

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of May 1, 2016 by and between the South Bay Cities Council of Governments, a California joint powers authority ("SBCCOG") and LRS Program Delivery, Inc. ("Consultant").

RECITALS

A. SBCCOG desires to utilize the services of Consultant as an independent contractor to provide specified professional services to SBCCOG as set forth in Exhibit A, to assist the SBCCOG's member agencies to improve the Caltrans permitting and coordination process when local jurisdictions seek to work on state highways in the South Bay.

B. The goal of this program is to achieve an improved and expedited approval process for Caltrans issuance and administration of permits and design exceptions requested by local jurisdictions that seek to work on state highways within their local jurisdictions.

C. Consultant represents that it is fully qualified to perform consulting services by virtue of its experience and the training, education, and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. **Services.**

1.1 The nature and scope of the specific services to be performed by Consultant are as described in Exhibit A, attached hereto and incorporated herein by reference.

1.2 SBCCOG agrees to conduct its best effort to assist with the success of the program and understands that the Consultant assumes full responsibility to manage and produce the program.

1.3 SBCCOG and participating agencies shall provide all relevant documentation in their possession to the Consultant upon request in order to minimize duplication of efforts. The SBCCOG staff shall work with the Consultant as necessary to facilitate performance of the services.

2. **Term of Agreement.** This Contract shall take effect May 1, 2016 and shall continue until October 31, 2016 unless earlier terminated pursuant to the provisions of paragraph 14 herein. The term of this Agreement may be extended by mutual agreement of the parties as may be necessary or desirable to carry out its purposes.

3. **Compensation.** SBCCOG shall pay for services based on the not to exceed budget as itemized in Exhibit B.

4. **Terms of Payment.** Consultant shall submit monthly invoices for services rendered and for reimbursable expenses incurred. The invoice should include: an invoice number, the dates covered by the invoice, the hours expended and a summary of the work performed. SBCCOG shall pay the invoices within sixty (60) days of receipt.

5. **Parties' Representatives.** Jacki Bacharach shall serve as the SBCCOG's representative for the administration of the project. All activities performed by the Consultant shall be coordinated with this person. Lan Saadatnejadi shall be in charge of the project for the Consultant on all matters relating to this Agreement and any agreement or approval made by him shall be binding on the Consultant. This

person shall not be replaced without the written consent of the SBCCOG.

6. Addresses.

SBCCOG:

South Bay Cities Council of Governments
20285 S. Western Ave., Suite 100
Torrance, CA 90501
Attention: Jacki Bacharach, Executive Director

Consultant:

LRS Program Delivery, Inc.
1379 Park Western Drive, Suite 364,
San Pedro, CA 90732
Attention: Lan Saadatnejadi, President / CEO

7. Status as Independent Contractor.

A. Consultant is, and shall at all times remain as to SBCCOG, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of SBCCOG or any participating agency or otherwise act on behalf of SBCCOG or any participating agency as an agent except as specifically provided in the Scope of Services. Neither SBCCOG nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of SBCCOG.

B. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold SBCCOG harmless from any failure of Consultant to comply with applicable worker's compensation laws.

8. Standard of Performance. Consultant shall perform all work at the standard of care and skill ordinarily exercised by members of the profession under similar conditions.

9. Indemnification. Consultant agrees to indemnify the SBCCOG and participating public agencies, their respective officers, staff consultants, agents, volunteers, employees, and attorneys against, and will hold and save them and each of them harmless from, 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, its agents, employees, subcontractors, or invitees, including each person or entity responsible for the provision of services hereunder, except for liability resulting from the sole negligence or wrongful acts of the SBCCOG or a participating agency.

10. Insurance. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California and approved by the SBCCOG (1) a policy or policies of broad-form comprehensive general liability insurance with minimum limits of \$1,000,000.00 combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement; (2) property damage insurance with a minimum limit of \$1,000,000.00; (3) automotive liability insurance, with minimum combined single limits coverage of \$500,000.00; and (4) worker's compensation insurance with a minimum limit of \$500,000.00 or the amount required by law, whichever is greater. SBCCOG and participating public agencies, their respective officers, employees, attorneys, staff consultants, and volunteers shall be named as additional insureds on the policy (ies) as to comprehensive general liability,

property damage, and automotive liability. The policy (ies) as to comprehensive general liability, property damage, and automobile liability shall provide that they are primary, and that any insurance maintained by the SBCCOG shall be excess insurance only.

A. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving SBCCOG thirty (30) day's prior written notice thereof. Consultant agrees that it will not cancel, reduce or otherwise modify the insurance coverage.

B. All policies of insurance shall cover the obligations of Consultant pursuant to the terms of this Agreement; shall be issued by an insurance company which is admitted to do business in the State of California or which is approved in writing by the SBCCOG; and shall be placed with a current A.M. Best's rating of no less than A VII.

C. Consultant shall submit to SBCCOG (1) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (2) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on SBCCOG's appropriate standard forms entitled "Additional Insured Endorsement", or a substantially similar form which the SBCCOG has agreed in writing to accept.

11. Confidentiality. Parties agree to preserve as confidential all Confidential Information that has been or will be provided to each other.

12. Ownership of Materials. All materials provided by Consultant in the performance of this Agreement shall be and remain the property of SBCCOG and its partner organizations without restriction or limitation upon their use or dissemination by SBCCOG. The Consultant will retain non-exclusive perpetual rights to the use of material developed under this contract.

13. Conflict of Interest. It is understood and acknowledged that Consultant will serve as an agent of the SBCCOG and the participating agencies for the limited purpose of implementation of this project.

14. Termination. Either party may terminate this Agreement without cause upon fifteen (15) days' written notice to the other party. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the fifteenth (15th) day following delivery of the notice. Immediately upon receiving written notice of termination, Consultant shall discontinue performing services. Should the Agreement be breached in any manner, the non-breaching party may, at its option, terminate the Agreement not less than five (5) days after written notification is received by the breaching party to remedy the violation within the stated time or within any other time period agreed to by the parties.

15. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but SBCCOG reserves the right, for good cause, to require Consultant to exclude any employee from performing services on SBCCOG's premises.

16. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status,

national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of SBCCOG relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

17. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of SBCCOG, and any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

18. Compliance with Laws. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Each party is responsible for paying its own all federal and state income taxes, including estimated taxes, and all other government taxes, assessments and fees incurred as a result of his/her performance under this Agreement and the compensation paid by or through this Agreement

19. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by SBCCOG of any payment to Consultant constitute or be construed as a waiver by SBCCOG of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by SBCCOG shall in no way impair or prejudice any right or remedy available to SBCCOG with regard to such breach or default.

20. Resolving Disputes. If a dispute arises under this Agreement, prior to instituting litigation the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in California. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

21. Severability. If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect provided that the principal purposes of the parties are not thereby frustrated.

22. Notices. Any notices required to be given under this Agreement by either party to the other may be affected by any of the following means: by electronic correspondence (email), by personal delivery in writing by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices must be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by giving written or electronic notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Electronic notices are deemed communicated as of actual time and date of receipt. Any electronic notices must specify an automated reply function that the email was received. The email addresses for each party are as follows:

Jacki Bacharach – jacki@southbaycities.org
Lan Saadatnejadi - lan@lrsprogramdelivery.com

23. Governing Law. This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of California.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

25. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and SBCCOG. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement. Amendments on behalf of the SBCCOG will only be valid if signed by the SBCCOG Executive Director or the Chairman of the Board and attested by the SBCCOG Secretary.

26. Exhibits. All exhibits referred to in this Agreement are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

"SBCCOG"
South Bay Cities Council of Governments

By: _____
Jim Gazeley, Chair

Date: _____

Attest: _____
SBCCOG Secretary

"Consultant"
LRS Program Delivery, Inc.

By: _____
Lan Saadatnejadi, President / CEO

Date: _____

Exhibit A

Scope of Work to improve the Caltrans Local Agency Design Approval and permit process for South Bay Cities Measure R South Bay Highway Program (SBHP) projects

Background

- ❖ The goal of the SBHP is to improve the operation and safety of the South Bay freeways and highways by reducing vehicular delays and improving roadway safety. This 30-year program is partially funded with the Measure R sales tax approved by L. A. County voters in 2008. The SBHP is included in the Measure R Expenditure Plan that was adopted by Los Angeles County Metropolitan Transportation Authority (Metro) when the sales tax measure was approved.
- ❖ The South Bay Cities Council of Governments has entered into a Cooperative Agreement with Metro to provide assistance in the development and oversight of SBHP projects. Currently there are more than 60 active projects identified in the SBHP. More than 40 of these projects have local jurisdictions as the lead agency and involve facilities on the State Highway System, which require design approvals and permits from the California Department of Transportation (Caltrans).
- ❖ The South Bay sub-region is expected to receive approximately \$906 million (in 2008 dollars or an estimated \$1.5 billion escalated to year of expenditure dollars) over the 30-year life of Measure R. Measure R is expected to provide approximately half of the funding for South Bay improvements identified over the 30-year Measure R allocation period.
- ❖ Consistency with design standards provides a basis for Caltrans to be covered by the statutory design immunity from liabilities. Therefore, exceptions must be carefully evaluated and justifications documented. Inadequate documentation will subject both Caltrans and the project lead agency to potential liabilities. Caltrans' policy requires project sponsors to bring a facility up to Caltrans' current standard whenever there is a proposed modification to its facility. This often presents a challenge for projects in the South Bay, as it is a highly urbanized sub-region within Los Angeles County and transportation solutions to address the increase in traffic demand are often constrained by limited right of way availability. The lead agency must prepare a Fact Sheet for Exceptions to Mandatory Design Standards (Fact Sheet) for every project in which the lead agency is proposing non-standard features. Historically the Fact Sheet review and approval process could take months and cost as much as \$50,000 in consultant fees, which does not include costs of the lead agency's internal staff time or the cost due to the schedule delays.
- ❖ South Bay Cities desire to establish a model streamlined process with Caltrans for design approvals and permits involving projects on the state highway system in which Caltrans is not the lead agency. The SBCCOG is interested in exploring the potential for a master cooperative agreement with Caltrans under which local agencies could have a clear expedited process, improved predictability, and reduced risk, as the local jurisdictions agree to assume the lead agency role for an SBHP project on a state highway.

Scope of Services

Task 1: Magnitude of Problem and Summary Areas of Potential Concern (1 month)

Consultant will work with the South Bay Cities with projects that require Caltrans approvals to identify the kind of projects, the environment in which the projects are to be implemented, the issues in the conceptual SBHP project types that may require non-standard features on the state highway system, and the preliminary rationale for granting a design exception. CONSULTANT will also do a literature research on South Bay state highway facilities at issue for their general features, general conditions of the surroundings, and historical precedents for design exceptions, if any. CONSULTANT will compile a summary consisting of the collected data and sample improvements as identified by cities. This task does not include the collection of any traffic volumes, accident data, or as-builts.

Deliverable: Summary of Area of Potential Concerns

Task 2: Initial Engagement with Caltrans (1 month)

Using the sample improvements, Consultant will engage Caltrans District 7 as well as Sacramento Headquarters offices to explore opportunities for a streamlined approach for design approvals for the South Bay Measure R projects. Appropriate steps will be identified and documented as to the rules of engagement, decision makers, documentation required, and potential legislative changes required. Caltrans could potentially require additional information such as accident data, traffic volumes, and existing roadway geometric features. CONSULTANT will assume that Caltrans will use internal resources to collect such information. CONSULTANT will update the *Summary of Area of Potential Concerns* upon receipt of such data provided by Caltrans. However, if Caltrans requires CONSULTANT personnel to collect or generate any portion of such data, then CONSULTANT will perform such services at the rate shown in Exhibit 2. CONSULTANT will communicate with SBCCOG staff and obtain approval in advance to performing such extra services.

*Deliverables: Conceptual Approach Memorandum
Updated Summary of Area of Potential Concerns*

Task 3: Definition of the Streamlined Process (2 months)

CONSULTANT will facilitate two workshops with the SBCCOG, cities, Metro, and Caltrans to explore alternatives for streamlined processes. CONSULTANT will organize the logistics and prepare the materials needed for the workshops, conduct the workshop, and prepare a summary report. The recommendations will include the scope of the application, generally applicable standards for the South Bay Measure R projects, descriptive flowchart for the approval processes, tabulated roles and responsibilities, and the Fact Sheet template unique to the South Bay Measure R projects. The draft recommendations will be circulated for review and comments by SBCCOG, cities, Metro, and Caltrans. CONSULTANT will document the comments and responses in Comments Matrix for distribution.

*Deliverables: Recommendation Summary
Comments Matrix*

Task 4: Model Master Agreement with Caltrans (2 months)

CONSULTANT will prepare the draft and final Model Master Agreement with Caltrans and facilitate the review of such agreement by SBCCOG, cities, Metro, and Caltrans.

CONSULTANT will prepare briefing materials and accompany SBCCOG staff in its meeting with Caltrans Executive Management, California Transportation Commission, and legislative staff as appropriate for the negotiation and final execution of the Model Master Agreement.

*Deliverables: Draft Model Master Agreement
Final Model Master Agreement*

**EXHIBIT B
Cost Breakdown
for**



**Improve the Caltrans Local Agency Design Approval and
Permit Process for South Bay Cities Measure R South
Bay Highway Program (SBHP) Projects**

4/28/16

Hourly Rate => \$ 235

Task No.	Task Name	Duration (month)	Lan Saadatnejadi	Total Cost (\$)
1	Magnitude of Problem and Summary Areas of Potential Concern	1	40	\$ 9,400
2	Initial Engagement with Catlans	1	40	\$ 9,400
3	Definition of the Streamlined Process	2	68	\$ 15,980
4	Model Master Agreement with Caltrans	2	60	\$ 14,100
			Total	\$ 48,880
Expense Items:				
	<i>Mileage traveled or parking within Los Angeles County are not subject to additional charges</i>			\$ -
	Travel to Sacramento - airfare, parking, transportation will be at cost (assumed twice)			\$ 1,000
	Reproduction will be at cost			
			Total including Expenditure	\$ 49,880