole source request as presented in this documentation.*

APPENDIX D  
**Sole Source Board Letter**  
**Documentation of Research**

Requester: Becky Napier

Board Agenda Date: June 20, 2019

Proposed Vendor: MetroQuest

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This document must accompany all contracts submitted to Kern Council of Governments requesting sole source concurrence. Completion of this document is required for appropriate review. Upon receipt, staff may place their letter on the Board's agenda for final consideration and approval.

The following sole source acquisitions (those with no competitive bid process) would require Board of Directors' approval and would necessitate the need to complete this document:

- One-time orders of a single item or non-professional service which exceed \$10,000
- One-time orders in which the total acquisition of goods or non-professional services exceeds \$100,000
- Blanket orders for goods or non-professional services that exceed \$100,000 annually
- Professional service agreements (PPSA / TDSA) which exceed \$100,000

A Sole Source situation exists when there is clearly and legitimately only one brand (product or service) available from only one source (vendor or manufacturer) that will meet your essential requirements.

An Essential Requirement is a very specific and well-defined need that must be satisfied by the procurement of this product or service. The essential requirement may be required to fulfill the mission or function of your department.

Kern Council of Governments' decision on sole-source procurement will be based on the requester's investigations, evaluation and documentation of alternate sources of supply. Requester's rejection of similar products or services should be based solely on their failure to meet specific and necessary specifications (Essential Requirements). In cases where an alternate supplier cannot be identified, the requester must document that a good faith effort has been made to seek other sources. A list of the unique specifications required of the good or service and the potential companies contacted in the search for alternate sources is necessary.

It is important to remember that a sole source justification cannot be based on quality or price, because quality is subjective and price must be evaluated via competitive bidding.

Please provide accurate and specific information to the questions on the following pages. Forward this completed document to your Financial Officer for funding approval. Once approved and returned, please submit a signed copy of this form along with your staff report to Kern Council of Governments for sole source review and concurrence at least 10 **working** days prior to the anticipated agenda date. This form does not need to be attached to the Board letter sent.

**1. NEEDS STATEMENT:**

**Describe the need that this good or service will satisfy.**

*This question provides you the opportunity to simply explain the need for the good or service regardless of whether or not it is sole source.*

The 2017 Transportation Plan Guidelines requires development of a Public Participation Plan to include consultation and coordination with all interested parties (Title 23 CFR Part 450.316). Coordination is the cooperative development of plans, programs and schedules among agencies and entities with legal standing in order to achieve general consistency. It is very important for the development of the Regional Transportation Plan (RTP) to be conducted both in coordination and consultation with interested parties. The addition of the MetroQuest community engagement software will enhance Kern COG's ability to engage members of the public and constituencies that may not participate in an open meeting.

**2. ESSENTIAL REQUIREMENTS:**

**Describe each requirement that must be met and explain why it is essential.**

*This question is designed to show the objective criteria you are trying to satisfy. Be very specific about the requirement and the reason(s) why this is an Essential Requirement. Do not include 'optional' or 'nice-to-have' features.*

The 2017 Transportation Plan Guidelines requires: Outreach efforts encouraging the active participation of a broad range of stakeholders in the planning process, consistent with the MPO's adopted Federal Public Participation Plan. This includes, but is not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations; consultation with congestion management agencies, transportation agencies, and transportation commissions; regional public workshops with information and tools providing a clear understanding of policy choices and issues. To the extent practicable, each workshop shall include urban simulation computer modeling to create visual representations of the SCS and APS. MetroQuest community engagement software provides the opportunity to "educate" the public and other interested parties with visual and written explanations and then ask questions based on the information.

**3. SEARCH FOR GOODS / SERVICE PROVIDERS:**

**What steps were taken to search for specific brands or service providers to satisfy the Essential Requirements listed above? Provide detailed information.**

*This question provides you the opportunity to show that you did an in-depth search for a brand/provider that satisfies the objective criteria identified above. A good answer would include sources of investigation, such as trade shows, internet searches, professional journals, colleagues, etc.*

Extensive internet research and also discussions with a San Joaquin Valley MPO that used this software during their previous Regional Transportation Plan outreach.

**4. COMPETING BRANDS INVESTIGATED:**

**What are the unique performance features of the brand requested that make it the ONLY product among all the brands to meet the Essential Requirements? For services, what are the unique qualifications this provider possesses over other providers? State the other brands' or service providers' inability to meet one or more of the Essential Requirements.**

*A good answer would compare features related to your Essential Requirements for all the brands considered.*

MetroQuest is widely recognized in the planning and engagement profession for delivering outstanding results on a multitude of planning and engagement initiatives for hundreds of government agencies and communities throughout the USA and Canada. Examples include: Regional Transportation Commission of Southern Nevada (Regional Transportation Plan); Nashville nMotion Transit Plan; Lancaster County, PA (Comprehensive Plan and Indianapolis MPO – Let's Talk Transit: Hamilton County to name a few.

**5. SOURCES FOR THE BRAND (GOODS ONLY):**

**What steps were taken to find sources (i.e. dealers, distributors, etc.) that can provide this brand? Please provide detailed information.**

*This question is designed to insure adequate steps were taken to identify all available sources.*

Please see Number 3 above.

**6. PRICING:**

**Why do you feel the price or fee is fair and reasonable? Include price comparisons with like or similar brands and services.**

*This question asks you to justify the price. It's best to use price comparisons of products or services that are similar in some way.*

I could not find a comparable product. Additionally the annual community survey commissioned by Kern COG is completed at a cost of \$65,000 compared to unlimited surveys through MetroQuest for an annual cost of \$32,000.

**7. URGENCY:**

**Is there an unusual or compelling urgency associated with this request?**

*Administrative delay or lack of adequate advanced planning does not create urgency that justifies a sole source acquisition. Identify when the requirement first became known. Define the impact to the department if the schedule is not met.*

Kern COG is in the planning stages for community outreach as required by the 2017 Transportation Plan Guidelines for its 2022 Regional Transportation Plan.

**8. FUTURE COMPETITION:**

**What can and/or is being done to foster future competition?**

*County policy requires that materials, goods and services are to be procured via competitive means whenever possible. What steps, if any, can be taken to competitively bid this good or service in the future?*

Unknown.

**I hereby certify that:**

- a. I am a staff member and aware of Kern Council of Governments' requirements for competitive bidding, as well as the criteria for justification for sole source brand purchasing.
- b. I have researched and gathered the required information and have made a concentrated effort to review comparable and/or equal products and/or services.
- c. The information contained herein is complete and accurate.
- d. There is justification for this sole source brand described above as it meets the Kern Council of Governments' criteria and nothing else will do.
- e. This sole source/sole brand justification would withstand a possible audit or a vendor's protest.

*Rolando J. Napin*

Requester's Signature

*6-10-19*

Date

*Alan K.*

Authorized Signature

*6-10-19*

Date



## III. D. COG

June 20, 2019

TO: Kern Council of Governments (Kern COG)

FROM: Ahron Hakimi  
Executive Director

BY: Becky Napier  
Deputy Director - Administration

SUBJECT: KERN COUNCIL OF GOVERNMENTS CONSENT AGENDA ITEM III. D.  
COST OF LIVING INCREASE

#### DESCRIPTION:

Proposal for a net 4 percent cost-of-living (COLA) adjustment for Kern COG staff. This item has been approved for recommendation to the full Board by the Executive Committee.

#### DISCUSSION:

The Executive Committee met May 30, 2019, to discuss a potential cost-of-living adjustment (COLA) for Kern COG staff. The last increase of 4% was passed in May 2017.

Since 2017, the consumer price index in the western region has increased accordingly (NOTE: Numbers are not seasonally adjusted):

- January-December, 2017 – 2.8 percent
- January-December, 2018 – 3.3 percent

The Executive Committee recommends a net 4 percent COLA which includes a 5% increase with each employee paying 1 percent into the Public Employees Retirement System. A net 4 percent COLA does not impact funds passed through to Kern COG's member jurisdictions. With Board approval, the increase would become effective July 1, 2019 and be amended into Kern COG's 2019-20 budget in the fall.

#### ACTION:

Approve a net 4 percent COLA to be effective July 1, 2019. VOICE VOTE.



## III. E. COG

June 20, 2019

TO: Kern Council of Governments

FROM: Ahron Hakimi,  
Executive Director

BY: Michael Heimer,  
Regional Planner

SUBJECT: KERN COUNCIL OF GOVERNMENTS CONSENT AGENDA ITEM: III. E.  
SOLE SOURCE PURCHASE OF MAPPING SOFTWARE SUPPORT

DESCRIPTION:

Contract for \$19,600.00 to provide maintenance and support for ESRI mapping software.

DISCUSSION:

Kern COG uses ESRI mapping software for multiple uses including producing wall maps, hosting maps and imagery online, land use modeling, and analysis of geographical information. The yearly support for the use of the suite of ESRI software used by Kern COG is \$19,600.00, which provides technical support, upgrades, and web mapping tools.

ACTION:

Approve sole source purchase not to exceed \$19,600.00 for maintenance and support from ESRI. VOICE VOTE.





## III. F. COG

June 20, 2019

TO: Kern Council of Governments

FROM: Ahron Hakimi  
Executive Director

By: Ben Raymond, Regional Planner

SUBJECT: KERN COUNCIL OF GOVERNMENTS CONSENT AGENDA ITEM: III. F.  
2019-2050 GROWTH FORECAST CONSULTANT CONTRACT APPROVAL

### DESCRIPTION:

Requests for Proposals were distributed to over fifty consultants for updating Kern COG's regional growth forecast for 2019-2050. The consultant reviewing team selected The California Economic Forecast. A contract was prepared with a total budget not to exceed \$39,740. County Counsel is reviewing this contract.

### DISCUSSION:

Kern COG's regional growth forecast is essential to the transportation model and providing data for the Regional Transportation Plan (RTP). The 2017 California RTP Guidelines prepared pursuant to Government Code, Section 14522, list the third step to be undertaken in the development of the RTP as follows: "Forecasting future population and employment growth". Updating the regional growth forecast is a critical step in moving forward with the preparation of Kern COG's next RTP.

The regional growth forecast is also used by Kern COG's member agencies for a variety of planning related tasks, such as: environmental impact analysis/reports, transportation models/impacts, assessing impact fees, determining need for services/infrastructure/utilities, and numerous planning studies.

Kern COG solicited for proposals and advertised a request for proposal for the update to Kern COG's growth forecast. The consultant reviewing team was made up of staff from the City of Bakersfield along with Kern COG staff. The team selected The California Growth Forecast from the submitted proposals with project completion by February 28<sup>th</sup>, 2020. Kern COG staff recommends approval of this contract.

### ACTION:

Approve the consultant selection of The California Growth Forecast to develop the 2019-2050 Growth Forecast Update, and authorize Chair to sign the contract. VOICE VOTE.

DRAFT CONTRACT (UNDER REVIEW) BETWEEN THE KERN COUNCIL OF GOVERNMENTS  
AND  
THE CALIFORNIA ECONOMIC FORECAST

THIS CONTRACT, made and entered into this 20<sup>th</sup> day of June, 2019, by and between the Kern Council of Governments, hereinafter referred to as "Kern COG," and, The California Economic Forecast hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, pursuant to the Joint Powers Agreement of November 4, 1970, creating Kern COG and the amended Joint Powers Agreement of May 1, 1982, Kern COG is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, Consultant represents it is qualified and willing to provide such services pursuant to the terms and conditions of this contract;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. Contract Organization and Content

This contract is fully comprised of these terms and the attached exhibits: Scope of Work, Schedule, and Budget/Cost Proposal, all of which are incorporated herein by this reference.

II. Statement of Work

The work to be conducted by Consultant is specified in Scope of Work identified in the Consultant's proposal, dated May 1<sup>st</sup>, 2019, for the delivery of products as specified in the Scope of Work, attached hereto as Exhibit "A," according to the Schedule, attached hereto as Exhibit "B," and Budget/Cost Proposal, attached hereto as Exhibit "C." During the performance of this contract, the representative project managers for Kern COG and Consultant will be:

Kern COG: Ben Raymond  
Consultant: Mark Schniepp

III. Term

Time is of the essence in this contract. The term of this contract is June 20<sup>th</sup>, 2019 through March 30<sup>th</sup>, 2020 unless an extension of time is granted in writing by Kern COG. The various phases involved in this project shall be completed as indicated in Exhibit "B," Schedule.

Consultant services and reimbursements beyond June 30<sup>th</sup>, 2019, are subject to the inclusion and funding agency approval of this project in Kern COG's 2019-2020 fiscal year Overall Work Program (OWP). If the project or OWP is not approved, this contract is terminated, effective the ending date of the last approved Kern COG OWP.

IV. Assignability

Consultant shall not assign any interest in this contract, and shall not transfer the same, without the prior written consent of Kern COG.

## V. Contract Changes

No alteration or deviation of the terms of this contract shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated herein, shall be binding on any of the parties.

Kern COG may request, at any time, amendments to this contract and will notify Consultant in writing regarding changes. Upon a minimum of ten (10) days notice, Consultant shall determine the impact on both time and compensation of such changes and notify Kern COG in writing. Upon agreement between Kern COG and Consultant as to the extent of these impacts on time and compensation, an amendment to this contract shall be prepared describing such changes. Such amendments shall be binding on the parties if signed by Kern COG and Consultant, and shall be effective as of the date of the amending document, unless otherwise indicated.

## VI. Contract Costs and Reimbursements

### A. Maximum Contract Amount/Budget Amendments:

For services rendered, Consultant may bill and receive up to \$39,740, to be billed in accordance with Exhibit "C," Costs. The total sum billed under this contract may not exceed including all costs, overhead, and fixed fee expenses. Such billings, up to the specified amount, shall constitute full and complete compensation for Consultant's services. Any amendments to the individual categories within the budget must be approved in writing in advance by Kern COG.

### B. Progress Payments and Reports:

Progress payments are authorized under this contract. Progress billings in arrears may be submitted as often as monthly. Written progress reports shall accompany each billing and shall specify, by task, the percentage of contract work completed to date and since the date of the preceding billing, if any. Consultant shall be paid within 30 days following the receipt and approval of each billing by Kern COG. If Kern COG disputes any portion of a request for payment, Kern COG shall pay the undisputed portion of such request as provided herein and shall promptly notify Consultant of the amount in dispute and the reason therefore.

### C. Billing Format and Content:

Requisitions for payment shall refer to Work Element number 604.2 as identified on the FY 2019-2020 Overall Work Program, or as may be specified in a written notice by Kern COG. Specific budget category detail is given below:

1. Direct Labor and Fringe Benefits: All direct labor charges should be billed by class of employee, rate per hour and number of hours. (Anticipated personnel cost-of-living or merit increase, if any, should be reflected in the budget).
2. Other Direct Costs: All direct costs billed must be specifically identified. Any travel costs may not exceed the per diem (\$65/day meals; \$225/day accommodations) and mileage rates shall be reimbursed at the IRS established standard mileage rate. Any other direct costs not specifically identified in the contract budget cannot be reimbursed.

### D. Contract Completion Retainer:

Ten (10) percent shall be retained from each contract billing until the completion of the contract. This retention will be released to Consultant upon completion of contract and contract deliverables to the satisfaction of Kern COG.

### E. Allowable Costs and Documentation:

All costs charged to this contract by Consultant shall be supported by properly executed

payrolls, time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges, and shall be costs allowable as determined by Title 48 Code of Federal Regulations, Chapter 1, Part 31 (Contract Cost Principles and Procedures), Subpart 31.2 (Contracts with Commercial Organizations), as modified by Subpart 31.103. Consultant shall also comply with Title 49, Code of Federal Regulations, Part 18, (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) in the procurement of services, supplies or equipment.

#### VII. Progress Reports

Consultant shall submit progress reports, as described in Exhibit "A" and Paragraph VI-B. above. The purpose of the reports is to allow Kern COG to determine if Consultant is completing the activities identified in the Work Program in accordance with the agreed upon schedule, and to afford occasions for airing difficulties or special problems encountered so remedies can be developed.

Consultant's Project Manager shall meet with Kern COG's Project Manager, as identified under Section II, as needed to discuss work progress.

#### VIII. Inspection of Work

Consultant, and any subcontractors, shall permit Kern COG, Caltrans and the Federal Highway Administration (FHWA), and other participating agencies, the opportunity to review and inspect the project activities at all reasonable times during the performance period of this contract, including review and inspection on a daily basis.

#### IX. Staffing

There shall be no change in Consultant's Project Manager, or members of the project team, without prior written approval by Executive Director of Kern COG. The Project Manager shall be responsible for keeping Kern COG informed of the progress of the work and shall be available for no less than four (4) meetings with Kern COG.

#### X. Subcontracting

Consultant shall perform the work with resources available within its own organization, unless otherwise specified in this contract. No portion of the work included in this contract shall be subcontracted without written authorization by Kern COG. In no event shall Consultant subcontract for work in excess of fifty (50) percent of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing this particular type of work. All authorized subcontracts shall contain the same applicable provisions specified in this contract.

#### XI. Termination of Contract

##### A. Termination for Convenience of Kern COG:

Kern COG may terminate this contract at any time by giving notice to Consultant of such termination, and the effective termination date, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents and other materials shall, at the option of Kern COG, become its property. If this contract is terminated by Kern COG, as provided herein, Consultant shall be reimbursed for expenses incurred prior to the termination date, in accordance with the cost provisions of this contract. Consultant will also be allowed a proportion of any fixed fee that is equal to the same proportion of the project completed by Consultant on the date of termination of this contract.

##### B. Termination for Cause:

If through any cause, Consultant shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Consultant violates any of the covenants, agreements, or stipulations of this contract, Kern COG shall thereupon have the right to

immediately terminate the contract by giving written notice to Consultant of the intent to terminate and specifying the effective date thereof. Kern COG shall provide an opportunity for consultation with Consultant and a ten-day cure period prior to termination. In such an event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by Consultant under this contract shall, at the option of Kern COG, become the property of Kern COG. Consultant shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.

#### XII. Compliance with Laws, Rules and Regulations

All services performed by the Consultant pursuant to this contract shall be performed in accordance and full compliance with all applicable federal, state or local statutes, rules, and regulations.

#### XIII. Conflict of Interest

- A. Consultant, and the agents and employees of Consultant, shall act in an independent capacity in the performance of this contract, and not as officers, employees or agents of Kern COG.
- B. No officer, member, or employee of Kern COG or other public official of the governing body of the locality or localities in which the work pursuant to this contract is being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work shall:
  - 1. Participate in any decision relating to this contract which affects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
  - 2. Have any interest, direct or indirect, in this contract or the proceeds thereof during his tenure or for one year thereafter.
- C. Consultant hereby covenants that it has, at the time of the execution of this contract, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this contract. Consultant further covenants that in the performance of this work, no person having any such interest shall be employed.

#### XIV. Contingency Fees

Consultant warrants, by execution of this contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, Kern COG has the right to terminate this contract without liability, allowing payment only for the value of the work actually performed, or to deduct from the contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

#### XV. Copyrights

Consultant shall be free to copyright material developed under this contract with the provision that Kern COG reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, distribute, and to authorize others to use, and distribute for fee or otherwise, the work for any purpose. Consultant is subject to the duties of agency relating to rights in data and copyrights as set forth in 28 CFR 179.9(c) and (d).

#### XVI. Publication

- A. No report, information, or other data given to or prepared or assembled by Consultant pursuant to this contract, shall be made available to any individual or organization by

Consultant without the prior written approval of Kern COG.

- B. The following acknowledgment of FTA's participation must appear on the cover or title page of all final products:

"The preparation of this report has been financed, in part, through a grant from the U.S. Department of Transportation, Federal Transit Administration, under the authority of the 49 USC Chapter 43 #5313(b) of the Federal Transit Laws."

#### XVII. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact which is not disposed of by mutual agreement, shall be decided by a court of competent jurisdiction.

#### XVIII. Hold Harmless

Consultant agrees to indemnify, defend and hold harmless Kern COG and Kern COG's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of Kern COG Counsel and counsel retained by Kern COG, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Consultant or Consultant's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of Kern COG; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Consultant by any person or entity.

#### XIX. Insurance

Consultant, in order to protect Kern COG and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's actions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with Kern COG's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Consultant shall promptly deliver Kern COG a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to Kern COG not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or Kern COG as an additional insured.

Without limiting Kern COG's right to obtain indemnification from the consultant or any third parties, the consultant, at its sole expense, shall maintain in full force and affect the following insurance policies throughout the term of the contract:

- A. Comprehensive general liability insurance with coverage of not less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Comprehensive general liability insurance policies shall name Kern COG, its officers, agents, and employees, individually and collectively, as additional insured, but

only insofar as the operations under the terms of the contract are concerned. Such coverage for additional insured shall apply as primary insurance or self-insurance and any other insurance, maintained by Kern COG, its officers, agents, and employees, shall be given excess only and not contributing with insurance provided under the consultant's policies herein.

- B. Comprehensive automobile liability insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.
- C. Professional liability insurance of at least \$1,000,000 per occurrence and two million dollars (\$2,000,000) aggregate.
- D. Worker's compensation insurance as required by law.

This insurance shall not be canceled or changed without a minimum of thirty (30) days advance written notice given to Kern COG. The consultant shall provide certification of said insurance to Kern COG within twenty-one (21) days of the date of the execution of the contract. Such certification shall show, to Kern COG's satisfaction, that such insurance coverages have been obtained and are in full force; that Kern COG, its officers, agents, and employees will not be responsible for any premiums on the policies; that as and if required such insurance names Kern COG, its officers agents, and employees individually and collectively as additional insured (comprehensive and general liability only), but only insofar as the operations under the contract are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by Kern COG, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the consultant's policies herein; and that this insurance shall not be canceled or changed without a minimum of thirty (days) advance, written notice given to Kern COG.

In the event the consultant fails to keep in effect at all times insurance coverage as herein provided, Kern COG may, in addition to other remedies it may have, suspend or terminate the contract upon the occurrence of such event.

Consultant shall require any sub-contractors to provide workers' compensation for all of the sub-contractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, Consultant shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

- A. The Commercial General Liability and Automobile Liability Insurance required in subparagraph A and B. shall include an endorsement naming Kern COG and Kern COG's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided on ISO form CG 20 10 Edition date 11/85 or such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- B. Any self-insured retentions in excess of \$10,000 must be declared on the Certificate of Insurance or other documentation provided to Kern COG and must be approved by Kern COG.
- C. If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- D. Cancellation of Insurance -- The above stated insurance coverages required to be

maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the Consultant must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

- E. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-;VII" rating. Any exception to these requirements must be approved by the Kern COG.
- F. If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The Kern COG will not accept such coverage unless Kern COG determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.
- G. All insurance afforded by Consultant pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by Kern COG. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against Kern COG.
- H. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude Kern COG from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
- I. Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. Kern COG, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, Kern COG may purchase such required insurance coverage, and without further notice to Consultant, Kern COG shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by Kern COG for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse Kern COG for the premiums and any associated costs, Consultant agrees to reimburse Kern COG for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by Kern COG to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

#### XX. Equal Employment Opportunity/Nondiscrimination

Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR 21 through Appendix C and 23 CFR 170.405(b). During the performance of this contract, Consultant, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance with Regulations: Consultant shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.



Prior to any performance under this agreement, Consultant must review, sign and return to Kern COG a copy of the Title 49, Code of Federal Regulations, Part 29 Debarment and Suspension Certifications ("Certifications") attached and incorporated here as Exhibit D, "Debarment and Suspension Certification." The signed copy of the Certifications shall be incorporated by this reference into the Agreement as if set forth in full herein.

- B. **Nondiscrimination:** Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including the procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiations made by Consultant for work to be performed under a subcontract, including the procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this contract, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Kern COG, Caltrans, FTA, or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Kern COG, Caltrans, FTA, or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this contract, Kern COG shall impose such contract sanctions as it, Caltrans, FTA, or FHWA may determine to be appropriate, including, but not limited to:
  - 1) Withholding of payments to Consultant under this contract until Consultant complies; and/or
  - 2) Cancellation, termination or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions:** Consultant shall include the provisions of Paragraphs A through F of this Section XX in every subcontract, including procurements of materials and leases of equipment, unless exempt from the regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Kern COG, Caltrans, FTA, or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. However, in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request Kern COG to enter into such litigation to protect the interests of Kern COG, and in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

#### XXI. Disadvantaged Business Enterprise (DBE)

It is the policy of Kern COG, the California State Department of Transportation and the U.S. Department of Transportation, that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with local, state or federal funds.

The Caltrans annual DBE Program goal is 4.8 percent with a split of 3.7% race-neutral and 1.1% race-conscious for Federal Transit Administration (FTA) fund recipients. Failure to comply with the DBE Program may result in the suspension or termination of federal funds until deficiencies

are remedied as discussed in Title 49 CFR Part 26.101 and the MFTA Article IV, Section 2.

Title 49 CFR, Part 26, entitled, Participation by DBEs in Department of Transportation Financial Assistance Programs, describes a race neutral measure or program as one that is, or can be, used to assist all small businesses. Race-neutral includes gender-neutrality. On the other hand, a race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate, which may include but is not limited to:

- Withholding monthly progress payments.
- Assessing sanctions.
- Liquidated damages.
- Disqualifying the contractor from future bidding as non-responsible.

The contractor must make available to the Caltrans contract manager a copy of all DBE subcontracts upon request.

The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains authorization from Caltrans. Unless the Department provides prior authorization approving a request for termination or substitution of a listed DBE, the Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.

### **Prompt Payment Clauses**

**Prompt Progress Payment to Subcontractors** - A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Prompt Payment of Withheld Funds to Subcontractors** - The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

## XXII. Audits

At any time during normal business hours, and as often as Kern COG, Kern COG's participating agencies, the California Department of Transportation, the Federal Transit Administration, the Federal Highway Administration, the Department of Labor, the Comptroller General of the United States, or other appropriate state and federal agencies, or any duly authorized representatives may deem necessary, Consultant shall make available for examination all of its records with respect to all matters covered by this contract for purposes of audit, examination, or to make copies or transcripts of such records, including, but not limited to, contracts, invoices, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this contract. Project costs are subject to audit and approval for payment according to the eligibility requirements of the funding agencies. However, Kern COG shall not have the right to audit Consultant's fixed rates or fees, percentage multipliers, or standard charges. All project records shall be retained and access to the facilities and premises of Consultant shall be made available during the period of performance of this contract, and for three years after Kern COG makes final payment under this contract.

## XXIII. Clean Air Act/Clean Water Act Requirements

Consultant, in carrying out the requirements of this contract, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857[h]), Section 508 of the Clean Water Act (33 USC 1368), Presidential Executive Order 11738, and those Environmental Protection Agency regulations contained in 40 CFR Part 15.

## XXIV. Notice

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

Mr. Ahron Hakimi,  
Executive Director  
Kern Council of Governments (Kern COG)  
1401 19th Street, Suite 300  
Bakersfield, California 93301

OR  
Mark Schniepp  
Director  
The California Economic Growth Forecast  
5385 Hollister Avenue, Box 207  
Santa Barbara, California 93111

## XXV. Venue

If any party to this contract initiates any legal or equitable action to enforce the terms of this contract, to declare the rights of the parties under this contract or which relates to this contract in any manner, Kern COG and Consultant agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of Kern.

## XXVI. California Law

Kern COG and Consultant agree that the provisions of this contract will be construed in accordance with the laws of the State of California.

## XXVII. No Authority to Bind Kern COG

It is understood that Consultant, in its performance of any and all duties under this contract, has no authority to bind Kern COG to any agreements or undertakings with respect to any and all persons or entities with whom Consultant deals in the course of its business.

#### XXVIII. Nonwaiver

No covenant or condition of this contract to be performed by Consultant can be waived except by the written consent of Kern COG. Forbearance or indulgence by Kern COG in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Consultant. Kern COG shall be entitled to invoke any remedy available to it under this contract or by law or in equity despite any such forbearance or indulgence.

#### XXIX. Independent Contractor

Nothing in this contract shall be construed or interpreted to make Consultant, its officers, agents, employees or representatives anything but independent contractors and in all their activities and operations pursuant to this contract, Consultant, its officers, agents, employees and representatives shall for no purposes be considered employees or agents of Kern COG.

#### XXX. Partial Invalidity

Should any part, term, portion, or provision of this contract be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be effected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

XXXI. Signature Authority

Each person executing this contract on behalf of Consultant represents and warrants that he or she is authorized by Consultant to execute and deliver this contract on behalf of Consultant and that this contract is binding on Consultant in accordance with the terms.

IN WITNESS WHEREOF, the Kern Council of Governments and \_\_\_\_\_ have executed this agreement as of the date first above written.

RECOMMENDED AND APPROVED  
AS TO CONTENT:

KERN COUNCIL OF GOVERNMENTS

\_\_\_\_\_  
Ahron Hakimi, Executive Director  
Kern Council of Governments

\_\_\_\_\_  
Bob Smith, Chair  
"Kern COG"

APPROVED AS TO FORM:

CONSULTANT

\_\_\_\_\_  
Philip Hall, Deputy  
Kern County Counsel

\_\_\_\_\_  
Mark Schniepp, Director  
The California Growth Forecast

## Exhibit "A"

### Scope of Work

We, The California Economic Forecast (Consultant), will assist Kern Council of Governments (Kern COG) in the update of the demographic forecast for Kern County. Kern COG's existing 2015-2050 growth forecast model projects future employment, population and housing growth including an array of demographics indicators. We will continue that tradition by providing alternative approaches.

We will also provide projections of school enrollments, a white paper on the farm and oil industry, and presentations to Kern COG Regional Planning Advisory Committee and the Transportation Planning and Policy Committee.

#### TASK 1. PROJECT INITIATION

Consultant will conduct a kick-off meeting with the project steering committee. The meeting will clarify project expectations, finalize scope-of-work and project-schedule issues, and review data needs.

##### DELIVERABLES – Task 1

- Meeting agenda and draft data list
- Summary notes memo describing major topics discussed and any clarifications to project expectations, scope, or schedule
- Attendance at one in-person meeting

#### TASK 2. INITIAL DATA ASSESSMENT AND DATA COLLECTION

Consultant will assemble the data and information that is intended to be used in the forecast model. The data will include publicly available data sets, employment data purchased by Kern COG; information from county and municipal general plans, and other appropriate data identified in the project kick-off meeting.

Consultant will revise their Kern County econometric model to accommodate recommendations made by Consultant and approved by Kern COG for providing enhanced forecast data for the Kern COG demographic data, and the employment forecasts.

Consultant will analyze the coverage and suitability of the data and review the analysis with the project steering committee at an in person meeting.

The purpose of the meeting is to make a final determination of the data that will be incorporated into the forecast model.

##### DELIVERABLES – Task 2

- Technical memorandum describing coverage and suitability of the

- data to be used in the forecast model
- One in-person meeting to discuss data coverage and suitability
- Summary notes from the meeting

### TASK 3. WHITE PAPER – KERN’S AGRICULTURE & OIL FIELD WORKERS

The consultant will analyze existing agriculture employment and oil industry employment. The consultant will collect additional data and research of agriculture field worker employment by acre by crop type and oil field work by acre.

Using the data and research gathered, the consultant will prepare a report that thoroughly describes existing agriculture and oil industry employment data sources, how and why these data sources differ; and provide an updated estimate for county total agriculture and oil industry employment;

Consultant will also estimate agriculture field worker employment by acre by crop type; and estimate oil field worker employment by acre.

The consultant will meet with the PSC to discuss initial findings, and gather any additional input for finalizing the white paper development.

#### DELIVERABLES – Task 3

- A meeting to discuss data initial findings of research and suitable data sources
- Summary notes from the meeting
- White paper describing Kern’s Agriculture and Oil Field Workers

### TASK 4. DRAFT GROWTH FORECAST MODEL

Consultant will revise their current Kern County economic and demographic forecasting model to accommodate all of the criteria listed here in. The consultant will revise Kern COG’s existing growth forecast model with new assumptions and new base data, and adjustments to the methodology to incorporate more robust estimates of net migration, birth and mortality rates, head of households, vacancy rates, school enrollments, and the 20 NAICs employment sectors. The model will be in a Microsoft Excel format that Kern COG can update in future years as updated data become available. The model will provide 2010 data, 2019 estimates, and forecasts for 2020, 2025, 2030, 2035, 2040, 2045, and 2050. The model will provide forecast and estimates for each data item specified in Data List provided herein. Consultant will also prepare a draft report that describes the data used, the methodology, the findings, and a discussion of the implications of the forecast for planning and development.

Consultant will present the draft model and report at an in-person meeting with the project steering committee. Based on the comments and direction received at the meeting, Consultant will refine the model and report and prepare the final products.

Data List:

1. Age Group:
  - 0-4 years
  - 5-13 years
  - 14-17 years
  - 18-24 years
  - 25-54 years
  - 55-64 years
  - 65-74 years
  - 75 years and older
  
2. Housing type:
  - Single family
  - Multiple family
  - Other (motor home, recreational vehicle, etc.)
  
3. Average household size by:
  - Single family
  - Multiple family
  - Other (motor home, recreational vehicle, etc.)
  
4. Age of head of household:
  - 15-24 years
  - 25-64 years
  - 65-74 years
  - 75 years and older
  
5. Income:
  - \$0-19,999
  - \$20,000-39,999
  - \$40,000-59,999
  - \$100,000 and over
  
6. Vacancy Rate:
  - Single family
  - Multiple family
  - Other (motor home, recreational vehicle, etc.)
  
7. Housing type:
  - Single family
  - Multiple family
  - Other (motor home, recreational vehicle, etc.)
  
8. Ethnicity:
  - White
  - Hispanic
  - Black
  - Asian and Pacific Islander



- Native American  
Other
9. Group Quarters:  
Institutionalized  
Non-institutionalized
  10. Employment:  
By 2012 NIACS twenty sector categories
  11. Enrollment:  
K-8  
9-12  
College/University

#### DELIVERABLES – Task 4

- Draft forecast model submitted in a digital format
- Draft report submitted in a digital format
- One in-person meeting to review the draft forecast model and report
- Summary notes from the meeting

#### TASK 5. MODEL REFINEMENT AND FINAL REPORT

Consultant will submit a screencheck draft of the growth forecast model, the report, and a PowerPoint presentation of the report to the Kern COG project manager for a final review. Upon receipt of comments from the project manager, Consultant will prepare the final version of the growth forecast model, the final report, and the PowerPoint presentation

Consultant will conduct two formal presentations of the final report to the Kern COG Regional Planning Advisory Committee and the Transportation Planning and Policy Committee.

The report can be expected to include:

- Executive Summary. The executive summary will provide a brief overview of the project, the key forecasts, a concise summary of the findings, and a discussion of the implications for planning and development. The Executive Summary will be sufficiently detailed to stand on its own.
- Introduction. National and regional demographic and economic trends will be discussed and compared with the Kern County. The introduction will also provide an analysis of migration trends, which were identified in the San Joaquin Valley Demographics Forecasts as having the largest influence on changing demographics.
- Model Description. This section will provide an understandable and succinct break down of the model, an assessment of the data incorporated into the

model, and the project methodology.

- Growth Forecast. This section will present high level and detailed descriptions of each forecast. It will compare and contrast the new forecast to previous forecast and forecast from the California Department of Finance. This section will also describe the similarities and differences in forecasted growth in rural and urban areas of Kern County.
- Implications. The final section will discuss the implications of the forecasts on planning and development in general, and specifically on the Sustainable Communities Strategy and the Regional Transportation Plan.

#### DELIVERABLES – Task 5

- Screencheck draft of the forecast model submitted in a digital format
- Screencheck draft of the report submitted in a digital format
- Screencheck draft of the report presentation submitted in a digital format
- Final forecast model submitted in a digital format
- Final report in a digital PDF format
- Final presentation in a digital PowerPoint format
- Two in-person meetings to present the final report

#### TASK 6. PROJECT MANAGEMENT

The consultant shall manage project tasks, submit written monthly progress reports with invoices, and schedule bi-weekly phone calls with the Kern COG project manager. The monthly progress report shall document specific accomplishments of each task, identify percent completion by task, difficulties encountered, and any adjustments recommended in the project schedule.

Consultant will be responsible for scheduling, coordinating and preparing all of the necessary materials for Project Steering Committee (PSC) meetings throughout the duration of the project. PSC meetings will be held at the request of the Kern COG project manager. The consultant shall prepare meeting minutes that document all of the major points and actions taken at each PSC meeting and provide those notes to the Kern COG project manager within five days following each meeting.

Within one month from the time Kern COG issues the notice to proceed, the consultant will be required to coordinate the project kick-off meeting with all of the stakeholders present. It is anticipated that the consultant will make two presentations on the final report to both the Kern COG Regional Planning Advisory Committee and the Transportation Planning and Policy Committee (Board of Directors).

The consultant shall maintain all electronic and hard copy files pertaining to the project and shall provide Kern COG with an electronic version of all reports,

technical memos, and backup data prior to completion of the study. This shall include a PDF version of the final report. The consultant and sub-consultants shall maintain consistent quality control procedures.

#### DELIVERABLES – Task 6

- Monthly progress reports;
- Project Kick-off meeting;
- Project Steering Committee Meetings as determined by Kern COG
- Brief meeting notes and action items from the PSC meetings;
- Two project presentations—KERN COG Regional Planning Advisory Committee and Transportation Planning and Policy Committee (Board of Directors); and
- Additional informational materials that can be posted on KERN COG's web site, as appropriate.

## Exhibit "B"

### Schedule

Based on an expected contract approval by the Kern Council of Governments Board of Directors on June 20, 2019 and a Notice to Proceed issued the following day, the schedule for completing the project will be:

#### TASK 1. PROJECT START-UP

Completed within one month of contract execution and notice to proceed, on or before July 20, 2019.

#### TASK 2. INITIAL DATA ASSESSMENT

Completed by August 20, 2019.

#### TASK 3. WHITE PAPER

Completed by September 15, 2019.

#### TASK 4. DRAFT FORECAST MODEL

Completed by October 15, 2019.

#### TASK 5. MODEL REFINEMENT AND FINALIZATION

The final model will be submitted by November 29, 2019.

The two formal presentations will be conducted after submission of the final model, as scheduled by Kern Council of Governments.

#### TASK 6. PROJECT MANAGEMENT

Ongoing throughout the project.

Exhibit "C"

Budget

<b>TASKS</b>	<b>Mark Schniepp</b>		<b>Ben Wright</b>		<b>Interns/Support Staff</b>		Task Total Hours	Task Total Cost
	Project Manager		Project Analyst		GIS Analyst			
	\$250		\$120		\$45			
	Hours	Cost	Hours	Cost	Hours	Cost		
Task 1 & Task 2: Project Start-Up and Initial Data Assessment/Collection	5	\$1,250	10	\$1,200	12	\$540	27	\$2,990
Task 3: White Paper	8	\$2,000	10	\$1,200	---	---	18	\$3,200
Task 4: Draft Forecast Models	40	\$10,000	70	\$8,400	10	\$450	120	\$18,850
Task 5: Model Refinement and Finalization	33	\$8,250	29	\$3,480	10	\$450	72	\$12,180
Task 6: Project Management	5	\$1,250	6	720	---	---	11	\$1,970
<b>Tasks Subtotal</b>	<b>91</b>	<b>\$22,750</b>	<b>125</b>	<b>\$15,000</b>	<b>32</b>	<b>\$1,440</b>	<b>248</b>	<b>\$39,190</b>

<b>Direct Costs</b>	
Data Purchasing	\$550
<b>Direct Costs Subtotal</b>	<b>\$550</b>

<b>Proposed Grand Total</b>	<b>\$39,740</b>
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Exhibit D

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29  
DEBARMENT AND SUSPENSION CERTIFICATION

The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;

does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

\_\_\_\_\_  
(Consultant)

\_\_\_\_\_  
Date



# IV. COG

June 20, 2019

TO: Kern Council of Governments

FROM: Ahron Hakimi,  
Executive Director

BY: Becky Napier  
Deputy Director – Administration

SUBJECT: KERN COUNCIL OF GOVERNMENTS CONSENT AGENDA ITEM: IV.  
BOARD APPOINTMENTS OF AN ALTERNATE TO THE SAN JOAQUIN VALLEY  
POLICY COUNCIL

DESCRIPTION:

Kern COG Board appointment of an alternate to the San Joaquin Valley Policy Council.

DISCUSSION:

**San Joaquin Valley Regional Policy Council**

The San Joaquin Valley Regional Policy Council is a sixteen member board that consists of two elected officials from each of the eight Regional Transportation Planning Agencies in the San Joaquin Valley. The Policy Council was established in 2006 to provide a forum for the Valley to communicate, discuss and collaborate on issues that impact the entire region such as transportation, air quality, and advocacy efforts. The Policy Council works regionally to build consensus on items that, when implemented by individual Regional Planning Agencies, results in a single vision for the entire San Joaquin Valley.

Policy Council meetings are typically held 3 times per year in alternating locations in the Valley. The meetings are scheduled for 10:00 a.m. and a call in number is provided.

ACTION

Make an appointment of an alternate to the San Joaquin Valley Regional Policy Council.  
VOICE VOTE