

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is effective July 1, 2020 by and between the South Bay Cities Council of Governments ("SBCCOG"), a joint powers authority organized and existing pursuant to the laws of the State of California, and McGowan Consulting, LLC, a limited liability company, ("McGowan"). SBCCOG and McGowan shall collectively be referred to herein as the "Parties."

RECITALS

- A. McGowan wishes to maintain and periodically revise web page(s) with content on environmentally friendly landscaping, gardening and pest control and rainwater harvesting being hosted on the SBCCOG's websites - Southbaycities.org and SBESC.com - on behalf of certain member cities of SBCCOG and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group.
- B. SBCCOG has determined that the inclusion of information on environmentally friendly landscaping, gardening and pest control and rainwater harvesting on its websites is consistent with its mission and would benefit the public, particularly the residents of its member cities.

NOW, THEREFORE, in consideration of the foregoing and the promises herein contained, the Parties agree as follows:

1. McGowan will at its sole cost and expense:
 - Provide additional or revised text, images and related material for the website content,
 - Review and provide comments on the revised website content and layout,
 - Obtain feedback from Beach Cities Watershed Management Group and Peninsula Watershed Management Group representatives and provide consolidated comments on revisions to the revised website layout and content.
2. SBCCOG will perform the following tasks (work) for the associated costs:
 - a. Task 1: Webpage Updates & Addition of Content for "Environmentally Friendly Landscaping, Gardening, and Pest Control and Rainwater Harvesting" pages (\$1,500)
 - i. Rework "Sustainable Landscapes and Gardens" page based on content developed by McGowan Consulting which will include revised text and layout as well as new links and photos
 - ii. Add new "Rainwater Harvesting" webpage and associated resources/links based on content developed/provided by McGowan Consulting which will include:
 1. Brief narrative introducing downspout disconnection and rainwater harvesting (developed by McGowan)
 2. Embedded YouTube Video (link provided by McGowan)
 3. Embedded link or thumbnail to downloadable version of the Rainwater Harvesting Guide (Digital version of Rainwater Harvesting Guide for website posting provided by McGowan)
 - iii. Reconfigure landing webpage "Environmentally Friendly Landscaping, Gardening, and Pest Control" to reflect new and updated content layout
 - iv. Migrate content to new redesigned SBCCOG website and ensure that webpage(s) function properly on new software platform
 - b. Task 2: Reporting & Webpage Maintenance, Hosting, and System **Updates** (\$4,000)
 - i. Provide biannual website analytics reports and recommendations to increase webpage(s) visibility; discuss results with McGowan team
 - ii. Host and maintain webpages for a total of 12 months including:

1. Coordinating software/security updates;
 2. Maintaining landing webpage link to SBCCOG and SBESC landing pages;
 3. Ensure ongoing content maintenance, e.g., replacing photos or making minor text revisions, as requested by McGowan Consulting;
 4. Fixing minor issues such as broken links on a quarterly basis or as discovered in the existing pages; and
 5. Coordinating with McGowan regarding webpage content and layout.
3. McGowan agrees to pay the SBCCOG a total amount not to exceed \$5,500 for performing the work as described in Section 2 including website hosting and maintenance for a 12-month period commencing July 1, 2020 and concluding on June 30, 2021. The Parties may amend the terms of the contract to include additional services or to extend the term beyond this 12-month period.
 4. SBCCOG will submit invoices in two annual installments, each in the amount of \$2,750 for a total not to exceed \$5,500 in accordance with the tasks and costs described in Section 2. The first invoice will be submitted on or before November 30, 2020, and the second invoice will be submitted on or before May 30, 2021. McGowan agrees to pay SBCCOG the amount due within thirty (30) days of presentation of an invoice.
 5. SBCCOG and McGowan agree that neither is an employee of the other and that each shall provide worker's compensation insurance for its own employees to the extent required by California law.
 6. The obligations of McGowan under this MOU shall not be assigned or subcontracted, nor shall the rights be delegated without prior written approval of the SBCCOG Executive Director.
 7. The obligations of SBCCOG under this MOU shall not be assigned or subcontracted, nor shall the rights be delegated without prior written approval of McGowan Consulting Principal/Owner.
 8. Indemnification, Hold Harmless, and Duty to Defend.
 - a. To the fullest extent permitted by law, SBCCOG shall, at its sole cost and expense, defend, hold harmless and indemnify McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group and their elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of SBCCOG, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that SBCCOG shall bear the legal liability thereof) in the performance of this MOU, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the MOU of the Parties. SBCCOG shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. SBCCOG shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

9. SBCCOG shall pay all required taxes on amounts paid to SBCCOG under this MOU and indemnify and hold McGowan harmless from any and all taxes, assessments, penalties, and interest asserted against McGowan by reason of the independent contractor relationship created by this MOU. SBCCOG shall fully comply with the workers' compensation law regarding SBCCOG's employees. SBCCOG shall indemnify and hold McGowan harmless from any failure of SBCCOG to comply with applicable workers' compensation laws. Insurance.
- a. Minimum Scope and Limits of Insurance. SBCCOG shall procure and at all times during the term of this MOU carry, maintain, and keep in full force and effect, insurance as follows:
 - i. Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If SBCCOG is a limited liability company, the commercial general liability coverage shall be amended so that SBCCOG and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.
 - ii. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this MOU with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If SBCCOG does not use any owned, non-owned or hired vehicles in the performance of Services under this MOU, SBCCOG shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.
 - iii. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease.
 - b. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section.
 - c. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group as additional insureds. This provision shall also apply to any excess/umbrella liability policies.
 - d. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of SBCCOG's insurance and shall not contribute with it.
 - e. SBCCOG's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit SBCCOG and SBCCOG's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. SBCCOG hereby waives all rights of subrogation against City.
 - f. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by McGowan.

- g. Cancellations or Modifications to Coverage. SBCCOG shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this MOU. The commercial general and automobile liability policies required under this MOU shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to McGowan. If any insurance policy required under this Section is canceled or reduced in coverage or limits, SBCCOG shall, within two Business Days of notice from the insurer, phone, email or notify McGowan via certified mail, return receipt requested, of the cancellation of or changes to the policy.
 - h. Evidence of Insurance. Prior to the performance of Services under this MOU, SBCCOG shall furnish McGowan with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group's approval. SBCCOG may provide complete, certified copies of all required insurance policies to City. SBCCOG shall maintain current endorsements on file with McGowan. SBCCOG shall provide proof to McGowan that insurance policies expiring during the term of this MOU have been renewed or replaced with other policies providing at least the same coverage.
 - i. Indemnity Requirements not Limiting. Procurement of insurance by SBCCOG shall not be construed as a limitation of SBCCOG's liability or as full performance of SBCCOG's duty to indemnify McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group under this MOU.
 - j. Broader Coverage/Higher Limits. If SBCCOG maintains broader coverage and/or higher limits than the minimums required above, McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group require and shall be entitled to the broader coverage and/or the higher limits maintained by SBCCOG. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to McGowan and the members of the Beach Cities Watershed Management Group and the Peninsula Watershed Management Group.
10. Either McGowan or SBCCOG may terminate this MOU at any time with or without cause by providing 30 days' notice in writing. SBCCOG will receive just and equitable compensation for any work satisfactorily completed up to the effective date of the notice of termination.
11. Should the MOU be terminated, McGowan may procure on its own terms services similar to those terminated.
12. McGowan and SBCCOG agree that the environmentally friendly landscaping, gardening and pest control and rainwater harvesting content developed for the webpages will be in the public domain and may be used freely by both parties without attribution of the other, including but not limited to print material or in other websites. Neither party shall assume any copyright or intellectual property license or right over the content developed for the webpages.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed the day and year first above written.

SOUTH BAY CITIES COUNCIL OF GOVERNMENTS

Olivia Valentine
SBCCOG Chairman

ATTEST:

Jacki Bacharach, Board Secretary

APPROVED AS TO FORM:

Michael Jenkins, Legal Counsel

MCGOWAN CONSULTING, LLC

Kathleen McGowan, Principal/Owner