

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of July 1st, 2020 by and between the South Bay Cities Council of Governments, a California joint powers authority ("SBCCOG") and FMF Pandion ("Consultant") hereafter referred to as "Parties."

RECITALS

A. SBCCOG desires to engage the services of FMF Pandion as an independent contractor on behalf of the Dominguez Channel Watershed Management Group (DC WMG) to provide specified professional services as set forth in Exhibit A, to assist in fulfilling monitoring requirements pursuant to the Coordinated Integrated Monitoring Program (CIMP).

B. The goal of this project is to provide technical support and analysis for monitoring requirements of the Municipal Separate Storm Sewer System (MS4) Permit and related water quality studies. This includes the following tasks: providing support for sample analysis, reporting of laboratory results, coordination, and delivery of samples, technical support, and contract administration.

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 the Scope of Work (SOW) and the costs for these services are as detailed in Exhibit A attached hereto and incorporated herein by reference.

1.2 Consultant assumes full responsibility to manage and produce the project subject to oversight of the DC Project Manager. Consultant will take its directions as to performance of the project directly from the DC Project Manager. SBCCOG's services shall be limited to processing Consultant's invoices with the DC WMG's approval for payment to Consultant.

1.3 DC WMG shall provide all relevant documentation in its possession to the Consultant upon request in order to minimize duplication of efforts. The DC WMG staff shall work with the Consultant as necessary to facilitate performance of the services. Consultant shall rely upon all DC WMG furnished data, documents, drawings or specifications as being complete and accurate unless otherwise noted.

2. Term of Agreement. This Agreement shall take effect for a period of one (1)

year from the date of execution of this Agreement or until June 30th, 2021, whichever comes later, unless earlier terminated pursuant to the provisions of paragraph 14 herein. The term of this Agreement may be extended by mutual agreement of all parties as may be necessary or desirable to carry out its purposes.

All work shall be completed expeditiously, excepting, however, any delays caused by Acts of God, regulatory agencies, changes requested by Client, labor strikes, lock-outs, fire, unavoidable casualties, or other causes beyond the control of the Consultant and without its fault or negligence. Should such cause for delay occur, the time for the performance or completion of said work shall be extended for a reasonable period to allow therefor.

3. Compensation. The total compensation for all work hereunder shall be on a Not-To-Exceed basis for each task and budget as itemized in Exhibit A. Compensation shall not exceed time, budget, and scope of each task.

4. Terms of Payment. Invoices shall be submitted the 15th of every month on a percentage of completion basis of the deliverables as detailed in Exhibit A. The invoice should also include: an invoice number, the dates covered by the invoice, and a summary of the work performed towards the specific deliverable. Invoices shall be submitted to the DC WMG Project Manager for review, who will complete a review within one week of submittal. Upon review and approval of the invoice and expected deliverables as set forth in Exhibit B, the DC WMG Project Manager will send the approved invoice to the SBCCOG with authorization for payment. SBCCOG shall pay the invoices within forty-five (45) days of receipt only following the approval of the DC WMG Project Manager.

5. Parties' Representatives. Jacki Bacharach shall serve as the SBCCOG's representative for the contract administration of the project. Taraneh Nik-Khah shall serve as the DC WMG representative for task management and approval of the project. All activities performed by the Consultant shall be coordinated with Taraneh Nik-Khah. Tommy Wells 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

DC WMG:

Dominguez Channel Watershed Management Group
1149 S. Broadway Ave., 10th Floor
Los Angeles, CA 90015
Attention: Taraneh Nik-Khah, DC WMG Project Manager

FMF PANDION

FMF Pandion
2235 Encinitas Blvd, Suite 107
Encinitas, CA 92024
Attention: Tommy Wells, Principal Scientist/Owner

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, the DC WMG or any participating agency or otherwise act on behalf of SBCCOG, the DC WMG or any participating agency as an agent except as specifically provided in the Scope of Services. Neither SBCCOG, DC WMG 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 or the DC WMG.

B. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold SBCCOG and the DC WMG 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. Consultant provides no warranty or guarantee whatsoever, for any item or result which may be delivered under this Contract.

9. Indemnification. Each Party agrees to indemnify the other party, 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 resulting solely from its negligence or misconduct in performance of this Agreement to the limits of available insurance.

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 the DC WMG without restriction or limitation upon their use or dissemination by either party. The Consultant will retain non-exclusive perpetual rights to the use of material developed under this contract.

Ownership of intellectual property in any drawings, documents, information, samples, models, patterns, or any other tangible or intangible thing existing prior to the date of execution of the Agreement and any developments or improvements to that intellectual property and any intellectual property created or developed otherwise than in connection with the Agreement at any time remains with Consultant.

13. Conflict of Interest. It is understood and acknowledged that Consultant will serve as an agent of the SBCCOG and the DC WMG for the limited purpose of implementation of this project. Consultant warrants that it has no and will not acquire any conflicts of interest that would interfere with its performance of this Agreement.

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. Subconsultants. Consultant may subcontract all or any part of tasks listed in Exhibit A to agreed upon sub-consultants that have been approved by the DC WMG Project Manager.

18. 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 the DC WMG, 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.

Approved reassignments under this Agreement will be under the strict management and oversight of the Consultant, and held to the same performance criteria and payment schedule as per the terms of this Agreement. Consultant shall charge no more than three (3) percent markup on approved reassignments to other entities in support of this Agreement.

19. 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

20. 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.

21. 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. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. If mediation is not successful, either party may pursue all judicial remedies available to that party.

22. 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.

23. 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
Taraneh Nik-Khah – taraneh.nik-khah@lacity.org
Tommy Wells – tommy.wells@fmpandion.com

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

25. 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.

26. 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 DC WMG by 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 in conjunction with the signature of the DC WMG Project Manager.

27. 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: _____
Olivia Valentine, Chair (Signature)

Title: _____

Date: _____

Attest: _____
SBCCOG Secretary

"Consultant"
FMF Pandion

By: _____
Tommy Wells (Signature)

Title: _____

Date: _____

EXHIBIT A

Budget and Contract Ceiling:

Table 1 reflects the overall budget for this contract, including the relative amount allocated to each of the following tasks: (1) Contract Administration, (2) Coordination, Delivery, & Technical Support, (3) Laboratory Analysis & Reporting, and (4) Contingency.

Table 1. Overall Budget, Tasks, and Contingency

Task	Description	%	Amount
1	Contract Administration	3%	\$10,887
2	Coordination, Delivery & Technical Support	12%	\$43,549
3	Laboratory Analysis & Reporting	85%	\$308,475
	Total		\$362,912
	Contingency	10%	\$36,291
	Total with Contingency		\$399,203

If cost savings are identified for a particular task, DC WMG Project Manager may reallocate those funds to other tasks related to monitoring support services. Likewise, if needed, the contingency funds can be allocated to other tasks, as identified by the Project Manager.