

DRAFT

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT (“Agreement”) is made and entered into as of 08/20/21 (the “Effective Date”), by and between the CITY OF EL SEGUNDO, a municipal corporation (“CITY”), and the South Bay Cities Council of Governments, a Joint Powers Authority (“CONSULTANT”).

RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to implement the California Green Business Network Grant Program to assist CITY OF EL SEGUNDO businesses with environmental program compliance.
- B. CITY was awarded \$30,000 in grant funds from the California Green Business Network (“CAGBN”) in August of 2021 to certify a minimum of 10 businesses in the Green Business certification program and improve the business’ environmental compliance.
- C. CITY would like to contract the services of CONSULTANT to assist in the implementation of this grant program. CONSULTANT represents that it is qualified to perform these services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through June 30, 2022.

3. COMPENSATION

A. CONSULTANT’s Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of \$20,000 (“Agreement Sum”), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that CONSULTANT is not in default under the terms of this Agreement, upon CITY award of contract by CGBN and presentation of an invoice, CONSULTANT will be

paid the fees described in Paragraph 3.A. above, according to the Compensation Schedule Exhibit B. Payment will be due within 30 days after the date of the invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY and CONSULTANT may, at any time, terminate the Agreement for convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:
 - a. cease operations as directed by CITY in the notice;
 - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed, together with costs incurred by reason of the termination, along with reasonable overhead and profit on work not executed.

B. Termination.

1. 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, SBCCOG 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.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of that cause for failure to perform.

6. RETENTION OF FUNDS

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's acts or omissions in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. CITY REPRESENTATIVE

The Public Works Director or their designee is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. CONSULTANT REPRESENTATIVE(S)

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Jacki Bacharach, Executive Director of the South Bay Cities Council of Governments

9. INDEPENDENT CONSULTANT

CONSULTANT is, and at all times will remain as to CITY, a wholly independent CONSULTANT. Neither CITY nor any of its agents will have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as otherwise set forth in this Agreement. CONSULTANT's agents and employees are not and shall not be considered employees of CITY for any purpose. CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY. CITY has no duty, obligation, or responsibility to CONSULTANT's agents or employees under the Affordable Care Act. CONSULTANT is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act and any other liabilities, claims and obligations regarding compliance with the Affordable Care Act with respect to CONSULTANT's agents and employees. CITY is not responsible and shall not be held liable for CONSULTANT's failure to comply with CONSULTANT's duties, obligations, and responsibilities under the Affordable Care Act. CONSULTANT agrees to defend, indemnify and hold CITY harmless for any and all taxes and penalties that may be assessed against CITY as a

result of CONSULTANT's obligations under the Affordable Care Act relating to CONSULTANT's agents and employees.

10. OTHER LICENSES AND PERMITS

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

11. FAMILIARITY WITH WORK

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services required under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

12. CARE OF WORK

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

13. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of CONSULTANT's time pertaining to the project, and records of accounts between CITY and CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation, specifications, drawings, progress reports and the like, relating to the work and services identified in Exhibit A. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

14. INDEMNIFICATION

CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, members of boards and commissions, their officers, agents, employees and volunteers (collectively "City Affiliates") from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful

misconduct of CONSULTANT, its officers, employees, agents, sub-consultants or vendors. CONSULTANT's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of City Affiliates, except for liability resulting solely from the negligence or willful misconduct of City Affiliates. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of City Affiliates, CONSULTANT will be obligated to pay for the defense of City Affiliates until such time as a final judgment has been entered adjudicating City Affiliates as solely negligent. CONSULTANT will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

15. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

16. INSURANCE

A. CONSULTANT and its sub-consultants must maintain at their sole expense the following insurance, which will be full coverage, not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Combined single limits of \$1,000,000 per occurrence.
2. Commercial General Liability including coverage for premises, products and completed operations, independent CONSULTANTS/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence, \$2,000,000 aggregate.
3. Workers' Compensation coverage as required by the Labor Code of the State of California and, if workers' compensation is required, employer's liability insurance with minimum limits of (\$1,000,000) per occurrence or occupational illness. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its employees, agents and subCONSULTANTS.

B. The insurance provided by CONSULTANT will be primary and non-contributory.

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.

- D. CONSULTANT must provide certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) indicating appropriate coverage, to the City Clerk of the City of El Segundo before the commencement of work.
- E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without notice to the CITY.
- F. If the CONSULTANT maintains broader coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.
- G. The procuring of insurance shall not be construed as a limitation on liability nor as full performance of the indemnification provisions of the CONSULTANT.
- H. CONSULTANT hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its employees, agents and subcontractors.
- I. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

17. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "A" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of

increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

18. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

19. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
 - 1. Personal delivery. When personally delivered to the recipient, notice is effective on delivery.
 - 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
 - 3. Certified mail. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.
 - 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
 - 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
 - 6. Addresses for purpose of giving notice are as follows:

CONSULTANT: The South Bay Cities Council of Governments
2355 Crenshaw Blvd, Suite 125
Torrance, CA 90501

Fax: (310) 437-8977

CITY: City Clerk
City of El Segundo
City Hall
350 Main Street
El Segundo, CA 90245
Fax: 310-414-0911

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

20. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

21. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

22. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or by any other rule of construction that might otherwise apply.

23. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

24. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

25. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

26. COMPLIANCE WITH STATUTES AND REGULATIONS

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

27. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the first party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

28. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

29. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

30. CONSULTANT'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of CONSULTANT warrant that (i) CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of CONSULTANT; (iii) by so executing this Agreement, CONSULTANT is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which CONSULTANT is bound.

31. PUBLIC RECORDS ACT

Any documents submitted by the CONSULTANT; all information obtained in connection with the CITY's right to audit and inspect the CONSULTANT's documents, books, and accounting records pursuant to paragraph 14 CONSULTANT's Accounting Records; Other Project Records; become the exclusive property of the City. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The CITY shall not in any way be liable or

responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

In the event the CITY is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the CONSULTANT agrees to defend and indemnify the CITY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

CITY OF EL SEGUNDO,
a municipal corporation

The South Bay Cities Council of Governments,
A Joint Powers Authority

Scott Mitnick, City Manager

By: _____
John Cruikshank, 1st Vice Chair
South Bay Cities Council of Governments

ATTEST:

Tracy Weaver
Elected City Clerk

APPROVED AS TO FORM:
MARK D. HENSLEY
City Attorney

By: _____
City Attorney for El Segundo

Attachments: Exhibit A Scope of Services
 Exhibit B Compensation Schedule

Rev. 08/21

EXHIBIT A

SCOPE OF SERVICES 2021-2022 Program Year

The South Bay Cities Council of Governments ("CONSULTANT"), under the approval and supervision of the City of El Segundo ("CITY"), will help implement the requirements of the California Green Business Network (CAGBN) Grant, including but not limited to:

1. General Oversight

- a. Coordinate with City Staff, City of El Segundo Environmental Committee, City of El Segundo Economic Development Committee, and El Segundo Chamber of Commerce for a successful implementation of this program.
- b. Participate in the CAGBN on the City's behalf including participating in the statewide bi-annual meetings and other meetings and workshops through the CAGBN.
- c. Consult with CAGBN staff as needed to help ensure that grant requirements are implemented appropriately and to provide any needed support to City.
- d. Provide training and assistance to City staff and others on the CAGBN program as requested on database, outreach, and audit procedures.
- e. Create and maintain a spread sheet to track business progress and marketing efforts.
- f. Report the outcomes to the City and assist in preparing progress and final reports for CAGBN. Monthly reporting to City will include: number of businesses contacted, status of business certification, and gains towards goals.
- g. Conduct other related program activities as agreed to by the CITY and CONSULTANT.

2. Business Certification

- a. Recruit and certify a minimum of 10 businesses. Recruitment will include business walks/canvassing. Certification includes performing final checklist.
- b. Conduct oversight, updates, and track business activities and certification through the use of CAGBN database GreenBiz Tracker tool.
- c. Utilize the CAGBN checklists (part of the GreenBiz tool) for various business types such as retail, office, restaurants, hotels, etc. This list will be used for initial business walk throughs, audits, and follow up. Notes will be added within the tracker if applicable.
- d. Coordinate with utility partners to provide incentives, rebates, business upgrades, sustainability opportunities, and assistance with audits. Utility partners include Southern California Edison, SoCalGas, West Basin Municipal Water District, Sanitation Districts of Los Angeles County, among others.

3. Promotion

- a. Work with City to promote Green Business Program visibility through increased publicity to encourage the public to patronize certified and participating green businesses.
- b. Recruit City of El Segundo Environmental Committee and Economic Development Committee, agency staff, and community organizations such as Chamber of Commerce as needed to promote program.
- c. Advertise/publicize the program through SBCCOG channels and networks to promote recruitment of new green businesses.
- d. Use approved/provided promotional/media collateral: online, social media, and print media (postcard and brochure) to promote the Green Business program.
- e. Distribute Green Business window clings with the CAGBN and El Segundo logos to promote the statewide green business brand to successful participants.
- f. Assist with City Council recognition for newly certified businesses throughout the program period and other awards and recognition programs available.

Note: All reports, documentation, materials, etc., are the property of the City and must have City Staff approval before submitting to the State or other agencies.

EXHIBIT B

COMPENSATION SCHEDULE

CONSULTANT will be paid monthly, upon presentation of an invoice, in accordance with Paragraph 3 of the Agreement. Invoices submitted by the SBCCOG will include a progress report noting number of businesses contacted, status of business certification, and gains towards goals.