REPORT

DATE: December 14, 2006

TO: Regional Council
Administration Committee

FROM: Joann Africa, Deputy Legal Counsel, 213-236-1928
africa@scag.ca.gov

SUBJECT: Final Version of Delegation Agreement re. Regional Housing Needs Assessment

EXECUTIVE DIRECTOR'S APPROVAL:

RECOMMENDED ACTION:
Approve final version of Delegation Agreement and authorize Executive Director to sign Agreement on behalf of SCAG.

SUMMARY:
As part of staff's efforts relating to preparing the next Regional Housing Needs Assessment (RHNA), a draft Delegation Agreement ("Agreement") was prepared in September 2006. Last month, the Administration Committee and Regional Council reviewed two issues relating to the Agreement, dealing with funding and indemnification. The Administration Committee and Regional Council directed that SCAG provide a maximum of $20,000 to each subregion who accepts delegation, and approved indemnifying the delegate subregion provided it complies with all of the delegation duties under the Agreement up to the maximum amount of $25,000.

As a result of last month's action, staff has revised the Delegation Agreement. Attached for your consideration is the final version of the Agreement. Aside from the changes relating to funding and indemnification, staff also made revisions to clarify certain issues relating to the RHNA process, such as the need for the delegate subregion's final allocation plan to be consistent with SCAG's Integrated Growth Forecast and adopted allocation methodology.

This final version of the Delegation Agreement has been presented and circulated to the subregional coordinators for their review and comment. To date, OCCOG and CVAG have relayed to staff an interest in possibly accepting delegation.

In order to best ensure compliance with SCAG's current schedule for undertaking the RHNA, staff proposes that the deadline for SCAG and a subregion to enter into the Delegation Agreement be January 31, 2007. This is based upon staff's intent to present the Draft Housing Allocation Plan, or Draft RHNA, to the Regional Council on February 1, 2007. Assuming the Draft RHNA is approved by such date, the delegate subregion (having accepted and entered into the Agreement) will have its subregional total, can thereafter commence its tasks relating to delegation, and be in a similar position as SCAG in working towards preparing its final allocation plan.

FISCAL IMPACT:
Funding for subregions who accept delegation is included as part of staff's additional appropriation request to fund RHNA, which is also scheduled to be discussed at today's meeting.

Reviewed by:

Department Director

Reviewed by:

Chief Financial Officer

DELEGATION AGREEMENT
CONCERNING HOUSING NEEDS ASSSEMENT
BETWEEN THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS AND (NAME OF SUBREGIONAL ENTITY)

This Delegation Agreement ("Agreement" herein) is made and entered into this _____ day of _____, 2007, by and between the Southern California Association of Governments, a joint powers authority established under California law (hereinafter referred to as "SCAG"), and the (NAME OF SUBREGIONAL ENTITY), a _____ (hereinafter referred to as "Subregion"), collectively referred to herein as the "Parties."

RECITALS

The following recitals are a substantive part of this Agreement, and are incorporated herein by this reference.

A. The California Legislature has declared, in Government Code Section 65580, that the availability of housing is of vital state importance, and it is a goal of the State of California to expand housing opportunities and accommodate housing needs of Californians in all economic levels.

B. Counties and cities within California, in order to ensure attainment of the State's housing goal, are required under state law to adopt a general plan, which must include a housing element, which identifies and analyzes existing and projected housing needs, and enumerates goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement and development of housing to meet the needs of all economic segments of the community.

C. Government Code Section 65583(a) requires each such housing element to provide an assessment of the "share" of regional housing needs which must be borne by a local jurisdiction, and an inventory of resources and constraints relevant to the meeting of those needs.

D. SCAG is a joint powers authority agency representing six counties: Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial; and is mandated by the federal and state law to research and develop long range regional plans related to transportation, growth, waste management, air quality and housing.

E. SCAG, in consultation with the California Department of Housing and Community Development ("HCD" herein), is required to determine the existing and projected need for housing for the SCAG region pursuant to Government Code Sections 65584 et seq. by way of preparation of a Regional Housing Needs Assessment ("RHNA").

F. Counties and cities use the RHNA to prepare its respective housing element, and specifically, its assessment of its "share" of the regional housing needs.

G. SCAG is preparing the fourth update of the RHNA and intends to submit the RHNA to HCD on or about June 30, 2007. Counties and cities within the SCAG region thereafter are required to prepare and submit their respective updated housing elements to HCD by June 30, 2008.

H. For purposes of preparing the fourth update of the RHNA, SCAG is undertaking a "RHNA Pilot Program," a program which SCAG is seeking to be codified into state law and streamlines the current statutory process.

I. SCAG is authorized both under current state law and under the RHNA Pilot Program to delegate the responsibility of allocating the projected housing need for jurisdictions with a subregion to a subregional entity by way of a written agreement.

J. Subregion is a subregional entity as set forth in Government Code Section 65584 et seq., is recognized by SCAG as one of the subregions within the SCAG region, and desires to accept delegation of the responsibility of allocating the total housing need for the cities and counties in the _____ subregion, under the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

I. Parties and Purpose.

A. The Executive Director of SCAG, or his designee, and the _____ of Subregion, or his designee, are authorized to execute this Agreement and carry out the responsibilities of the Parties herein.

B. The purpose of this Agreement is to establish the responsibilities of the Parties associated with preparation of the fourth update of RHNA as they relate to delegation of the housing allocation process.

II. Definitions:

For purposes of this Agreement, the following terms shall be defined as follows:

"Adopted Allocation Methodology" shall mean the final regional housing need allocation methodology adopted by SCAG to be used in preparing the fourth update of the RHNA.

"Draft Allocation of Local Housing Need" shall mean the draft allocation made by SCAG for each city or county within the Subregion, of its share of

the Total Subregional Allocation, which is issued by SCAG as part of the Draft Housing Allocation Plan.

"Draft Housing Allocation Plan" shall mean the draft allocation of regional housing need to cities, counties and subregions within the SCAG region prepared and issued by SCAG as a result of its Integrated Growth Forecast and Adopted Allocation Methodology. The Draft Housing Allocation Plan shall also include the Total Regional Allocation.

"Final Allocation of Local Housing Need" shall mean the final allocation made by Subregion for each city or county with the Subregion, of its share of the Total Subregional Allocation, which shall be issued by the Subregion after conclusion of the appeal and trade and transfer process, as described in Sections V.C and V.D, below.

"Final Housing Allocation Plan" shall mean the RHNA or the final allocation of regional housing need to cities, counties and subregions within the SCAG region adopted by SCAG for submittal to HCD

"Integrated Growth Forecast" shall mean the growth scenario established by SCAG for the Southern California region which ties housing to transportation planning, and which serves as the platform for several of SCAG's regional plans and projects, including the Regional Transportation Plan and the RHNA.

"Local Housing Need" shall mean the existing and projected housing need for persons at all household income levels, as such terms are defined in Government Code Section 65584(e), that each city and county in the Subregion is required to plan for based upon existing and projected household growth forecasts.

"RHNA Pilot Program" shall mean the program initiated by SCAG to streamline the current statutory process of RHNA. Specifically, the RHNA Pilot Program seeks to utilize the Integrated Growth Forecast, which ties housing to transportation and air quality planning. The RHNA Pilot program also replaces the survey process set forth in current state law with public hearings and workshops, aimed at gathering information and facilitating an open dialogue with cities, counties, subregions and the general public about SCAG's Integrated Growth Forecast and proposed allocation methodology. Finally, the RHNA Pilot program streamlines the appeal process, and provides for one formal appeal by cities and counties of its draft allocation number.

"Total Regional Allocation" shall mean the share of the statewide housing need assigned to the SCAG region by HCD.

"Total Subregional Allocation" shall mean the share of the Total Regional Allocation assigned to the Subregion by SCAG as part of the Draft Housing

Allocation Plan. The Draft Housing Allocation Plan shall be prepared utilizing SCAG's Integrated Growth Forecast and Adopted Allocation Methodology.

III. Acknowledgement of status of RHNA Pilot Program

It is hereby acknowledged by the Subregion that the RHNA Pilot Program has not been enacted into state law as of the date of this Agreement, and that SCAG is implementing the RHNA Pilot Program based upon reasonable assurances that it will be approved and become state law prior to SCAG's completion of the 4th update of RHNA. The Subregion further acknowledges the risk in undertaking the RHNA Pilot Program without statutory authority. Notwithstanding the above, in approving this Agreement, Subregion agrees to abide by the terms of RHNA Pilot Program to the extent applicable to this Agreement. A copy of the RHNA Pilot Program is attached hereto as Exhibit "A."

IV. Duties of SCAG:

For purposes of this Agreement, SCAG shall be responsible for the following duties:

A. Furnishing Total Subregional Allocation. SCAG shall furnish to Subregion a copy of the Draft Housing Allocation Plan, which shall contain information regarding the Total Regional Allocation, the Total Subregional Allocation and the Draft Allocation of Local Housing Need for each city and county within the boundaries of Subregion.

B. Furnishing background information regarding Integrated Growth Forecast and Adopted Allocation Methodology to Subregion. At Subregion's request, SCAG shall furnish to Subregion background data and information regarding SCAG's Integrated Growth Forecast and Adopted Allocation Methodology specific to the Subregion, which may be necessary for Subregion's preparation of its Final Allocation of Local Housing Need.

C. Review of Final Allocation of Local Housing Need. SCAG shall review the Final Allocation of Local Housing Need established by Subregion in order to ensure its consistency with the RHNA Pilot Program, any applicable provisions of Government Code Section 65584 et seq., and the terms of this Agreement. In the event that the Final Allocation of Local Housing Need established by Subregion is inconsistent with the RHNA Pilot Program, the applicable provisions of Government Code Section 65584 et seq., or the terms of this Agreement, SCAG reserves the right to make the final housing need allocations to counties and cities within the

Subregion in accordance with subdivision (d) of Government Code Section 65584.03.

V. Duties of Subregion:

For purposes of this Agreement, the Subregion in accepting delegation shall be responsible for the following duties:

A. Determination of Final Allocation of Local Housing Need. Subregion shall determine the Final Allocation of Local Housing Need for each city or county contained within the boundaries of the Subregion in accordance with the requirements of the RHNA Pilot Program, or if a matter is not addressed in the RHNA Pilot Program, in accordance with the applicable requirements of Government Code Section 66584 et seq. Subregion's determination of the Final Allocation of Local Housing Need shall be consistent with the Integrated Growth Forecast and the Adopted Allocation Methodology. Subregion shall not utilize a different forecast or allocation methodology. This determination shall be made in a cooperative manner with the affected city or county government, and shall be based upon the Draft Allocation of Local Housing Need made by SCAG for each city or county within the Subregion as part of SCAG's Draft Housing Allocation Plan.

B. Maintain Total Subregional Allocation. In determining the Final Allocation of Local Housing Need, the Subregion shall maintain the Total Subregional Allocation. Maintenance of the Total Subregional Allocation shall mean to account for the total housing need originally assigned to Subregion as part of the Draft Housing Allocation Plan. By way of example, this means a downward adjustment in one jurisdiction's allocation shall be offset by an upward adjustment in another jurisdiction's allocation in the Subregion.

C. Administer Appeals Process. The Subregion shall administer and facilitate an appeals process for local jurisdictions within the Subregion seeking to appeal the original local housing need allocation made by SCAG as part of the Draft Housing Allocation Plan. The Subregion shall administer the appeals process in accordance with the terms of the RHNA Pilot Program and for matters not addressed in the RHNA Pilot Program, the applicable provisions of Government Code Section 66584.05. The Subregion may also utilize any procedures developed by SCAG related to appeals in administering the appeals process. Subregion shall adjust allocations to local governments based upon the results of the appeals process, and follow the provisions set forth in subdivision (g) of Government Code Section 65584.05 relating to adjustments. Local jurisdictions shall have no separate right of appeal to SCAG.

D. Administer Trade and Transfer Process. The Subregion may administer a "trade and transfer process" prior to adoption of its Final Allocation of Housing Need. This trade and transfer process may involve the Subregion facilitating negotiations between two or more cities relating to an alternate distribution of housing allocations between the affected cities. If the alternate distribution maintains the total housing need originally assigned to these communities, the Subregion shall include the alternate distribution in Subregion's Final Allocation of Local Housing Need. The trade and transfer process may commence before the start of the appeals process and continue until the Subregion's adoption of its Final Allocation of Housing Need. Trades and transfers may also occur outside of the Subregion provided the Total Subregional Allocation is maintained or accounted for. To the extent that SCAG develops guidelines relating to a trade and transfer process, Subregion's administration of its trade and transfer shall be consistent with these guidelines.

E. Compliance with SCAG RHNA Timeline/Submission of Subregion's Final Allocation of Local Housing Need. Subregion shall comply and adhere to the SCAG RHNA Timeline, attached hereto as Exhibit B. Subregion shall deliver its Final Allocation of Local Housing Need to SCAG in time to be included as part of SCAG's public hearing relating to the adoption of SCAG's Final Housing Allocation Plan, unless this Agreement is terminated pursuant to Section IX herein.

F. Records Maintenance. The Subregion shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this Agreement. Subregion shall also maintain a written record of any administrative proceeding conducted pursuant to this Agreement, whether by tape recording or by other means. Subregion shall make such records available to SCAG upon written request to Subregion. Subregion shall maintain these records for a period of not less than three (3) years after submission of its Final Allocation of Local Housing Need to SCAG.

VI. Financial Assistance.

In consideration for Subregion's agreement to undertake all delegation duties required by this Agreement, SCAG shall provide to Subregion financial assistance in the maximum amount of Twenty Thousand Dollars ($20,000), hereinafter referred to as "Financial Assistance". Subregion shall utilize the Financial Assistance solely to implement the terms of this Agreement, including but not limited to, providing staffing (both administrative and technical) to undertake the delegation duties required herein. Subregion shall be responsible for any additional costs required to implement this Agreement that is above the amount of Financial Assistance.

SCAG shall disburse the Financial Assistance to Subregion based upon the following performance milestones:

1. Full Execution of Agreement: Disbursement of 40% of Financial Assistance;
2. Completion of Appeals Process: Disbursement of 40% of Financial Assistance;
3. Delivery to SCAG of Final Allocation of Local Housing Need: Disbursement of 20% of Financial Assistance.

Subregion shall submit sufficient documentation to SCAG to evidence its completion of the above-mentioned performance milestones prior to disbursement of the Financial Assistance. By way of example, in order to evidence completion of the appeals process, Subregion shall submit a written report to SCAG detailing the appeal process, including information relating to the number of appeals and its respective outcomes. SCAG shall have the right to request and review additional information from Subregion in order to approve disbursement of the Financial Assistance.

VII. Indemnification.

Provided Subregion complies with all of its delegation duties required herein, SCAG agrees to indemnify, defend and hold harmless the Subregion, its officers, agents and employees, from any and all claims, demands, costs or liability, including but not limited to legal costs and attorneys fees, arising from or connected with this Agreement, up to a maximum dollar amount of Twenty-Five Thousand Dollars ($25,000). Subregion agrees and acknowledges that it shall be responsible for any additional costs above this amount which relates to any claim, demand, costs or liability arising from or connected with this Agreement. This indemnification provision does not apply to member jurisdictions of Subregion.

VIII. Progress report to SCAG.

Pursuant to the RHNA Pilot Program, the Subregion agrees and acknowledges that SCAG is required to submit to the State Legislature by March 30, 2007, a written report describing its progress in completing SCAG's final Housing Allocation Plan for the SCAG region. This report by SCAG shall include information regarding the status of the work undertaken by Subregion as part of its acceptance of delegation herein. In order to determine if the Subregion is complying and completing the activities required herein in accordance with the agreed-upon schedule, and to resolve any issues in connection with the work to be performed by Subregion, the Subregion shall submit a progress report to SCAG by no later than March 15, 2007, describing the status of work performed by Subregion to implement this Agreement.

IX. Termination of Agreement.

A. Termination by Subregion. Subregrion shall have the right to terminate this Agreement without cause by giving written notice to SCAG by no later than May 4, 2007 of its intent to terminate. In such event all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG. In the event of termination, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.

B. Termination by SCAG. SCAG shall have the right to terminate this Agreement with cause, including but not limited to, if SCAG has a reasonable basis to conclude that Subregion shall be unable to fulfill in a timely and proper manner its duties under this Agreement. SCAG shall provide written notice to Subregion of its intent to terminate this Agreement, which shall be effective ten (10) days from the date on the notice. In the event of such termination, all finished or unfinished documents, data, studies, reports or other materials prepared by Subregion relating to this Agreement shall be given to SCAG in order for SCAG to determine the local allocation of need for all cities and counties within the Subregion. By termination of this Agreement, SCAG reserves the right to distribute the share of regional housing need to cities and counties within the Subregion using the Draft Allocation of Local Housing Need established by SCAG as part of its Draft Housing Allocation Plan. In the event of termination, Subregion shall forfeit any Financial Assistance not disbursed by SCAG.

X. Other Provisions.

A. Notices. All notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by U.S. mail, certified, or by reputable document delivery service such as Federal Express. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices shall be delivered as follows:

SCAG: Southern California Assn. of Governments
Attn: Hasan Ikhrata, Director of Planning and Policy
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

Subregion: (Name of Subregional Entity)
Attn: _____
_____
_____

B. Prohibition against Assignment/Subcontract. Subregion shall not assign or subcontract any rights, duties or obligation in this Agreement.

C. Governing Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

D. Time is of Essence. Time is expressly made of the essence with respect to the performance of the Parties and of each and every obligation and condition of this Agreement.

E. Amendments in writing. This Agreement cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.

F. Interpretation; Days. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Agreement, it shall mean and include all subsections and subparts thereof.

G. Exhibits. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.

H. Cooperation between the Parties/Dispute Resolution. SCAG and Subregion are each undertaking the responsibilities of this Agreement for the benefit of their respective members. The Parties agree and acknowledge that it is their best interest to engage in cooperation and coordination with each other in order to carry out its responsibilities herein. In this spirit of cooperation, the Parties agree that neither party will seek any action in law or in equity. Disputes regarding the interpretation or application of any provision of this Agreement shall be resolved through good faith negotiations between the Parties. Changes in exigent circumstances or the RHNA Law may cause a party to conclude that this Agreement should be amended. If the Parties cannot agree on changes to this Agreement, the Parties can terminate this Agreement; in no event shall either Party seek any legal or equitable remedy against the other.

I. Entire Agreement. This Agreement constitutes the entire understanding between the Parties. All prior agreements or understandings, whether oral or written, are superseded. Each Party is entering this Agreement based solely upon the representations set forth herein. This Agreement may be executed in counterpart originals, and when the original signatures are assembled together, shall constitute a binding agreement of the Parties.

[Signature Page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its duly authorized officers, shall become effective as of the date in which the last of the Parties, whether SCAG or Subregion, executes this document.

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS ("SCAG")

By_____

Date _____

Approved as to form:

_____
Karen Tachiki, Chief Counsel

(NAME OF SUBREGIONAL ENTITY) ("Subregion")

By_____

Date_____

Approved as to form:

By_____
Counsel for Subregion

Exhibit "A" – RHNA Pilot Program

(Note: Language of RHNA Pilot Program is still under discussion. The RHNA Pilot Program, once finalized, will be attached as part of the final document prior to execution).

Exhibit "B" – SCAG RHNA Timeline

January 31, 2007	Last day for SCAG and Subregion to execute Delegation Agreement.
Jan. 2007	SCAG to hold second public hearing regarding final methodology, subregional workshop results and policy recommendations.
Feb 1, 2007	SCAG Regional Council to consider adoption of Draft Housing Allocation Plan; Adoption triggers starts of appeal filing period.
March 15, 2007	Subregion to submit progress report to SCAG.
March 30, 2007	SCAG to submit status report to State pursuant to Pilot Program.
Mid-April 2007	SCAG to hold public hearing for appeal jurisdictions.
May 4, 2007	End of appeals process for SCAG; SCAG to start preparing Final Housing Allocation Plan.
June 2007	Subregion to deliver Final Allocation of Local Housing Need to SCAG.
July 5, 2007	SCAG Regional Council to hold public hearing regarding adoption of Final Housing Allocation Plan (RHNA).
July 6, 2007	SCAG submits RHNA to HCD.
Sept. 4, 2007	Deadline for adoption of RHNA by HCD.
June 30, 2008	Due date for jurisdictions in SCAG region to submit updated Housing Elements to HCD.