

EXECUTIVE DIRECTOR SERVICES AGREEMENT

THIS EXECUTIVE DIRECTOR SERVICES AGREEMENT (“Agreement”) is made and entered into this 1st day of July, 2016, by and between the SOUTH BAY CITIES COUNCIL OF GOVERNMENTS (“SBCCOG”), a California Joint Powers Authority, and Jacki Bacharach & Associates (“JB&A”), a sole proprietorship (“CONTRACTOR”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. SBCCOG is desirous of obtaining independent contractor services necessary to professionally manage the activities and programs of the organization and the South Bay Environmental Services Center, a programmatic element of the SBCCOG;

B. SBCCOG has determined based on its historic relationship with CONTRACTOR that CONTRACTOR possesses the expertise, qualifications and knowledge to provide the required services, that these services have met the expectations of the Board of Directors, and that a competitive procurement at this time would not serve any public purpose; and

C. The parties desire to replace and supersede the existing agreement for consulting services due to expire on June 30, 2016 and herein to establish the terms and conditions of CONTRACTOR’S engagement to perform services as Executive Director of the SBCCOG.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties mutually agree as follows:

1. **Term of Agreement.** This Agreement shall terminate on June 30, 2019 unless earlier terminated as provided below.

1.1 **Termination.** SBCCOG shall have the right to terminate this Agreement without cause by giving CONTRACTOR thirty (30) days written notice. CONTRACTOR shall have the right to terminate this Agreement without cause by giving SBCCOG one hundred twenty (120) days written notice; provided, however, should CONTRACTOR be unable to perform due to a documented debilitating medical condition, the required written notice may be reduced by up to sixty (60) days as necessary, provided that CONTRACTOR’S subcontractors remain obligated to perform their subcontracted obligations through the balance of the one hundred twenty day notice period should SBCCOG agree in its sole discretion to accept an assignment of one or more of those subcontracts from CONTRACTOR. Upon receipt of a termination notice, CONTRACTOR shall: (1) promptly discontinue all services affected on the termination date (unless the notice directs otherwise); and (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to SBCCOG, whether completed or in progress. CONTRACTOR shall be entitled to reasonable compensation for the services it performs up to the date of termination.

2. **Services to be Provided.** The services to be provided hereunder shall be those set

forth in Exhibit "A", Scope of Work, which is attached hereto and incorporated herein by this reference. The Scope of Work will be evaluated annually by SBCCOG and changes in scope beyond that described in Exhibit "A" will be negotiated to the mutual satisfaction of the parties.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

3.1 **Amount.** Compensation under this Agreement shall not exceed \$405,000 for the general operations of the SBCCOG for the first year of the Term with an annual review by the Board of Directors during the budget deliberations.

3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by SBCCOG will be required.

3.3 **Expenses.** Standard office supplies are included in the compensation. Budgeted costs for copying, additional supplies and equipment, mailings, meals, parking, and conferences will be paid upon presentation of receipts. Extraordinary expenses must be pre-approved.

4. **Professional Standards.** CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** CONTRACTOR shall complete all services required hereunder as set forth in Exhibit A under the general direction of the SBCCOG Steering Committee.

6. **Employees and Subcontractors.** CONTRACTOR may, at its sole cost and expense, employ or subcontract with such other person or entity as may, in the opinion of CONTRACTOR, be needed to comply with the terms of this Agreement, if such persons or entities possess the necessary qualifications to perform such services. CONTRACTOR shall notify SBCCOG in writing of any such arrangements within ten (10) days of securing such services.

7. **Insurance Requirements.**

7.1 **Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until it has obtained SBCCOG approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place all of the insurance coverages required in this Section 7. CONTRACTOR insurance shall comply with all items specified by this Agreement. CONTRACTOR'S subcontractors and employees shall be covered by the insurance coverages of this Section 7; otherwise, insurance coverage provided by subcontractors and employees shall be determined on a case-by-case basis in consultation with SBCCOG General Counsel.

Insurers authorized to do business in the State of California shall issue all insurance policies used to satisfy the requirements imposed hereunder. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by SBCCOG.

7.2 Coverages, Limits and Policy Requirements.

CONTRACTOR shall maintain the types of coverages typical of a small business to include but not be limited to property insurance, liability insurance, and automobile insurance to apply to the SBCCOG and SBESC business location and employees. Policy limits of such insurance coverage are subject to SBCCOG approval.

The insurer shall agree to provide the SBCCOG with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage.

In the event that during the term of this agreement, CONTRACTOR hires employees, Worker's Compensation Insurance must be obtained. The policy shall meet all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be approved by SBCCOG. The policy shall contain or be endorsed to include a waiver of subrogation in favor of SBCCOG.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against SBCCOG for payment of premiums or other amounts with respect thereto. SBCCOG shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with SBCCOG incorporating such changes within sixty (60) days of receipt of such notice CONTRACTOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by SBCCOG. Any deductible exceeding an amount acceptable to SBCCOG shall be subject to the following changes: either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to SBCCOG and its officials, employees and agents (with additional premium, if any, to be paid by CONTRACTOR; or CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration and defense expenses.

7.4 Verification of Compliance. CONTRACTOR shall furnish SBCCOG with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by SBCCOG before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to SBCCOG a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to SBCCOG.

8. **Non-Liability of Officials and Employees of the SBCCOG and Member Cities.** No official or employee of SBCCOG or members cities shall be personally liable for any default or liability under this Agreement.

9. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, sexual orientation, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** It is agreed that CONTRACTOR shall act and be an independent contractor and not an agent or employee of SBCCOG, and shall obtain no rights to any benefits. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold SBCCOG harmless from any and all taxes, assessments, penalties, and interest asserted against SBCCOG by reason of the independent contractor relationship created by this Agreement.

11. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Ownership of Work Product.** All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for SBCCOG by CONTRACTOR as SBCCOG's employee(s) for hire and shall be the sole property of SBCCOG. CONTRACTOR shall provide SBCCOG with electronic copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

13. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. CONTRACTOR is a "consultant" for the purposes of the California Political Reform Act because CONTRACTOR's duties would require CONSULTANT's principal to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were CONTRACTOR employed by the SBCCOG. CONTRACTOR hereby acknowledges its assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the SBCCOG's Conflict of Interest Code and agrees to comply with those obligations at its expense.

14. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

14.1. Business address of CONTRACTOR is as follows:

5033 Rockvalley Road
Rancho Palos Verdes, California 90275

14.2. Address of SBCCOG is as follows:

Chair
South Bay Cities Council of Governments
20285 S. Western Avenue, Suite 100
Torrance, CA 90501

15. **Licenses, Permits, and Fees.** CONTRACTOR shall obtain all permits, and licenses as may be required by this Agreement.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement.

17. **Limitations Upon Assignment.** Neither this Agreement or any portion thereof shall be assigned by CONTRACTOR without prior written consent of SBCCOG.

18. **Key Person.** During the term of this Agreement, CONTRACTOR shall provide the services of Jacki Bacharach to perform as Executive Director of SBCCOG. Changes to this key person shall require the written approval of SBCCOG.

19. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

20. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless SBCCOG and its directors, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees and expert fees arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR, except for liability arising from the negligent or wrongful conduct of SBCCOG. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

21. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises other than those included in this Agreement shall be valid. This Agreement may be modified only by a written agreement executed by SBCCOG and CONTRACTOR.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Superior Court.

23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties. Any issue with respect to the interpretation or construction of this Agreement is to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable provided that the essential purposes of the Agreement are not thereby frustrated.

25. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

26. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover reasonable attorneys' fees and court costs from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

JACKI BACHARACH & ASSOCIATES

By: _____

SOUTH BAY CITIES COUNCIL OF GOVERNMENTS

By: _____
James Gazeley, Chair

ATTEST:

Administrative Officer

APPROVED AS TO FORM:

Michael Jenkins, Legal Counsel

Exhibit “A” - Scope of Work

ADVOCACY

1. Provide focus and facilitate communication on issues of mutual benefit to member cities of the SBCCOG;

- A. Legislative Interaction** - In coordination with the L.A. Division of the League of California Cities, monitor legislation that would impact the South Bay and work closely with Legislative staff representatives at the State and County levels to assure communication of the COG’s position on issues affecting the South Bay. Coordinate periodic meetings with Legislators or their staff member representatives to maintain positive relations and open communications. Provide monthly updates on the status of identified legislation.
- B. Tracking Regional issues** – Review and comment on RTP, AQMP, Metro LRTP, SB 375, RHNA, etc. On behalf of the SBCCOG, coordinate sub regional input on regional documents.

2. Organize and provide lobbying assistance to SBCCOG;

- A. Legislative Advocacy** – For specific issues identified by the Steering Committee as important to elected officials and City Managers, work closely with the League of California Cities, the L.A. Division of the League and other organizations deemed appropriate by the Steering Committee to take positions and advocate on legislation that affects South Bay cities.
- B. SBCCOG Sponsored Legislation** - Coordinate a coalition effort to secure passage of any legislation the Board may wish to sponsor.
- C. Calls to Action** - Be prepared to communicate to the Steering Committee and City Managers as new issues arise.

3. Act as principal Liaison to other regional, state, and federal agencies as necessary to effectively provide input on SBCCOG’s behalf;

- A. Agency Liaison** – Promote partnerships with other agencies including Metro, SCAG, Caltrans, AQMD, South Bay Association of Chambers of Commerce, other COGs, League of California Cities, individual Chambers of Commerce, etc., on subject matters, projects and issues agreed upon by the Steering Committee. In addition, work with elected officials and City Managers to coordinate the sub region’s input to regional agencies helping to reduce the need for city staff attendance at agency meetings and resulting in employee timesaving.
- B. Coordination** – Provide information from other agencies to SBCCOG members in a timely, accurate and understandable manner.
- C. Attendance** - Participate and/or serve on committees as needed to communicate the position of the SBCCOG.
- D. Agency candidate recommendation** - following existing policy, conduct a process for evaluation of candidates and recommendation to those agencies seeking representation by the SBCCOG.

PROGRAMS AND PROJECTS

4. Develop and provide ideas for funded programs;

- A. Work Program** - Develop and bring forward ideas to the City Managers, Steering Committee and Board to propose for funding. Once projects are funded, oversee the consultant selection process if required, develop agreements and recommendations for approval by the Board and then manage consultant/SBCCOG employee work.
- B. Coordination** - Provide for attendance at SCAG meetings when necessary to give input on policy issues and for sub-regional coordination. Participate in meetings of regional agencies as needed to ensure that their requirements are not onerous to South Bay cities.

5. *Ensure distribution of information to member cities and facilitate program development;*

- A. *Program development*** - On an annual basis, work with the Board, Steering Committee and City Manager's group to identify and recommend to the Board, annual goals and collective areas of need for member cities. Recommend as appropriate, projects for the sub-region. An assessment of the projects status shall be presented to the Board and City Manager's group for comment and modification if necessary.
- B. *Project Implementation*** – Coordinate through each respective City Manager or their designee, all of the programs and projects including: expenditure of \$906 million of Measure R Highway funds, leveraging transportation funding sources, climate action planning including updates of baseline greenhouse gas emission inventories, and responses to state requirements such as SB 375. Report project progress monthly or as determined to the Steering Committee.
- C. *Communication*** – Use a range of communication media including e-mails, web sites (both for SBCCOG & SBESC), quarterly newsletter, General Assembly, and regular committee and staff working group meetings. Maintain and update the information on the SBCCOG & SBESC web sites. Work to improve productivity of social networking media and interactive displays for the identified communication channels. Evaluate effectiveness and recommend any improvements annually.
- D. *General Assembly*** – Plan and produce an annual event with the objective of identifying relevant issues affecting the South Bay and of interest to the member cities and creating a program with knowledgeable speakers addressing these issues.
- E. *Meetings*** – Prepare and distribute/post: agendas, staff reports, public notices, announcements and maintain minutes for meetings as requested by the Steering Committee and required by the Brown Act and Records Retention Schedule.

GRANT WORK

6. *Present potential new beneficial activity and seek grant funding for additional projects that support SBCCOG goals/member cities' needs;*

- A. *Grants*** – Communicate and coordinate with elected officials and City Managers of cities that may be eligible to reach out beyond their borders to tap into funding opportunities. Work to research grant opportunities and pursue them when they can add value to the services and programs of the South Bay cities without adding unnecessary time and cost. Inform the Board periodically on the status and benefits of the selected pursuits. Prepare timely letters of support for cities with projects of regional benefit.
- B. *New Project Scopes of Work*** – With the concurrence of the Steering Committee, prepare each project description for grant funding that addresses issues of importance to the South Bay sub-region. Input will be solicited from members.
- C. *Studies*** - Conduct studies as funding becomes available or seek funding for studies to support further understanding of issues of concern to the South Bay.
- D. *Energy Efficiency*** – Consistent with the annual goals development, seek funding to expand the South Bay Environmental Services Center and programs that will provide efficiencies to South Bay cities and other public agencies.

7. *Supervise SBCCOG employees who will be working on grants from Southern California Edison, the Gas Company, West Basin Municipal Water District, Torrance Water, L.A. County Sanitation District, Metro, California Energy Commission and prepare and administer all future grants obtained for the SBCCOG;*

- A. *Administration*** – Oversee and manage the staff hired by SBCCOG to operate the South Bay Environmental Service Center (SBESC) office. Assure full time, on-site supervision of employees and management of the SBESC operations.
- B. *Outreach and Education*** – Facilitate and promote highly informative training programs for residents and public agencies on a quarterly basis. The programs can include specialized courses for businesses.
- C. *Water Partnership*** – Work with the Water District in the South Bay to expand water saving services and programs. Assure that SBESC staff will continue to work with utility partners on new programs and rebate opportunities.
- D. *Coordination*** – Coordinate action on issues of concern to the sub-region with the utilities such as reliability. Facilitate tours.

- E. *EE+* - Propose and recommend “out of the box” programs to the Board that will benefit our cities, school districts and other public agencies that will enable them to jointly procure energy efficient equipment at reduced prices and reduced staff time.
- F. *Additional Programs & Projects* - With the concurrence of the Steering Committee, research and apply, when appropriate, for funding to enhance the programs of the SBESC.

ADMINISTRATION

8. *Encourage/enhance outreach efforts to member cities as well as South Bay Community regarding activities, efforts of SBCCOG and issues impacting sub region;*

- A. *New Member Orientation* – As a regional organization, it is vital that each newly elected official and City Manager be informed of the benefits, capabilities and resources of the SBCCOG. A “New Member Welcome Packet” of materials describing the benefits, capabilities and resources will be prepared and distributed through the city with an SBCCOG orientation session to include the new member, Executive Director and City Manager as desired. Schedule as needed a periodic orientation for all Council Members on regional governance.
- B. *Media* – Ensure prompt response to media information requests that are in the SBCCOG purview including referring them to the appropriate city. Ensure that the Chair and Steering Committee are informed when media contacts are received.

Communication Channels:

SBCCOG Web Site – Maintain the web site to ensure that the information is current and accessible in a user-friendly manner and resources added and updated.

South Bay Watch - Ensure that the SBCCOG *Bay Watch* is a professional looking easy to read newsletter that shares city stories and keeps the cities and community up to date on SBCCOG and SBESC programs.

SBESC Web Site – Provide the same oversight and attention to the e-newsletter, web site and publications of the South Bay Environmental Services Center.

Social Networking – Ensure that the SBCCOG and SBESC are using latest communication strategies effectively and productively

9. *Oversee/coordinate activities of all SBCCOG committees/working groups;*

- A. *Committees & Working Groups* – Provide administrative staff support and advice to Committee and Working Group chairs to create agendas that are meaningful to participants, publicize meetings and activities, coordinate speakers, obtain meeting locations, prepare handouts, and draft minutes. Offer regional agency representatives the opportunity at these forums to inform city representatives of their programs where pertinent.
- B. *City Managers’ Association* –Prepare a written monthly report for City Managers of SBCCOG programs and projects for distribution prior to the monthly meeting. Attend meetings, and take minutes. Be prepared to discuss major items of importance and report on outstanding actions.

10. *Develop an up-to-date comprehensive organized tracking system for all work projects and income and expenditures of SBCCOG;*

- A. *Finance* –Following existing policies for the handling of SBCCOG revenue and expenses, working with the bookkeeper, prepare a report for monthly review and approval by the Steering Committee. Subsequent to each annual audit, review existing policies as well as any potential improvements or recommendations resulting from the audit for approval by the Steering Committee. Ensure that all invoices are reviewed by the Steering Committee before payment. If an invoice must be paid in advance of the Steering Committee meeting and under the Executive Director’s authority, ensure that it is reported to the Steering Committee. Oversee the preparation of the quarterly financial reports and the annual budget. Ensure that bills are promptly paid and an audit is done annually.
- B. *Annual Budget* - Prepare a budget of revenue and expenditures that aligns with the fiscal year and report quarterly on status. Involve all stakeholders in the development of the budget. Present the budget to the

Steering Committee for initial review and to the Board for approval. Obtain approval for any adjustments from the Board.

- C. Budget Updates** - Provide budget adjustments or modifications to the Steering Committee for review. Present the revised budget to the Board for approval.
- D. Record Keeping** - Maintain all records in accordance with the SBCCOG records retention ordinance.
- E. FPPC Reporting** – Collect and file annual Form 700 FPPC forms for all Board members and alternates as well as keeping current required filings throughout the year.
- F. Correspondence** - Prepare letters that are timely and express the SBCCOG position on issues, legislation, regional plans, thank you notes for speakers and sponsors and for newly elected or re-elected officials in the South Bay as well as certificates of appreciation and other documents as required.
- G. Project Tracking** – Provide timely, professional and thorough tracking of SBCCOG projects and funding. Quarterly updates shall be provided to the Steering Committee to include status, schedule and cost variance to planned expenditure. Ensure that all grant fund reporting is completed in a timely and accurate manner.

11. Supervise/manage all administrative/clerical support functions in support of COG projects/goals and objectives;

- A. Meetings** – Prepare agendas for all Board meetings and distribute them one week in advance of the meetings with proper legal notice, as required. A master calendar will be maintained and posted on the SBCCOG web site.
- B. Mailing lists and membership/contact lists** – Maintain current Board rosters. After each election, update City Council composition and legislative representatives as well as the Council officers.
- C. Training** – Bring informative training programs to both elected officials and staff that enhance their ability to perform in their position.

12. Develop a Succession Plan;

- A. Growth and evolving responsibilities** - The SBCCOG continues to grow with unique roles in regional transportation, environmental outreach and education, and engaging legislative representatives and their staff members on issues that affect the South Bay. The SBCCOG also serves as a representative for numerous organizations affecting quality of life in the South Bay to include SCAG, the Santa Monica Bay Restoration Commission, League of California Cities and the MTA Service Council.
- B. Strategic Plan** - In recognition of this growth and the importance of serving the South Bay in the future, present to the Board semi-annual updates of the strategic plan which was created as guidance document for five years and adopted by the Board in January, 2014. Work with the Steering Committee to determine the timing for the next strategic plan.
- D. Succession Planning** – Maintain complete and current descriptions of the work scope for each employee and contractor. Identify and develop individuals who can work alongside the Executive Director and be knowledgeable of the policies, procedures and practices necessary to accomplish the goals and objectives of the organization.