

**LAS VIRGENES – MALIBU COUNCIL OF GOVERNMENTS
GOVERNING BOARD MEETING**

Tuesday, March 17, 2020, 8:30 AM

AGOORA HILLS CITY HALL

Community Room

30001 Ladyface Court, Agoura Hills, CA 91301

AGENDA

1. CALL TO ORDER

Governing Board Members:

Denis Weber, Agoura Hills, President
Karen Farrer, Malibu
Kelly Honig, Westlake Village
Stuart Siegel, Hidden Hills
Alicia Weintraub, Calabasas

2. APPROVAL OF THE AGENDA

3. PUBLIC COMMENT PERIOD

Members of the public may address the Governing Board on any subject on or off the agenda by raising their hand and being recognized by the President of the Governing Board. Speakers shall limit their comments to three minutes.

Pursuant to California Government Code Section 54954.2, the Governing Board is prohibited from discussing or taking immediate action on any item not on the agenda unless it can be demonstrated that the item is of an emergency nature, or the need to take action arose subsequent to the posting of the agenda.

4. CONSENT CALENDAR

Consent Calendar items will be approved in one motion unless removed for separate discussion or action.

- A. Approval of January 21, 2020 and February 25, 2020 Draft Meeting Notes – Attachment
- B. March 2020 Executive Director's Report – Attachment
- C. March 2020 Financial Statement – Attachment

Recommended Action: Approve Consent Calendar

5. ACTION ITEMS

- A. COG City Representation, Reorganization and Bylaws – Attachment
Recommended Action: Discuss any issues related to member-city representation and reorganization as it relates to the COG Bylaws and recommend changes, if needed.
- B. Alternate Law Enforcement Options – The Governing Board may provide direction to staff pertaining to alternate law enforcement and public safety matters.
- C. Los Angeles County Homeless Innovation Funds Grant and Homeless Outreach Coordinator – The contract with the County was not available when the agenda was prepared so it will be distributed at the meeting. The contract for the COG’s Homeless Outreach Coordinator is attached.
Recommended Action: Approve the contract with Los Angeles County for the Homeless Innovation Funds grant in the amount of \$81,528 and the one year \$60,000 contract between the COG and Gabriel Graham to serve as the COG’s Homeless Outreach Coordinator.
- D. AB 5 Issues Pertaining to the Executive Director – Attachment

6. INFORMATION ITEMS

- A. Homeless Overview – Introduction of COG Homeless Outreach and Regional Coordinator and presentation by the Los Angeles County Sheriff’s Department Mental Evaluation Team – will be at the meeting to make the presentation.
- B. Coronavirus Disease 2019 – As member cities carefully monitor the developments related to the Coronavirus Disease 2019 (COVID-19), the Governing Board will have a discussion on how to protect the community from getting and spreading COVID-19 and what measures may be taken to prepare for a possible outbreak.

7. PUBLIC SAFETY AND LEGISLATIVE UPDATES

- A. Los Angeles County Sheriff’s Department
- B. Los Angeles County Fire Department
- C. League of Cities – Attachment
- D. Updates from Area Legislators and Agencies

8. COMMENTS AND REQUEST FOR FUTURE AGENDA ITEMS

9. FUTURE MEETING DATES

TAC Meeting: Wednesday, April 1, 2020, 8:30 AM
Governing Board Meeting: Tuesday, April 21, 2020, 8:30 AM

10. ADJOURNMENT

**Draft Meeting Notes
Governing Board Meeting
January 21, 2020**

1 – Call to Order: The meeting was called to order by President Weber at 8:32 a.m. The meeting was held at Agoura Hills City Hall, Community Room.

Roll Call of Governing Board members present:

Denis Weber, Agoura Hills, President
Ned Davis, Westlake Village, Vice President
Karen Farrer, Malibu
Stuart Siegel, Hidden Hills
Alicia Weintraub, Calabasas

2 – Approval of Agenda: There was a motion and second to approve the agenda. Motion carried unanimously.

3 – Public Comment Period: None.

4 – Consent Calendar: 4.A Meeting Notes from November 19, 2019; 4.B January 2020 Executive Director's Report; and 4.C January 2020 Financial Statement. Terry Dipple highlighted his Executive Director's Report. Following the Executive Director's Report, there was a motion and second to approve the items on the Consent Calendar. Motion carried unanimously.

5.A – COG Homeless Outreach Coordinator: The Executive Director explained the Technical Advisory Committee discussed this matter at the January 8th meeting and is recommending the Governing Board allocate up to \$60,000 in LA County homeless grant and Innovation Funds to hire a part-time to full-time homeless outreach/regional coordinator that would respond to city staff, public safety partners and homeless service providers to assist people experiencing homelessness in the COG region, represent the COG at meetings. The is scheduled to receive \$30,000 in the second year of the County homeless grant and \$81,528 Innovation Funds, also from the County to be used for coordination and homeless service issues in the COG region. Following the Executive Director's summary of the item, there was a motion and second to authorize the Executive Director to execute a contract with the County for said funds that must be spent by June 30, 2021. Motion carried unanimously.

5.B – Measure R Adjustment – The Executive Director provided an overview of the Measure R Adjustment from Los Angeles County to allocate \$250,000 from the County's share of Measure R funds to Westlake Village to complete the safety barricade improvements for the Lindero Canyon Road Northbound freeway ramp to Highway 101. There was a motion and second to approve the Measure R Adjustment. Motion carried unanimously.

5.C – Revised 6th Year Measure M Project List; The Executive Director provided an overview of the COG’s revised 6th Year Measure M Project List. He noted that following the Governing Board’s approved of the 6th Year Project List, last September, County staff decided to withdraw their projects and carry over the funds to be programmed in the 7th year. He stated the other projects that were approved by the Governing Board remain on the list. The Metro Board is scheduled to approve the COG’s revised 6th Year Measure M Project List, next month. Following discussion, there was a motion and second to approve the Revised 6th Year Measure M Project List. Motion carried unanimously.

6.A – Draft SCAG Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy: Darin Chidsey, SCAG, was in attendance and made the presentation. Following discussion, no action was taken as this was an informational item.

7.A – Los Angeles County Sheriff’s Department: Captain Vander Horck was present to provide an update and answer questions.

7.B – Los Angeles County Fire Department: Megan Currier was present and provided an update and answer questions.

7.C – League of Cities: Jeff Kiernan was not present. Governing Board members Weintraub and Honig stated they had expressed their opposition to AB 50 to Senator Stern and encouraged others to do so.

7.D – Updates from Area Legislators and Agencies: Aurelia Friedman provided an update from Congressman Lieu’s office and Dave Pedersen provided an update from Las Virgenes Municipal Water District regarding federal and local drinking water standards.

8 – Comments and Request for Future Agenda Items: None

9 – Future Meeting Dates: President Weber noted the Governing Board and Technical Advisory Committee meeting dates.

9 – Adjournment: President Weber adjourned the meeting at 9:43 AM.

Respectfully submitted,

Terry Dipple
Executive Director

Draft Meeting Notes
Special Meeting of the Governing Board
February 25, 2020

1 – Call to Order: The Special Meeting was called to order by President Weber at 8:35 a.m. The meeting was held at Agoura Hills City Hall, Community Room.

Roll Call of Governing Board members present:

Denis Weber, Agoura Hills, President
Karen Farrer, Malibu
Kelly Honig, Westlake Village
Stuart Siegel, Hidden Hills
Alicia Weintraub, Calabasas

Also present:

Illece Buckley-Weber, Agoura Hills

2 – Approval of Agenda: There was a motion and second to approve the agenda. Motion carried unanimously.

3 – Public Comment Period:

The following Malibu residents spoke in opposition to the recent personnel changes and the need for stability at the Malibu/Lost Hills Sheriff's Station: John Sibert, former Malibu City Councilmember and COG Governing Board member, Doug Stewart, Lloyd Ahern, E. Barry Haldeman, Paul Grisanti and Chris Frost. In addition, letters were received from Laura Rosenthal, former Malibu City Councilmember and COG Governing Board member and Ronda L. Hampton, Ph.D., Hampton and Associates Psychological Services opposing the recent personnel changes and the need for stability at the Malibu/Lost Hills Sheriff's Station.

4.A – Staffing and Personnel Changes at the Malibu/Lost Hills Sheriff's Station: President Weber stated the decision to hold a Special Meeting of the Governing Board was due to the recent staffing and personnel changes that Sheriff Villanueva made at the Malibu/Lost Hills Sheriff's Station without notice to the COG cities. He asked Governing Board members who attended the meeting with Sheriff Villanueva on Monday, February 24th to provide a summary and comments from the meeting. There was a general feeling from most in attendance that the meeting with Sheriff Villanueva went well, although Reva Feldman expressed reservations about the discussion. Following additional comments from the Governing Board and city managers, there was a consensus to send a letter to Sheriff Villanueva strongly expressing concern about the continual staff turnover, changes at the station and the impact that instability has on the communities and public safety. The letter would also confirm the discussion with the Sheriff that the five city managers and two supervisorial district representatives would serve on a panel to interview the new captain candidates for the Malibu/Lost Hills Station.

5. – Comments and Requests for Future Agenda Items: Governing Board members agreed to place a discussion item on a future TAC and COG agenda regarding alternate law enforcement options.

6. – Future Meeting Dates: President Weber noted the future meeting dates.

7. – Adjournment: President Weber adjourned the meeting at 9:58 PM.

Respectfully submitted,

Terry Dipple
Executive Director

Memorandum

DATE: March 17, 2020
TO: Governing Board
FROM: Terry Dipple, Executive Director
SUBJECT: Executive Director's Report

OVERVIEW

The purpose of this memorandum is to update the Governing Board on the status of COG projects and other items of interest.

Measure M Projects and Funding – On February 27, 2020, the Metro Board approved the COG's 6th Year Measure M Project List. Prior to taking the project list to the Planning and Program Committee, Metro staff raised an issue related to Hidden Hills' project and it was agreed to hold off programming their funds in the 6th year. There was a similar issue with some of the funds for Agoura Hills' project in the 6th year. Both cities will carry over their funds to be programmed in the 7th year or beyond.

Metro will allocate an additional \$12,870,156 of Measure M funds to the COG in the 7th year (2021). The additional funds will be included in the 7th year of the annually updated COG Measure M 5-Year Project List. Metro is requesting the COG annually approve the project list and submit it by the end of September, as we did last year. To meet that schedule, the Technically Advisory Committee will review and recommend the project list to the Governing Board for approval in September 2020. I have circulated potential dates for a kickoff meeting with the COG cities and Metro staff to discuss current and potential Measure M eligible projects and a timeline for informal review by Metro staff. Thereafter, I will be working with the cities to submit projects for review. Based on previous experience, that will take us into August, which will allow the COG to meet Metro's schedule. The following is the revised 6th year and 7th year allocations. Funds not programmed will be carried forward for future projects.

	6 th Year	7 th Year
Agoura Hills	\$3,023,861	\$3,114,577
Calabasas	\$3,423,711	\$3,526,422
Hidden Hills	\$ 262,402	\$270,274
Malibu	\$1,874,295	\$1,930,524
Westlake Village	\$1,237,035	\$1,274,146
LA County	<u>\$2,673,993</u>	<u>\$2,754,213</u>
Total	\$12,495,297	\$12,870,156

COG's Homeless Outreach Coordinator – The County has approved the Statement of Work and Contract for the homeless grant to hire Gabriel Graham as the COG's Homeless Outreach Coordinator. The COG's Homeless Working Group held a meeting on February 24, 2020 to meet Gabriel Graham in anticipation of him beginning once the contract is

signed with the County. The HWG members were very enthusiastic about having the COG's Homeless Outreach Coordinator as a resource. Gabriel Graham will be at the March 17th COG meeting.

Evacuation Plan – The County has assured me the Evacuation Plan is absolutely a priority, and they have been getting organized to deliver a functional, sustainable solution to this challenge for the COG and other key regional partners. Working with their consultant, the County has identified departmental leads for each of the Woolsey After Action Report recommendations. The lead for Evacuation Planning will be convening a County Working Group in the weeks ahead to move the related activities forward. I will continue to update the COG as new information becomes available.

Stormwater Investment Plan Development Update – The COG cities are members of the North Santa Monica Bay Watershed Area Steering Committee (NSMBWASC). Since the end of the Regional Call for Projects for FY 20-21, the NSMBWASC has been meeting regularly to review and score project submissions, discuss regional priorities, and begin drafting a recommended Stormwater Investment Plan (SIP; 5-year plan identifying first year budget along with 4-years of projections for the COG's Safe, Clean Water Program Watershed Area. By April 2020, the NSMBWASC is expected to advance a recommended SIP to the Regional Oversight Committee. In the meantime, the Flood Control District met with the Regional Water Quality Control Board (RWQCB) to provide updates on the progress of the Safe, Clean Water Program. Renee Purdy of the RWQCB shared that the committee should be looking for the most impactful projects to drive compliance with the new MS4 Permit and committee members are welcome to attend RWQCB meeting on March 12th in the City of Pico Rivera to discuss the latest regional MS4 Permit under review. Final SIP recommendations are expected to be before the Board of Supervisors in Summer 2020. I would point out that none of the COG cities submitted projects, just the County. However, the County withdrew its project as it would only benefit the unincorporated area. Next deadline for the next Call for Projects is July 31, 2020. The annual revenue for the NSMBWASC is \$1.7 million and if no projects are submitted, the funds rollover into next year. The Fund Transfer Agreement is out for public review. This Agreement is the instrument that will transfer 40% of the funds collected back to the cities. The cities can expect their funds in late June 2020 for 20/21. The Flood Control District wants the cities to prepare an annual plan for how the funds will be spent.

AB 5 Issues – Following up on a request from Greg Ramirez at the January TAC meeting, I reached out to Larry Weiner, COG Counsel, regarding AB 5 to determine how it might affect my status and that of the COG's other independent contractors. The COG currently contracts with two independent contractors, Terry Dipple, Executive Director and Maureen Micheline, who provides administrative services to Ara Najarian, Metro Board. In addition, the COG will be contracting with Gabriel Graham, who will serve as the COG's Homeless Outreach Coordinator. Maureen Micheline and Gabriel Graham clearly provide services that the COG does not otherwise provide, thus, they have no AB 5 issues. However, there are AB 5 issues as it pertains to Terry Dipple. Therefore, this item is on the COG agenda.

Metro NextGen Bus Study – The NextGen Bus Study began in early 2018. The NextGen Regional Service Concept was reviewed and approved by the Metro Board, last Summer. The Regional Service Concept was developed through consideration of both technical data and the priorities and personal experiences Metro heard during the outreach meetings and responses to questionnaires. The Draft NextGen Bus Service Plan is scheduled for presentation to the Metro Operations Committee this month with Metro Board approval expected in the Spring of 2020. Initial implementation is expected to begin by the end of the year.

Outstanding Liability with California Joint Powers Insurance Authority – There has been no word from the California Joint Powers Insurance Authority regarding a payment plan for the COG's \$32,325 outstanding retrospective liability.

Memorandum

DATE: March 17, 2020
TO: Governing Board
FROM: Terry Dipple, Executive Director
SUBJECT: March 2020 COG Financial Summary

SUMMARY

All of the revenue and expenditures are in accordance with the COG's 19/20 adopted budget.

19/20 Expected Revenue

Dues	100,000.00
Metro (admin & planning)	57,250.00
Metro (for consultant)	99,490.00
LA County Homeless Grant	<u>30,000.00</u>
Total Expected Revenue	286,740.00

19/20 Expenditures to Date

Terry Dipple – 7/19 Ex. Dir.	-12,250.00
M. Micheline 7/19 Metro	-8,042.11
Terry Dipple – 8/19 Ex. Dir.	-12,250.00
M. Micheline 8/19 Metro	-8,042.11
Liability Insurance 19/20	-3,605.45
Terry Dipple – 9/19 Ex. Dir.	-12,250.00
M. Micheline 9/19 Metro	-8,042.11
Terry Dipple – 10/19 Ex. Dir.	-12,250.00
M. Micheline 10/19 Metro	-8,042.11
Terry Dipple – 11/19 Ex. Dir.	-12,250.00
M. Micheline 11/19 Metro	-8,042.11
Terry Dipple – 12/19 Ex. Dir.	-12,250.00
M. Micheline 12/19 Metro	-8,042.11
Terry Dipple – 1/20 Ex. Dir.	-12,250.00
M. Micheline – 1/20 Metro	-8,283.37
Terry Dipple – 2/20 Ex. Dir.	-12,250.00
M. Micheline – 2/20 Metro	-8,283.37

Total to Date **-178,924.85**

Memorandum

DATE: March 17, 2020
TO: Governing Board
FROM: Terry Dipple, Executive Director
SUBJECT: COG City Representation/Participation and Annual Reorganization

OVERVIEW

The purpose of this memorandum is to provide information to the Governing Board regarding city representation/participation at the COG meetings and the annual reorganization to determine if there is a desire by the Governing Board to amend the COG Bylaws.

BACKGROUND

As was discussed recently, there have been occasions when both the Governing Board Representative and Alternate Representative have attended the COG meeting. In addition, the issue of changing the annual reorganization of COG officers was raised by a Governing Board Representative and requested the matter be placed on the agenda for consideration by the Governing Board.

The Bylaws state each city shall appoint a Governing Board Representative and an Alternate Representative to serve in the absence of the Governing Board Representative. The Alternate Governing Board Representative may participate or vote in the proceedings of the Governing Board only in the absence of the Governing Board Representative. The Bylaws further state the term of office for the President and Vice President continues to July 1. The issue of having the reorganization take place in January was raised as a majority of COG cities hold their respective reorganizations, in December.

OPTIONS

Governing Board Representative and Alternate Representative: The Governing Board may wish to amend the Bylaws to allow both the Representative and Alternate to attend the meeting, with only one allowed to vote. Or, the Governing Board could abide by the current attendance/participation policy as stated in the Bylaws.

Annual Reorganization: The Governing Board may wish to amend the Bylaws to change the date of the annual reorganization of officers or continue to hold the annual reorganization in June with the officers taking over in July.

RECOMMENDATION

Discuss any issues related to city representation/participation and reorganization as it relates to the COG Bylaws and recommend changes, if needed.

ATTACHMENT: COG Bylaws

Memorandum

DATE: March 17, 2020
TO: Governing Board
FROM: Terry Dipple, Executive Director
SUBJECT: Los Angeles County Homeless Innovation Funds Grant and Homeless Outreach Coordinator

OVERVIEW

The purpose of this memorandum is to update the Governing Board regarding the Los Angeles County Homeless Innovation Funds Grant and the COG's Homeless Outreach Coordinator.

BACKGROUND

The COG's Homeless Working Group held several meetings last year and there was consensus that the cities needed a part-time to full-time individual that would respond to city staff, public safety partners and homeless service providers to assist people experiencing homelessness in the COG region. The response time from LAHSA and service providers can range from 48-72 hours. The homeless outreach coordinator would work in the COG area and be able to respond quickly to the cities, Sheriff's deputies and Mental Evaluation Team (MET) that consists of a deputy and case manager. The MET works 40 hours a week but as we all know this is a 24/7 issue so there would be times the COG's homeless outreach coordinator would be the only resource available to respond immediately.

The city managers discussed this matter at the January 8, 2020 Technical Advisory Committee meeting and on January 21, 2020 the Governing Board approved allocating up to \$60,000 in LA County Homeless Innovation Funds, which total \$81,528, to hire a homeless outreach coordinator that would respond to city staff, public safety partners and homeless service providers to assist people experiencing homelessness in the COG region, represent the COG at meetings. The Executive Director worked with area homeless services providers to identify potential candidates for the position. The Executive Director interviewed and recommended the hiring of Gabriel Graham as the Homeless Outreach Coordinator for the COG. Further, that the Governing Board authorized the Executive Director to execute a contract with the County for said funds that must be spent by June 30, 2021.

The first year \$30,000 grant was allocated to Malibu to prepare a homeless services brochure and to provide coordination with LA County, homeless service providers and the COG cities. Malibu invoiced the County for \$26,000 and the remaining \$4,000 will be carried over to second year, which would provide the COG with an additional \$34,000 that has not been programmed. The COG's Homeless Working Group will be meeting to determine how to spend the grant funds and will make a recommendation to the TAC which will ultimately come to the Governing Board.

The LA County Homeless Initiative Team prepared the Statement of Work for \$81,528 Innovation Funds to fund the Homeless Outreach Coordinator through June 2021, although the contract between the COG and Gabriel Graham is only for one year, but can be extended if both parties agree.

RECOMMENDATION

Approve the contract with Los Angeles County for the Homeless Innovation Funds grant in the amount of \$81,528 and the one year \$60,000 contract between the COG and Gabriel Graham to serve as the COG's Homeless Outreach Coordinator, effective March 18, 2020.

ATTACHMENT: COG Contract with Gabriel Graham

AGREEMENT FOR CONSULTING SERVICES WITH THE
LAS VIRGENES MALIBU COUNCIL OF GOVERNMENTS

THIS AGREEMENT is made by and between the Las Virgenes Malibu Council of Governments, a joint powers authority (hereinafter called "COG"), and Gabriel Graham (hereinafter collectively called "CONSULTANT").

RECITALS

A. CONSULTANT is to begin providing consulting services related to the coordination of homeless outreach for COG on March 1, 2020.

B. COG desires to have certain professional services provided (the "services") as set forth in Exhibit A attached hereto and incorporated herein.

C. CONSULTANT represents that he is qualified to and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Services. CONSULTANT shall perform the services as described in Exhibit A, attached hereto and incorporated herein, to the full satisfaction of COG.

Section 2. Term and Time of Performance. This Agreement shall be effective as of March 1, 2020 (the "Effective Date") and shall be effective through February 28, 2021, unless extended in writing by both parties, or earlier terminated by either party.

Section 3. Compensation. COG agrees to compensate CONSULTANT, and CONSULTANT agrees to accept in full satisfaction for his services, \$60,00.00 per year, payable on a monthly basis and subject to proration in the event of termination and for any partial month (the "Consideration"). The Consideration shall constitute reimbursement of CONSULTANT's fee for the services (including all clerical and secretarial support) as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). COG shall pay CONSULTANT the Consideration in accordance with the schedule of payment set forth in Exhibit B attached hereto and incorporated herein. By way of illustration only and to provide an estimate of the nature and scope of the services the parties anticipate will be required to achieve the results expected under this Agreement, the parties estimate an average of approximately 40 hours per week for CONSULTANT's services. In the event that significantly more or less time is required on a regular and continuing basis, either party may request consideration of an adjustment in the Consideration.

Section 4. Independent Contractor. CONSULTANT will act hereunder as an independent contractor, however pursuant to AB 5, solely for the purposes of the California Labor Code (including Workers' Compensation) and Unemployment Insurance Code, CONSULTANT will be considered an employee of COG. Except as explicitly required under AB 5, this Agreement shall not and is not intended to constitute CONSULTANT as an agent, servant, or employee of COG and shall not and is not intended to create the relationship of partnership, joint venture or association between COG and CONSULTANT.

Section 5. Assignment. This Agreement may not be assigned in whole or in part by either party, without the prior written consent of the other party.

Section 6. CONSULTANT: Responsible Principal. Gabriel Graham shall be the person principally responsible for CONSULTANT's obligations under this Agreement. Designation of another responsible principal by CONSULTANT shall not be made without the prior written consent of COG.

Section 7. Personnel. CONSULTANT represents that he has, or shall secure at his own expense, all personnel required to perform CONSULTANT's services under this Agreement. CONSULTANT may associate with or employ associates or subconsultants in the performance of his services under this Agreement, but at all times shall be responsible for their services.

Section 8. Interests of CONSULTANT. CONSULTANT affirms that he has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT. In order to help COG enforce this provision, CONSULTANT shall, on a quarterly basis, provide to COG's technical advisory committee a list of business interests held by CONSULTANT, which business interests may engage in work within or near the boundaries of any COG member or which business interests may do business with the Southern California Association of Governments (SCAG) or any other COG consultant. CONSULTANT shall also identify to the technical advisory committee any agreements entered into between CONSULTANT and SCAG, a COG consultant, or a developer actively engaged in developing land within or near the boundaries of any COG member.

Section 9. Insurance.

(a) CONSULTANT shall submit to COG certificates indicating compliance with the following minimum insurance requirements not less than ten (10) days following the execution of this Agreement.

(i) Worker's Compensation Insurance to cover his employees, if any, as required by the California Labor Code. CONSULTANT shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(ii) Automobile insurance in at least the minimum amounts required by state law for any automobile used for business purposes with COG.

Such policies of insurance shall cover the operations of CONSULTANT pursuant to the terms of this Agreement.

(b) CONSULTANT shall cease performance of the services if the above insurance has not been obtained and certificates of insurance have not been timely filed with and approved by COG. Procurement of insurance by CONSULTANT shall not be construed as a limitation of CONSULTANT's liability or as full performance of CONSULTANT's duties to indemnify, hold harmless, and defend under this Agreement.

(c) CONSULTANT shall require all his subcontractors, including each person or entity responsible for the provision of services hereunder to be covered by similar insurance.

(d) Any self-insured retainers or deductibles shall be subject to COG approval.

Section 10. Driver License. CONSULTANT shall present for inspection his California driver license within 10 days of the execution of this contract.

Section 11. Indemnification. CONSULTANT agrees to indemnify COG, its officers, agents, volunteers, employees, and attorneys against, and will hold and save them and each of them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the acts, errors or omissions of CONSULTANT, his agents, employees, subcontractors, or invitees, including each person or entity responsible for the provision of services hereunder.

Section 12. Ownership of Documents. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this Agreement shall become the sole property of COG and may be used, reused or otherwise disposed of by COG without the permission of CONSULTANT. Upon satisfactory completion of, or in the event of expiration, termination, suspension or abandonment of the Agreement, CONSULTANT shall turn over to COG all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents. With respect to computer files, CONSULTANT shall make available to COG, upon reasonable request by COG, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

Section 13. Evaluation. COG may periodically evaluate the results achieved by CONSULTANT under this Agreement and may request a modification of the Scope of Services if such modification would serve COG's mission and purpose in hiring CONSULTANT.

Section 14. Termination. Either party may terminate this Agreement with or without cause upon thirty (30) days' written notice. If the termination is without cause, COG shall pay for services satisfactorily completed before the termination.

Section 15. Notice. Any notice required to be given to CONSULTANT shall be deemed duly and properly given upon delivery, if sent to CONSULTANT postage prepaid to the CONSULTANT's address as set forth below or personally delivered to CONSULTANT at such address or other address specified to COG in writing by CONSULTANT.

Gabriel Graham

14525 Vose St. Apt # 5

Van Nuys, CA 91405

Any notice required to be given to COG shall be deemed duly and properly given upon delivery, if sent to COG postage prepaid to the current chairman of COG's technical advisory committee at the city hall in which the chairman works or personally delivered to COG at such address or other address specified to CONSULTANT in writing by COG.

Section 16. Entire Agreement. This Agreement represents the entire integrated agreement between COG and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both COG and CONSULTANT.

EXECUTED on _____, 2020.

LAS VIRGENES MALIBU
COUNCIL OF GOVERNMENTS

By _____
President, Governing Board

APPROVED AS TO FORM:

General Counsel

CONSULTANT

By _____
Gabriel Graham

EXHIBIT A

Scope of Services

CONSULTANT shall perform the following services:

Regional Coordination

1. Support the Executive Director, city staff, homeless system partners, and community partners to set program goals and metrics.
2. Strengthen existing key relationships and develop new relationships to prevent and combat homelessness in the COG market area.
3. Monitor program activities and outcomes.
4. Maintain a comprehensive up-to-date resource base for homeless services and referrals.
5. Prepare program report outlining key activities and outcomes for the funder (County).
6. Prepare invoices for reimbursement.
7. Maintain professional relationships with offices of local government, and city and county Departments.

Outreach

8. Work with city staff, public safety partners and homeless service providers to assist homeless people in response to requests received and while performing outreach duties.
9. Provide linkages to resources available for the homeless population. Provide referrals to any needed services including health, mental health, education, employment, vocational training. Serve as an advocate or liaison to other organizations when needed.
10. Represent COG at community meetings.
11. Participate in CES and Case Conferencing meetings.

General

12. Hire technical or administrative assistance as needed as a subcontractor to Consultant. Provide all clerical and secretarial assistance necessary to the scope of services, including but not limited to that required for agenda preparation, handling correspondence and the copying of documents.
13. Provide regular updates to the Executive Director, on a mutually agreed upon schedule.
14. Other duties as assigned by the Executive Director.

EXHIBIT B

Schedule of Payment

CONSULTANT shall provide a monthly Statement of Services to COG setting forth the hours spent by CONSULTANT performing services for COG and the amount due to CONSULTANT for services performed during the previous month. COG shall pay all undisputed amounts set forth in the Statement of Services within fifteen days after receipt of the Statement of Services.

Memorandum

DATE: March 17, 2020
TO: Governing Board
FROM: Terry Dipple, Executive Director
SUBJECT: AB 5 Issues Pertaining to the Executive Director

OVERVIEW

The purpose of this memorandum is to provide the Governing Board with information regarding AB 5 issues and the Executive Director.

BACKGROUND

Following up on a request from Greg Ramirez at the January Technical Advisory Committee meeting, I contacted Larry Weiner, COG Counsel, regarding AB 5 to determine how it might affect my status as an independent contractor. I subsequently had a conference call with Larry and his associate, Rebecca Green. Please see the attached which concludes a minor amendment to my contract may be in order.

ATTACHMENT: Memo from Rebecca Green to Larry Wiener, COG Counsel

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGE
CONFIDENTIAL

TO: Laurence Wiener
FROM: Rebecca Green
DATE: February 24, 2020
SUBJECT: Contract for Executive Director Services and AB 5

Introduction

Terry Dipple, the Executive Director of the Las Virgenes Malibu Council of Governments (the “COG”), contacted us to inquire whether the recent legislation known as AB 5 impacts his status as independent contractor with the COG. AB 5, effective January 1, 2020, sets forth a new, more stringent test to determine whether a worker is classified as an employee or independent contractor for purposes of the Labor Code and Unemployment Insurance Code.

After speaking with Terry and reviewing his Employment Agreement, I advised Terry that under AB 5, his position would not qualify as an independent contractor position because he works under the COG’s direction, and his work is intrinsic to the primary purpose of the COG. AB 5 does not impact Terry’s classification for any purpose other than the Labor Code and Unemployment Insurance Code. Thus, he may still function as an independent contractor under the IRS 20-factor test or the common law test used by CalPERS, while being able to assert certain “employee rights,” such as paid sick leave,¹ whistleblower protection, and workers compensation benefits.

Analysis

AB 5 establishes a three-part test known as the “ABC test” to determine the classification of a worker under the Labor Code and Unemployment Insurance Code. A person performing work is presumed to be an employee unless all of the following three conditions are satisfied:

- “(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity’s business.

¹ Because Terry is a salaried employee whose pay is not based on hours worked, and because his Employment Agreement does not require that he perform work every day or place a limit on the number of days he does not perform work, I assume that the COG is already in compliance with sick leave law. I am happy to provide further analysis on this issue if you would like.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.”²

Based on my conversations with Terry, my review of the Employment Agreement, and my understanding of the nature of the COG, I believe that Terry’s work would not satisfy Parts (A) and (B) of the test.

Part A: “Free from the control and direction”

While I understand that Terry is given a large degree of independence as Executive Director, he is tasked with carrying out the goals set by the COG’s Governing Board, and he takes direction from the Board. Under the rigid ABC test, even *minimal* direction on the performance of work disqualifies a worker from independent contractor status. The Scope of Services attached as Exhibit A to the Employment Agreement provides for frequent interface with and reporting to the Board.

Even if the Board does not control the exact means by which Terry accomplishes the COG’s goals, an employer-employee relationship may still be found if (1) the employer retains control over the operation as a whole; (2) the worker’s duties are an integral part of the operation, and (3) the nature of the work makes detailed control unnecessary. *Yellow Cab Cooperative, Inc. v. Workers’ Compensation Appeals Board* (1991) 226 Cal.App.3d 1288. The *Yellow Cab* case, which predates AB 5, would make the Board’s level of involvement in Terry’s work indicative of an employer-employee relationship.

Part B: “Work that is outside the usual course of the hiring entity’s business”

If a court were to analyze Terry’s position, the inquiry would likely end when the court saw his title of Executive Director. It is nearly impossible to contemplate a scenario in which an executive director is performing a role outside the agency’s usual course of business. But even setting aside the title, my understanding is that if Terry’s position was eliminated, the COG would cease to function. Terry runs the core operation of the COG. I do not see any way to make an argument that his work is outside the usual course of the COG’s business.

I do not have enough information to fully analyze Part (C) of the test; however my opinion on Parts (A) and (B) is strong enough that I do not believe an analysis of the third part is necessary. I also believe, based on my limited information, that Terry could not satisfy Part (C) because he is not currently acting as the executive director or performing comparable services for other entities on a regular basis. Given the length of his service to the COG and the full-time nature of his work, I do not think a court would consider him to be “customarily engaged” in work of the same nature for another entity, even if he does provide some advisory services to other entities.

Therefore, for purposes of the Labor Code and Unemployment Insurance Code, Terry is an employee of the COG. His employee status provides him with rights including eligibility for workers compensation and unemployment benefits. If Terry asserted such a claim, the COG

² Cal. Labor Code § 2750.3(a)(1).

should not contest his employment status, and must treat the claim as if it came from an employee.

AB 5 does not affect Terry's employment status under other legal frameworks such as the California Government Code (governing, among other things, CalPERS eligibility) or the federal Internal Revenue Code, which apply tests that are less rigid than the ABC test and allow for the balancing of multiple factors.³

Next Steps

Because AB 5 affects Terry's employment status only for a limited set of purposes and does not require that the COG classify him as an employee across the board, I do not think that the COG has to amend Terry's Employment Agreement. However, in an abundance of caution, the COG may choose to amend the first sentence of Section 4 to read "CONSULTANT will act hereunder as an independent contractor, *subject to the provisions of Assembly Bill 5 for work performed on or after January 1, 2020*" (added language in italics). Right now, we do not have reason to believe that any state or municipal agency would be interested in conducting an audit of the COG absent a complaint, and even if it did, the COG would be out of compliance with AB 5 only if it denied Terry his rights as an employee under the Labor Code or Unemployment Insurance Code. While AB 5 does empower the Attorney General and certain municipal attorneys to bring enforcement actions against employers to prevent the "continued misclassification" of employees as independent contractors,⁴ I interpret the statute to mean that an employer would have to first be found in violation of AB 5, which would only occur if Terry asserts rights that are improperly denied, and then challenges such denial. Therefore, until we receive further guidance from the Legislature, Labor Commissioner, or courts, I believe the COG's only additional obligation under AB 5 is to recognize that Terry may assert certain rights or claims that should be treated as they would for a non-exempt, at-will employee.

³ Based on my conversation with Terry and review of his contract, I am concerned that he may not qualify as an independent contractor under the common law or IRS 20-factor tests. I am happy to analyze his position under those tests if you would like.

⁴ Cal. Labor Code § 2750.3(j).

Agenda Item 7.C

TO: LAS VIRGENES MALIBU COG BOARD MEMBERS

FROM: JEFF KIERNAN, REGIONAL PUBLIC AFFAIRS MANAGER, LEAGUE OF CALIFORNIA CITIES®

RE: UPDATE FOR COG MEETING ON MARCH 17, 2020 (prepared 3/11/2020)

COVID-19/Coronavirus Resources for Cities: The League has been communicating with the Newsom Administration, CalOES and the California Department of Public Health on a daily basis to get the latest information on the COVID-19 outbreak. When appropriate I have been forwarding information from those agencies to City Managers and City Council Members, however you can always find the latest on the League's website at www.cacities.org/coronavirus and the CDC has now linked all of their resources to www.coronavirus.gov.

As of today (March 11), the League is continuing to proceed with our events/meetings as planned. If you have specific concerns or questions, please contact me.

Housing Proposal: At the last League Board meeting, Governor Newsom participated in a discussion about housing and then the Board approved a housing proposal that largely mirrored the Los Angeles County Division's recommendations in our White Paper, published in December of last year. A one page summary of the League's housing proposal is attached and you can find all of the latest information our website at www.CACities.org/Housing.

Housing Legislation: Including those leftover from last year, there are more than 340 housing bills in the State Legislature and those just introduced this year are mostly spot bills with very little detail. I anticipate it will be a couple weeks before the League will be able to announce positions and produce letters for most of these bills. Please let me know if you have specific questions or concerns.

Innovative City Program Awards: It is time again for cities to submit applications for the League's Helen Putnam Awards for Excellence. These awards are an opportunity to get additional recognition and to thank your city's employees and collaborators who have been part of an innovative local program. Details on the 12 award categories and the award application can be found online at www.helenputnam.org, the deadline to apply is Thursday, April 9th at 5 PM.

Census 2020: Census invitations will begin arriving in mailboxes around the country this week and, for the first time in our history, these instructions will be asking everyone to complete the census online by April 30. It is important for the everyone to be counted so that our communities can receive their fair share of Federal, State and Local funding. The National League of Cities has a Municipal Action Guide for cities and opportunities for \$2,500 - \$40,000 in outreach grants. More information will be posted at www.nlc.org/census or at <https://www.nlc.org/program-initiative/cities-count-preparing-for-the-2020-census>. The deadline for grant funds is July 31st or until funds are depleted.

Upcoming Meetings (Details and Registration can be found on the Events Tab at www.LACities.org):

- April 30th CitiPAC Fundraising Dinner from 6 – 8:30 PM at the California Club in downtown LA
- June 4th Newly Elected Official Governance Training from 3 – 6 PM at the Sportsman’s Lodge in Los Angeles
- June 4th Division General Membership Meeting from 6 – 8:30 PM at the Sportsman’s Lodge in Los Angeles
- August 6th Annual Installation Ceremony & Dinner from 6 – 8:30 PM. Location TBD.

See Blueprint for More Housing 2020 Attachment



LEAGUE OF CALIFORNIA CITIES

California cities — committed to being part of the solution to our housing crisis

Cities lay the groundwork for housing by planning and zoning new projects in their communities, but there are not enough homes being built in California. That is why the League has developed a bold proposal that, if fully implemented, will lay the foundation for the immediate production of much needed housing across all income levels and consists of near-term and longer-term actions to provide homes for Californians today and tomorrow.

New funding to support needed affordable housing and essential infrastructure

NEAR-TERM ACTION

The League's housing production proposal includes new long-term funding to support the construction of affordable housing and essential infrastructure. Without a source of reliable, ongoing funding that matches the scale of the problem, little will be done to produce new affordable housing units. The following pending bills could be a source of the funding:

- SB 795 (Beall) Affordable Housing and Community Development Investment Program — a measure that would restore a robust property tax-based financing mechanism focused on building affordable housing and infill infrastructure, providing up to \$2 billion annually.
- ACA 1 (Aguilar-Curry) Affordable Housing and Public Infrastructure. Voter Approval — a measure that would allow voters to lower the vote approval threshold from two-thirds to 55 percent for local general obligation bonds, sales taxes, or parcel taxes that invest in affordable housing and infrastructure.

Cities will take immediate actions to help spur production

NEAR-TERM ACTION

More than new funding will be necessary to produce housing units at the scale needed. That is why the League also supports requiring cities to take some of the following immediate actions (already adopted actions would qualify) designed to help spur housing production. In order to ensure cities retain flexibility to best meet their local needs and conditions, they would choose from a suite of actions, including but not limited to the following:

- Adopt an Accessory Dwelling Unit (ADU) ordinance
- Streamline housing approval processes
- Establish a Workforce Housing Opportunity Zone (WHOZ) or a Housing Sustainability District
- Develop objective design review standards
- Reduce development fees
- Adopt an inclusionary housing ordinance
- Establish a local housing trust
- Restrict demolition of existing housing stock
- Allow up to fourplexes in single-family zones
- Increase allowable heights and densities
- Adopt transit-oriented development (TOD) plans
- Reduce parking requirements
- Adopt tenant protections
- Establish an Enhanced Infrastructure Financing District (EIFD) or a similar financing tool