

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of September 24, 2015 by and between the South Bay Cities Council of Governments, a California joint powers authority ("SBCCOG") and the Regents of the University of California ("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 with Electric Vehicle Charging Station (EVCS) Siting and Installation Process in the South Bay Cities.

B. The goals of this program are to (1) provide the SBCCOG prioritization strategies to conduct outreach to MUD owners and homeowners' associations (HOAs) with the greatest potential for tenant demand in EVCS installation with the 15 cities within Southern California Edison (SCE) territory; (2) make accessible a MUD Installation Tool Kit; and, (3) share results with SCE to improve the EVCS installation process.

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 Consultant shall comply with all the provisions of the California Energy Commission Grant Agreement ARV-14-035, attached hereto as Exhibit B and incorporated herein by reference.

1.3 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.

1.4 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 March 19, 2015 and shall continue until January 30, 2017 unless earlier terminated pursuant to the provisions of paragraph 13 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 \$111,425.

**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 with 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. The Principal Investigator, J.R. DeShazo shall be in charge of the project for the Consultant on all matters relating to the programmatic/technical aspects of this Agreement. 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:

The Regents of the University of California  
UCLA Office of Contract and Grant Administration  
11000 Kinross Avenue, Suite 211  
Los Angeles, CA 90095-1406  
Attn: Flora O'Brien, Contract and Grant Officer

With copies to:

UCLA Luskin Center for Innovation 3323 Public  
Affairs Building  
Box 951656  
Los Angeles, CA 90095  
Attention: J.R. DeShazo, Director

**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 State of California workers' compensation law regarding Consultant and Consultant's employees

**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, employees, and agents against, and will hold and save them and each of them harmless from, and all actions, claims, damages to persons or property, or liabilities that may be asserted or claimed arising out of the performance of the Agreement, except for liability resulting from the sole negligence or wrongful acts of the SBCCOG or a participating agency, but only in proportion to and to the extent such actions, claims, damages to persons or property, or liabilities are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its directors, officers, agents or employees.

**10. Insurance.** Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, self-insurance (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, and agents, 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, and employees 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. Consultant is a self-insured governmental entity.

C. Consultant shall submit to SBCCOG (1) self-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. Patents and Inventions.** Inventorship of developments or discoveries first conceived and actually reduced to practice under this Agreement ("Subject Inventions") will be determined in accordance with U.S. Patent Law. All rights to Subject Inventions made solely by employees of University will belong solely to University. All rights to Subject Inventions made solely by employees of Sponsor will belong solely to Sponsor. All rights to Subject Inventions made jointly by employees of University and employees of Sponsor will belong jointly to University and Sponsor. To the extent that Sponsor pays all direct and indirect costs of University's performance hereunder, and to the extent that the University is legally able, Sponsor will be granted a time-limited first right to negotiate an option or license under University's rights in any Subject Invention that belongs solely to University or under University's undivided interest in any Subject Invention that belongs jointly to University and Sponsor.

**13. Conflict of Interest.** It is understood and acknowledged that Consultant will serve as an independent contractor under 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. 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  
Flora O'Brien – flora.obrien@research.ucla.edu  
With copies to: J.R. DeShazo - deshazo@ucla.edu

**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"

"Contractor"

South Bay Cities Council of Governments

The Regents of the University of California

By: \_\_\_\_\_

By:

\_\_\_\_\_  
James Gazeley, SBCCOG Chair  
Officer

Flora O'Brien, Contract and Grant

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Marcy Hiratzka, SBCCOG Secretary