

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter, "Agreement") is made by and between the SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS (hereafter, "SBCAG") and KHOURI CONSULTING LLC, having its principal place of business at 1215 K Street, Suite 1700, Sacramento, CA 95814 (hereafter, "CONTRACTOR"), individually referred to as Party, or collectively as Parties, wherein CONTRACTOR agrees to provide and SBCAG agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by SBCAG and SBCAG desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth.

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

1. **DESIGNATED REPRESENTATIVES.** Haley DePass, Financial & Procurement Coordinator at phone number 805-961-8924 is the representative of SBCAG and will administer this Agreement for and on behalf of SBCAG. Gus Khouri at phone number 916-605-8975 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advanced written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To SBCAG: Santa Barbara County Association of Governments
260 North San Antonio Road, Suite B
Santa Barbara, CA 93110
Attention: Marjie Kirn, Executive Director

To CONTRACTOR: Khouri Consulting LLC
1215 K Street, Suite 1700
Sacramento, CA 95814
(916) 605-8975
gus@khouriconsult.com

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notice section. Notices and consents under this

section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to SBCAG in accordance with Exhibit A, attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on November 19, 2020 and end performance upon completion, but no later than November 29, 2023, unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by SBCAG and which is delivered to the address given in Section 2, **NOTICES**, above, following completion of the increments identified in Exhibit B. Unless otherwise specified in Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that CONTRACTOR, (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to SBCAG and not as an officer, agent, servant, employee, joint venture, partner, or associate of SBCAG. Furthermore, SBCAG shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, SBCAG shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a SBCAG employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CONTRACTOR shall be solely responsible and save SBCAG harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the SBCAG or to this Agreement.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this

Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to SBCAG pursuant to this Agreement shall be prepared in a professional and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions at SBCAG's request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **DEBARMENT AND SUSPENSION.** CONTRACTOR certifies to SBCAG that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or local government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. SBCAG shall not be responsible for paying any taxes on CONTRACTOR's behalf and, should SBCAG be required to do so by State, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse SBCAG for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance. CONTRACTOR shall provide its social security number or tax identification number to SBCAG, which SBCAG shall keep on file at its offices.

10. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to SBCAG, in writing, any potential conflict of interest. SBCAG retains the right to waive a conflict of interest disclosed by CONTRACTOR if SBCAG determines it to be immaterial, and such waiver is only effective if provided by SBCAG to CONTRACTOR in writing.

11. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** SBCAG shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos,

designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties, except after prior written approval of SBCAG.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to SBCAG all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions").

SBCAG shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions reports, data, documents or other materials prepared under this Agreement. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless SBCAG against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon any intellectual property or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by SBCAG in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of the Agreement.

12. **NO PUBLICITY OR ENDORSEMENT.** CONTRACTOR shall not use SBCAG's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials, unless otherwise required. CONTRACTOR shall not use SBCAG's name or logo in any manner that would give the appearance that the SBCAG is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of SBCAG's. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the SBCAG or its projects without obtaining the prior written approval of SBCAG.

13. **SBCAG PROPERTY AND INFORMATION.** All of SBCAG's property, documents, and information provided for CONTRACTOR's use in connection with the services shall

remain SBCAG's property, and CONTRACTOR shall return any such items whenever requested by SBCAG and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any SBCAG property, documents, or information without SBCAG prior written consent.

14. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. SBCAG shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) CONTRACTOR shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and review, whether by SBCAG or the State, at no charge to SBCAG.

If federal, state or other regulatory audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by SBCAG associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from SBCAG, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to SBCAG as specified by SBCAG in the notification.

15. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR agrees to defend, indemnify and hold harmless the SBCAG and to procure and maintain insurance in accordance with the provisions of Exhibit C, attached hereto and incorporated herein by reference.

16. **NONDISCRIMINATION.** CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in Title 49, Code of Federal Regulations (CFR), Part 21 through Appendix C and 23 CFR 710.405(b). During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations.** CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") 49 CFR Part 21, as they

may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- B. Nondiscrimination.** The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate. CONTRACTOR, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.
- C. Solicitations for Subcontractors, including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligations under this agreement, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. Information and Reports.** CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SBCAG to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to SBCAG, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance.** In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, SBCAG shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
1. Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies, and/or

2. Cancellation, termination or suspension of the Agreement in whole or in part.

17. **NON-EXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive agreement and that SBCAG shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the SBCAG desires.

18. **NON-ASSIGNMENT.** CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of SBCAG and any attempt to so assign or so subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. **TERMINATION.**

A. **By SBCAG.** SBCAG may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part, whether for SBCAG's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Convenience.** SBCAG may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by SBCAG, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on SBCAG from such winding down and cessation of services.
2. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or local governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then SBCAG will notify CONTRACTOR of such occurrence and SBCAG may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, SBCAG shall have no obligation to make payments with regard to the remainder of the term.
3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, SBCAG may, at SBCAG's sole option, terminate or suspend this Agreement in whole or

in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify SBCAG as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.

- B. **By CONTRACTOR.** Except where SBCAG withholds payment pursuant to other terms of this Agreement, should SBCAG fail to pay CONTRACTOR all or any part of the payment set forth in Exhibit B, CONTRACTOR may, at CONTRACTOR's option, terminate this agreement, if such failure is not remedied by SBCAG within thirty (30) days of written notice to SBCAG of such late payment.
- C. **Upon termination,** CONTRACTOR shall deliver to SBCAG all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as SBCAG may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, SBCAG shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to SBCAG such financial information as in the judgment of SBCAG is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of SBCAG shall be final. The foregoing is cumulative and shall not affect any right or remedy which SBCAG may have in law or equity.

20. **SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to SBCAG is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. **NO WAIVER OF DEFAULT.** No delay or omission of SBCAG to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to SBCAG shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of SBCAG.

25. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at its sole cost and expense, comply with all SBCAG, State and Federal ordinances and statutes, including regulations now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether SBCAG is a party thereto or not, that CONTRACTOR has violated any such ordinance statute, or regulation, shall be conclusive of that fact as between CONTRACTOR and SBCAG.

28. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents

shall be filed in the County of Santa Barbara, if in State court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any State and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the numbered sections shall prevail over those in the Exhibits.

(Signatures on following page.)

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the date when fully executed by both parties.

ATTEST:

**SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS:**

Marjie Kirn
SBCAG Executive Director
Clerk of the Board

By: _____
Deputy Clerk

By: _____
Gregg Hart
Chairperson
Board of Directors

Date: _____

CONTRACTOR:

KHOURI CONSULTING LLC

By: _____
Gus Khouri

Title: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By:  _____
Deputy County Counsel

EXHIBIT A

Scope of Services

The CONTRACTOR shall:

- Develop, in consultation with the SBCAG, an annual legislative advocacy platform that is reflective of the Central Coast Coalition (Coalition) member agency legislative platform priorities.
- Work with the SBCAG to support the annual Coalition legislative day that will occur in the Spring, or as directed by SBCAG in consultation with the Coalition. Responsibilities include, but are not limited to: developing the itinerary, scheduling legislative and state agency meetings, drafting coalition talking points, supporting pre-briefings of coalition member elected representatives, advising the Coalition upon SBCAG's approval on recommended collateral material to provide for meetings, coordinating legislative day lunch for participants, and respond to any follow up items related to legislative day.
- Notify the Coalition during regular monthly meetings of the State of California's current political landscape, legislative issues, policies or funding programs as they relate to the Coalition's legislative platform and budgetary priorities, unless otherwise directed by SBCAG. This includes updates from state agencies such as, but not limited to: California State Transportation Agency, California Transportation Commission, California Department of Transportation (Caltrans), Strategic Growth Council, Governor's Office of Policy and Research, Air Resources Board and Department of Housing and Community Development. Information can be provided either in written summaries or verbal updates.
- Advise SBCAG of opportunities when Coalition members can testify, submit letters, or raise awareness of information in support of coalition legislative goals.
- Work with SBCAG to draft timely written and oral expressions of support or opposition on legislation, and/or relevant state agency policies or programs of interest to the Coalition to be distributed on Coalition letterhead on behalf of, or by, SBCAG.
- Work with SBCAG to ensure that any written correspondence to Coalition members is consistent with the scope of services.
- Upon the request of the SBCAG in consultation with the Coalition, the Contractor will attend in-person or virtual meetings and events and report out on such participation with either written or oral updates. Meetings and events could include, but not limited to: California Transportation Commission meetings, State agency workshops and meetings, or special meetings of the Central Coast Coalition.

Administrative Responsibilities:

- Complete and file on behalf of SBCAG all lobbying and expenditure disclosure reports or any other reports required by the Secretary of State, Fair Political Practices Commission, or any other State agency upon submission to SBCAG of quarterly report of legislative activities performed on behalf of SBCAG for the Coalition.
- Inform SBCAG on any changes of policy or additional requirements affecting lobbying or expenditure reporting or any other reporting responsibilities of the SBCAG.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, up to but not to exceed \$60,000 commencing from November 2020 to November 2023, payable in 36 monthly installments of \$1,666.67, unless otherwise terminated.

- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in Exhibit A as determined by SBCAG. Payment for services is based on a monthly retainer fee that includes all direct and indirect costs. Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in Exhibit A.

- C. CONTRACTOR shall submit to the SBCAG Designated Representative an invoice or certified claim for the service performed over the period specified. SBCAG's Designated Representative shall evaluate the quality of the service performed and, if found to be satisfactory, shall initiate payment processing. SBCAG shall pay invoices or claims for satisfactory work within 30 days of presentation.

- D. SBCAG's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of SBCAG's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT C
STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS
FOR PROFESSIONAL CONTRACTS

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCAG) and hold harmless SBCAG and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by SBCAG on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to SBCAG's active as well as passive negligence but does not apply to SBCAG's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify SBCAG immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, SBCAG requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SBCAG.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – SBCAG, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the SBCAG, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by SBCAG, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to SBCAG.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to SBCAG a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the SBCAG by virtue of the payment of any loss under such insurance. CONTRACTOR 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 SBCAG has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the SBCAG. SBCAG may

require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
7. **Verification of Coverage** – CONTRACTOR shall furnish SBCAG with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by SBCAG before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR’s obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. SBCAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, SBCAG has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by SBCAG as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that SBCAG is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

11. Special Risks or Circumstances – SBCAG reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of SBCAG to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of SBCAG.