

South Bay Cities Council of Governments

October 23, 2014

TO: SBCCOG Board of Directors

FROM: SBCCOG Steering Committee

RE: Agreement for Special Legal Services

Adherence to Strategic Plan:

Goal A: Environment, Transportation, and Economic Development. *Facilitate, implement and/or educate members and others about environmental, transportation, and economic development programs that benefit the South Bay.*

Background

Since 1998, Michael Jenkins has been providing legal services to the SBCCOG at no cost. The services have been timely and he has continually accepted more and more work without objection as the SBCCOG's programs have grown. Those programs include all of the partnership agreements that support the Environmental Services Center as well as the human resources issues that have arisen from hiring employees. These are in addition to the general requirements of the SBCCOG, such as Brown Act compliance, etc.

With the addition of the Measure R program, Mike Jenkins has also been asked to review additional consultant contracts and procedures. While the partnership agreements have fixed prices that would make it difficult to add legal fees, we can add legal review fees for Measure R work and staff would recommend doing so.

As more work comes to the SBCCOG, when possible, staff recommends that legal services be an included expense in the budget. This is already being done for the Dominguez Channel Watershed Contract Administration which is scheduled to start next year.

SBCCOG staff has discussed the change in Mr. Jenkins' billing rates with Metro staff, which has no objection as long as the issues being reviewed are related to South Bay Highway Program – eligible expenses. Following SBCCOG Board approval of the recommendation, SBCCOG staff will transmit the Board Action to Metro with a description of the types of matters that Mr. Jenkins will be allowed to bill to the Measure R Program at the SBCCOG Board-approved hourly rate. Additionally, the hourly rate is a reduction for the SBCCOG from Mr. Jenkins regular rate.

RECOMMENDATION

That the Board approve the attached agreement with Jenkins and Hugin for special legal services which are eligible for reimbursement in connection with the Measure R program. The fee would be \$250/hour.

**AGREEMENT FOR SPECIAL LEGAL SERVICES
FOR THE SOUTH BAY CITIES COUNCIL OF GOVERNMENTS**

This Agreement for Special Legal Services ("Agreement") is made and entered into by and between the law firm of Jenkins & Hogin, LLP (hereinafter "the Firm") and the South Bay Cities Council of Governments (hereinafter "the SBCCOG") as of October 23, 2014.

RECITALS:

A. The SBCCOG desires to retain the Firm to provide special legal services to the SBCCOG in connection with Measure R projects that are eligible for reimbursement from Los Angeles County Metropolitan Transportation Authority.

B. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to provide the services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

The Firm shall provide special counsel legal services in connection with projects funded through Measure R that are eligible for reimbursement from Los Angeles County Metropolitan Transportation Authority. The Firm shall use its best efforts to provide legal services in a competent and professional manner. The Firm's services will be billed at \$250/hr.

2. Billing Procedures and Monthly Statements.

2.1 Payment for all services shall be made on or before the last day of each month for services rendered during the preceding month. The Firm shall submit to the SBCCOG, within 10 days after the end of each calendar month, a general statement of professional services provided.

2.2 The Firm will not bill the SBCCOG for routine copying, telephone, mileage, facsimile or word processing or electronic research within the Firm's current Westlaw Plan, which shall include California statutes and case and Ninth Circuit cases. The Firm will bill the SBCCOG, without any mark-up, actual expenses for out-of-contract electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying and similar out-of-pocket expenses. These items will be separately designated on the Firm's monthly statements as "disbursements" and will be billed in addition to the fees for professional services.

3. Term of the Agreement.

This Agreement shall commence as of October 23, 2014 and shall be and remain in full force and effect until terminated in accordance with the provisions of Section 5 hereof.

4. Resolution of Fee Disputes.

The SBCCOG is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles pursuant to the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. In the event that SBCCOG chooses not to utilize the Los Angeles County Bar Association's arbitration procedures, SBCCOG agrees that all disputes regarding the professional services rendered or fees charged by the Firm shall be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

5. Termination of the Agreement.

The SBCCOG may terminate this Agreement, with or without cause, upon written notice to the Firm. The Firm may terminate, with or without cause, on ninety (90) days written notice to the SBCCOG. In either event, the SBCCOG agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of the Firm's services, SBCCOG will remain obligated to pay to the Firm all fees and costs incurred prior to termination.

6. Conflict of Interest.

The Firm represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided to the SBCCOG under this Agreement.

The Firm represents that no SBCCOG employee or official other than the members of the Firm has a material financial interest in the Firm. During the term of this Agreement and/or as a result of being awarded this contract, the Firm shall not offer, encourage or accept any financial interest in the Firm's business from any SBCCOG employee or official.

7. Files.

All legal files of the Firm pertaining to the SBCCOG shall be and remain the property of SBCCOG. The Firm shall control the physical location of such legal files

in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at the Firm's expense, upon termination of this Agreement.

8. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of the Firm's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the SBCCOG.

9. Nondiscrimination.

In the performance of this Agreement, the Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation or medical condition. The Firm shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, sexual orientation or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

10. Assignment and Delegation.

This Agreement contemplates the personal professional services of the Firm and it shall not be assigned or delegated without the prior written consent of the SBCCOG. The Firm shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

11. Insurance.

11.1 The Firm shall obtain and maintain in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$3,000,000 aggregate. Said insurance policy shall provide coverage to the SBCCOG for any damages or losses suffered by the SBCCOG as a result of any error or omission or neglect by the Firm which arises out of the professional services required by this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

11.2 The Firm shall, if and as prescribed by law, obtain and maintain Workers' Compensation insurance in accordance with Section 3700 of the California Labor Code.

11.3 The Firm shall file with the SBCCOG evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The Firm agrees to notify SBCCOG in the event the limits of its insurance should fall below the coverage stated in this paragraph or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

12. Indemnification.

12.1 The Firm agrees to indemnify, hold harmless and defend SBCCOG and SBCCOG Board, its officers, employees, agents and volunteers, from any and all liability or financial loss including legal expenses and costs of expert witnesses and consultants resulting from any suits, claims, losses or actions brought by any person or persons, by reasons of injury and arising directly or indirectly from the negligent or wrongful activities and operations of the Firm, including its officers, agents, employees, or subcontractors in the performance of this Agreement.

12.2 Notwithstanding the provisions of paragraph 12.1, SBCCOG acknowledges its statutory obligation under California Government Code section 825 *et seq.* to defend and indemnify the Firm's attorneys from and against all and any claims, actions and liabilities arising from work performed within the scope of their duties under this Agreement.

12.3 The provisions of this Paragraph 12 shall survive the termination of this Agreement.

13. Legal construction.

13.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

13.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

13.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

13.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

14. Notices.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO SBCCOG: Jacki Bacharach, Executive Director
South Bay Cities Council of Governments
20285 Western Avenue, Suite 100
Torrance, California 90501

TO FIRM: Michael Jenkins
Jenkins & Hugin, LLP
1230 Rosecrans Avenue Suite 110
Manhattan Beach, CA 90266

15. Warranty of Authorized Signatures.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

16. Entire Agreement.

This Agreement, together with any written modification pursuant to Paragraph 8 above, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of either party relating to the subject matter hereof.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

Dated: _____

**SOUTH BAY CITIES COUNCIL OF
GOVERNMENTS**

By _____
James F. Goodhart, Chair

ATTEST:

BOARD SECRETARY

Dated: _____

JENKINS & HOGIN, LLP
A Limited Liability Partnership

By _____
MICHAEL JENKINS