

EXECUTIVE DIRECTOR SERVICES AGREEMENT

THIS EXECUTIVE DIRECTOR SERVICES AGREEMENT (“Agreement”) is made and entered into this 1st day of July, 2016, by and between the SOUTH BAY CITIES COUNCIL OF GOVERNMENTS (“SBCCOG”), a California Joint Powers Authority, and Jacki Bacharach & Associates (“JB&A”), a sole proprietorship (“CONTRACTOR”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. SBCCOG is desirous of obtaining independent contractor services necessary to professionally manage the activities and programs of the organization and the South Bay Environmental Services Center, a programmatic element of the SBCCOG;

B. SBCCOG has determined based on its historic relationship with CONTRACTOR that CONTRACTOR possesses the expertise, qualifications and knowledge to provide the required services, that these services have met the expectations of the Board of Directors, and that a competitive procurement at this time would not serve any public purpose; and

C. The parties desire to replace and supersede the existing agreement for consulting services due to expire on June 30, 2016 and herein to establish the terms and conditions of CONTRACTOR’S engagement to perform services as Executive Director of the SBCCOG.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties mutually agree as follows:

1. **Term of Agreement**. This Agreement shall terminate on June 30, 2019 unless earlier terminated as provided below.

1.1 **Termination**. SBCCOG shall have the right to terminate this Agreement without cause by giving CONTRACTOR thirty (30) days written notice. CONTRACTOR shall have the right to terminate this Agreement without cause by giving SBCCOG one hundred twenty (120) days written notice; provided, however, should CONTRACTOR be unable to perform due to a documented debilitating medical condition, the required written notice may be reduced by up to sixty (60) days as necessary, provided that CONTRACTOR’S subcontractors remain obligated to perform their subcontracted obligations through the balance of the one hundred twenty day notice period should SBCCOG agree in its sole discretion to accept an assignment of one or more of those subcontracts from CONTRACTOR. Upon receipt of a termination notice, CONTRACTOR shall: (1) promptly discontinue all services affected on the termination date (unless the notice directs otherwise); and (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to SBCCOG, whether completed or in progress. CONTRACTOR shall be entitled to reasonable compensation for the services it performs up to the date of termination.

2. **Services to be Provided**. The services to be provided hereunder shall be those set forth in Exhibit “A”, Scope of Work, which is attached hereto and incorporated herein by this

reference. The Scope of Work will be evaluated annually by SBCCOG and changes in scope beyond that described in Exhibit "A" will be negotiated to the mutual satisfaction of the parties.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

3.1 **Amount.** Compensation under this Agreement shall not exceed \$405,000 for the general operations of the SBCCOG for the first year of the Term with an annual review by the Board of Directors during the budget deliberations.

3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by SBCCOG will be required.

3.3 **Expenses.** Standard office supplies are included in the compensation. Budgeted costs for copying, additional supplies and equipment, mailings, meals, parking, and conferences will be paid upon presentation of receipts. Extraordinary expenses must be pre-approved.

4. **Professional Standards.** CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** CONTRACTOR shall complete all services required hereunder as set forth in Exhibit A under the general direction of the SBCCOG Steering Committee.

6. **Employees and Subcontractors.** CONTRACTOR may, at its sole cost and expense, employ or subcontract with such other person or entity as may, in the opinion of CONTRACTOR, be needed to comply with the terms of this Agreement, if such persons or entities possess the necessary qualifications to perform such services. CONTRACTOR shall notify SBCCOG in writing of any such arrangements within ten (10) days of securing such services.

7. **Insurance Requirements.**

7.1 **Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until it has obtained SBCCOG approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place all of the insurance coverages required in this Section 7. CONTRACTOR insurance shall comply with all items specified by this Agreement. CONTRACTOR'S subcontractors and employees shall be covered by the insurance coverages of this Section 7; otherwise, insurance coverage provided by subcontractors and employees shall be determined on a case-by-case basis in consultation with SBCCOG General Counsel.

Insurers authorized to do business in the State of California shall issue all insurance

policies used to satisfy the requirements imposed hereunder. Insurers shall have a current A.M. Best's rating of not less than A-VII unless otherwise approved by SBCCOG.

7.2 Coverages, Limits and Policy Requirements.

CONTRACTOR shall maintain the types of coverages typical of a small business to include but not be limited to property insurance, liability insurance, and automobile insurance to apply to the SBCCOG and SBESC business location and employees. Policy limits of such insurance coverage are subject to SBCCOG approval.

The insurer shall agree to provide the SBCCOG with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage.

In the event that during the term of this agreement, CONTRACTOR hires employees, Worker's Compensation Insurance must be obtained. The policy shall meet all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be approved by SBCCOG. The policy shall contain or be endorsed to include a waiver of subrogation in favor of SBCCOG.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against SBCCOG for payment of premiums or other amounts with respect thereto. SBCCOG shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with SBCCOG incorporating such changes within sixty (60) days of receipt of such notice CONTRACTOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by SBCCOG. Any deductible exceeding an amount acceptable to SBCCOG shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to SBCCOG and its officials, employees and agents (with additional premium, if any, to be paid by CONTRACTOR; or CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.

7.4 Verification of Compliance. CONTRACTOR shall furnish SBCCOG with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by SBCCOG before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to SBCCOG a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to SBCCOG.

8. Non-Liability of Officials and Employees of the SBCCOG and Member Cities. No official or employee of SBCCOG or members cities shall be personally liable

for any default or liability under this Agreement.

9. **Non-Discrimination**. CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, sexual orientation, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor**. It is agreed that CONTRACTOR shall act and be an independent contractor and not an agent or employee of SBCCOG, and shall obtain no rights to any benefits. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold SBCCOG harmless from any and all taxes, assessments, penalties, and interest asserted against SBCCOG by reason of the independent contractor relationship created by this Agreement.

11. **Compliance with Law**. CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Ownership of Work Product**. All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for SBCCOG by CONTRACTOR as SBCCOG's employee(s) for hire and shall be the sole property of SBCCOG. CONTRACTOR shall provide SBCCOG with electronic copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

13. **Conflict of Interest and Reporting**. CONTRACTOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. CONTRACTOR is a "consultant" for the purposes of the California Political Reform Act because CONTRACTOR's duties would require CONSULTANT's principal to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were CONTRACTOR employed by the SBCCOG. CONTRACTOR hereby acknowledges its assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the SBCCOG's Conflict of Interest Code and agrees to comply with those obligations at its expense.

14. **Notices**. All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

14.1. Business address of CONTRACTOR is as follows:

5033 Rockvalley Road
Rancho Palos Verdes, California 90275

14.2. Address of SBCCOG is as follows:

Chair
South Bay Cities Council of Governments

20285 S. Western Avenue, Suite 100
Torrance, CA 90501

15. **Licenses, Permits, and Fees.** CONTRACTOR shall obtain all permits, and licenses as may be required by this Agreement.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement.

17. **Limitations Upon Assignment.** Neither this Agreement or any portion thereof shall be assigned by CONTRACTOR without prior written consent of SBCCOG.

18. **Key Person.** During the term of this Agreement, CONTRACTOR shall provide the services of Jacki Bacharach to perform as Executive Director of SBCCOG. Changes to this key person shall require the written approval of SBCCOG.

19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

20. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless SBCCOG and its directors, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees and expert fees arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR, except for liability arising from the negligent or wrongful conduct of SBCCOG. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises other than those included in this Agreement shall be valid. This Agreement may be modified only by a written agreement executed by SBCCOG and CONTRACTOR.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Superior Court.

23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable provided that the essential purposes of the Agreement are not thereby frustrated.

25. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

26. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover reasonable attorneys' fees and court costs from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

Jacki Bacharach & Associates

By: _____

SOUTH BAY CITIES COUNCIL
OF GOVERNMENTS

By: _____

Chair

ATTEST:

Secretary

APPROVED AS TO FORM:

SBCCOG Attorney