

## STAFF REPORT

**SUBJECT:** Audit Contract

**MEETING DATE:** June 15, 2006

**AGENDA ITEM:** 6C

**RECOMMENDATION:**

Approve contract with Moreland & Associates, Inc. for professional auditing services at a not-to-exceed cost of \$49,500 for the fiscal year ending June 30, 2006 with the option to renew for two additional fiscal years.

**STAFF CONTACT:** Martha Gibbs

**DISCUSSION:**

SBCAG is required to have a number of different audits conducted each year by an independent audit firm. These include: an audit of the general purpose financial statements, a Single Audit, Maintenance of Effort audits of eight recipients of Measure D funds, fiscal and compliance audits of eight recipients of Transportation Development Act funds, a fiscal and compliance audit of SBCAG's Transportation Development Act funds, and a review of SBCAG's annual Appropriations Limit calculation.

A Request for Proposals (RFP) for professional auditing services was distributed in April to thirteen audit firms. Two proposals were received by the May deadline, from the following firms:

- Moreland & Associates, Inc. – Newport Beach, CA
- Brown Armstrong Paulden – Bakersfield, CA.

The proposals were reviewed and evaluated by a review committee comprised of staff from the Santa Barbara County Auditor Controller, Business Manager for the Air Pollution Control District and the Finance Officer for SBCAG utilizing the evaluation criteria specified in the RFP. The criteria included firm and personnel qualifications, auditing and other related experience, auditing approach, adherence to RFP instructions, and the price proposal.

Based on this evaluation, staff recommends that the firm of Moreland & Associates, Inc. be retained to conduct the above audits for the fiscal year ending June 30, 2006. Their proposal best met the criteria of the RFP, the needs of SBCAG, and their services were offered at a price

comparable to what was paid for the prior year's audit. Furthermore, Moreland & Associates has served as auditors for SBCAG since 2002.

The work would be completed at a not-to-exceed cost of \$49,500. The cost of the audit is financed from a number of different sources including General Fund revenues, TDA 2% planning funds, Measure D revenues, and contributions from both the SAFE and Traffic Solutions programs.

A contract for professional auditing services is attached for your review. The initial term of the contract is one year with an option to renew the agreement for two additional years.

**COMMITTEE REVIEW:** None

**ATTACHMENTS:** Audit Contract

**AGREEMENT  
BETWEEN  
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS  
AND  
MORELAND & ASSOCIATES, INC.  
FOR  
PROFESSIONAL AUDITING SERVICES**

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## **Agreement for Professional Auditing Services**

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This Agreement is entered into as of July 1, 2006, by the Santa Barbara County Association of Governments (hereinafter referred to as SBCAG) whose address is 260 North San Antonio Road, Suite B, Santa Barbara, California, 93110 and Moreland & Associates, Inc. (hereinafter referred to as CONTRACTOR) whose address is 1201 Dove Street, Suite 680, Newport Beach, California, 92660.

Whereas, SBCAG desires CONTRACTOR to perform certain financial and compliance audit services as hereinafter described and CONTRACTOR desires to do so for the compensation and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

### **Article 1**

### **Description of Work - General**

CONTRACTOR agrees to perform the Work set forth in Exhibit "A", Scope of Work, in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants; the standards for financial audits set forth in the U.S. General Accounting Office's Government Auditing Standards (1988); the provisions of the Single Audit Act; the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations; the provisions of the Department of Transportation's Transportation Development Act - Statutes and California Code of Regulations; and the Article XIIIB Appropriations Limitation Uniform Guidelines, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Work," as used herein, includes without limitation, the performance, fulfillment and discharge by CONTRACTOR of all obligations, duties, tasks, services and warranties imposed upon or assumed by CONTRACTOR hereunder.

### **Article 2**

### **Performance Schedule and Force Majeure**

- 2.1 The period of performance by CONTRACTOR under this Agreement shall commence after this agreement has been executed and notice to proceed has been issued to CONTRACTOR by SBCAG and shall continue in effect until December 31, 2006, or until otherwise terminated, canceled, or extended.
- 2.2 CONTRACTOR shall not be considered in default in the performance of its duties and obligations with respect to schedule performance to the extent that the performance of any obligation is prevented or delayed by Force Majeure. In any event, CONTRACTOR shall use its best efforts to minimize any schedule extension or additional cost to SBCAG resulting from such delay. Force Majeure includes, but is not limited to, acts of God or of the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter initiatives, legal actions, changes in law, fires, floods, labor disputes, freight embargoes, unusually severe weather and interference caused by, or failure to act of, SBCAG, SBCAG's CONTRACTORS (other than CONTRACTOR), or other third parties. In every case, the failure to perform must be beyond the control and without the fault or negligence of CONTRACTOR.

## **Agreement for Professional Auditing Services**

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### **Article 3**

### **Agreement Price and Cost Principles**

- 3.1 Full compensation to CONTRACTOR for full and complete performance of the Work, compliance with all the terms and conditions of this Agreement, payment by CONTRACTOR of all obligations incurred in, or application to, CONTRACTOR's performance of the Work, and for which CONTRACTOR shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Agreement as furnished by SBCAG), the total compensation to CONTRACTOR shall not exceed \$49,500.
- 3.2 CONTRACTOR labor billing rates shall not exceed the rates shown below for the positions shown below.

<u>Position</u>	<u>Rate/Hour</u>	<u>Estimated Hours</u>
Partner	\$146	25
Manager	\$112	60
Senior Accountant	\$84	275
Assistant Accountant	\$74	160
Clerical	\$34	4

The hourly rates are understood to include salary, benefits, overhead, administration, supplies, and profit. Costs for out-of-pocket expenses like mileage, meals, and hotels shall be billed at cost and must be supported by receipts and other documentation as necessary. It is understood that the costs of such travel are included in the not-to-exceed amount specified above.

- 3.3 From time to time the Scope of Work as stated in Exhibit "A", Scope of Work, may be changed by additions and/or deletions in accordance with Article 13, Changes, and in such event, the compensation limit shall be adjusted accordingly.

### **Article 4**

### **Availability of Funds**

This Agreement is awarded on the contingency of availability of funds. The obligation of SBCAG is conditioned upon the availability of funds which are allocated and available for the payment of such an obligation. If funds are not allocated and available for the continuance of the Work performed by CONTRACTOR, the Work directly or indirectly involved may be suspended or terminated by SBCAG at the end of the period for which funds are available. When SBCAG becomes aware that any portion of the Work which will or may be affected by a shortage of funds, it will immediately so notify CONTRACTOR. Nothing herein shall relieve SBCAG from its obligation to compensate CONTRACTOR for Work performed pursuant to this Agreement prior to such notification and for any reasonable related costs incurred in suspending work. No penalty shall accrue to SBCAG in the event this provision is exercised.

## **Agreement for Professional Auditing Services**

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### **Article 5      Taxes, Duties, Fees**

Except to the extent expressly provided otherwise elsewhere in this Agreement, CONTRACTOR shall pay when due, and the compensations set forth in Article 3, Agreement Price and Cost Principles, shall be inclusive of all a) local, municipal, state, and federal sales and use taxes, b) excise taxes, c) taxes on personal property owned by CONTRACTOR, and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

### **Article 6      Invoicing and Payments**

- 6.1 Except to the extent expressly stated otherwise elsewhere in this Agreement, payments made under this agreement shall be in arrears and invoices may be submitted at such intervals as the CONTRACTOR deems practicable, but no more frequently than once a month. SBCAG shall reimburse CONTRACTOR after receipt of acceptable invoices prepared in accordance with the instructions below.
- 6.2 CONTRACTOR shall prepare all invoices in a form satisfactory to and approved by SBCAG which detail the expenses and the period for which payment is requested. Any invoice submitted which fails to comply with the terms of this Agreement, including the requirements of form and documentation, may be returned to CONTRACTOR. Any costs incurred by CONTRACTOR in connection with the resubmission of a proper invoice shall be at CONTRACTOR's sole expense.

### **Article 7      Record Retention and Access**

CONTRACTOR shall keep and maintain all books, papers, documents, accounting records, including but not limited to all files, accounts, reports, cost proposals with backup data, and all other material relating to the Work, and shall make all such materials available at any reasonable time during the contract period for a minimum of three (3) years from the date of final payment to CONTRACTOR, for auditing, inspection, and copying by SBCAG or its designee, upon request.

### **Article 8      Personnel**

- 8.1 The CONTRACTOR shall employ at its own expense the personnel required to perform the services outlined in Exhibit "A", Scope of Work. Such personnel shall not be employees of or have any contractual relationship with SBCAG. Mr. Michael Moreland shall be responsible for the overall supervision and direction of the CONTRACTOR's Work including the review of all work and final audit reports.
- 8.2 Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of SBCAG. However, in either case, SBCAG retains the right to approve or reject replacements. Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

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### **Article 9**

### **Subcontracts**

- 9.1 CONTRACTOR shall not subcontract performance of all or any portion of the Work under this Agreement without first notifying SBCAG of the intended subcontracting and obtaining SBCAG's approval in writing of the subcontracting and the subconsultant. The definition of subconsultant and the requirements for subconsultants hereunder shall include all lower-tier subcontracts.
- 9.2 CONTRACTOR agrees that any and all subconsultants of CONTRACTOR will comply with the terms of this Agreement applicable to the portion of the Work performed by them. If requested by SBCAG, CONTRACTOR shall furnish SBCAG a copy of the proposed subcontract for SBCAG's approval of the terms and conditions thereof and shall not execute such subcontract until SBCAG has approved such terms and conditions. SBCAG approval shall not be unreasonably withheld.
- 9.3 Approval by SBCAG of any services to be subcontracted and the subconsultant to perform said services will not relieve CONTRACTOR of any responsibility or liability in regard to the acceptable and complete performance of said services.

### **Article 10**

### **Assignment**

CONTRACTOR shall not assign this Agreement wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of SBCAG. Subject to the foregoing, the provisions of this Agreement shall extend to the benefit of and be binding upon the successors and assignees of the parties hereto.

### **Article 11**

### **Reporting Requirements/Deliverables**

- 11.1 All reports and deliverables shall be submitted in accordance with Exhibit "A", Scope of Work, unless otherwise agreed by SBCAG and CONTRACTOR. Changes in reporting requirements and deliverables shall be made in accordance with Article 13, Changes.
- 11.2 The publication of all reports identified in Exhibit "A", Scope of Work, shall be the responsibility of the CONTRACTOR.

### **Article 12**

### **Permits and Licenses**

CONTRACTOR shall, without additional compensation, keep current all professional licenses, necessary for CONTRACTOR to perform the Work.

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### **Article 13    Changes**

- 13.1 This Agreement may only be changed by an amendment duly executed by CONTRACTOR and SBCAG, except that changes to the Agreement to implement administrative changes such as approved changes in key personnel, may be made by administrative amendment signed by CONTRACTOR and SBCAG's Executive Director or other duly authorized representative.
- 13.2 In the event that changes in the Work as described in Exhibit "A", Scope of Work, become necessary or the unforeseen complexity of the audit examination requires a revision in the contract limit specified in Article 3, Agreement Price and Cost Principles, SBCAG and CONTRACTOR shall jointly execute a supplemental agreement clearly specifying the changes made and containing a mutually agreed upon method of compensation. Any additional work agreed to between SBCAG and CONTRACTOR shall be performed at the same rates set forth in Article 3.2.

### **Article 14**

### **Federal and State Provisions**

- 14.1 Equal Employment Opportunity/Nondiscrimination
- 14.1.1 In connection with the execution of this Agreement, the CONTRACTOR shall not discriminate directly or indirectly against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selections of training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of the Equal Opportunity clause.
- 14.1.2 The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applications shall receive consideration for employment without regard to race, color, religion, sex, age, or national origin.
- 14.1.3 The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice advising the labor union or workers' representative of the CONTRACTOR's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 14.1.4 The CONTRACTOR shall comply with all provisions of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Park 60), and shall permit access to its books, records, and accounts by SBCAG and the Secretary of Labor for

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purposes of investigation to ascertain compliance with such rules, regulations, and orders.

14.1.5 In the event of the CONTRACTOR's noncompliance with the Equal Opportunity clause of this Agreement or any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

14.1.6 The CONTRACTOR shall include the provisions of sections 14.1.1 through 14.1.6 of this Section 14.1 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), so that such provisions will be binding upon each subcontract or vendor. The CONTRACTOR shall take such action with respect to any subcontract or purchase order as SBCAG may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by SBCAG, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

### **14.2 Affirmative Action for Handicapped Workers**

The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

## **Article 15**

## **Standard of Care**

CONTRACTOR represents to SBCAG that services supplied by CONTRACTOR in performance of this Agreement shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Agreement and represents to SBCAG that the same shall conform with usual and customary accounting and auditing principles and standards which are generally accepted.

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### **Article 16                      Proprietary Rights/Confidentiality**

- 16.1 All materials, documents, data or information obtained from SBCAG's data files or any SBCAG medium furnished to CONTRACTOR in the performance of this Agreement will at all times remain the property of the SBCAG. Such data or information may not be used or copied for direct or indirect use outside of this Agreement by CONTRACTOR without the express written consent of SBCAG.
- 16.2 Except as reasonably necessary for the performance of the Work, CONTRACTOR and its employees and agents shall hold in confidence the materials and information referred to in this Article 16, Proprietary Rights/Confidentiality, which are produced by CONTRACTOR for SBCAG in the performance and completion of CONTRACTOR's Work under the Agreement, until released in writing by SBCAG, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or agents.
- 16.3 CONTRACTOR agrees that it, and its employees, agents, and subconsultants will hold confidential and not divulge to third parties without the prior written consent of SBCAG, any information obtained by CONTRACTOR from or through SBCAG in connection with CONTRACTOR's performance of this Agreement, unless (a) the information was known to CONTRACTOR prior to obtaining same from SBCAG pursuant to a prior Agreement; or (b) the information was at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONTRACTOR or its employees, agents, or subconsultants, or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCAG and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same, or (d) disclosure as required by law.

### **Article 17**

### **Termination**

#### 17.1 Termination for Cause

In the event CONTRACTOR shall file a petition for bankruptcy, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy shall be filed against CONTRACTOR or a receiver shall be appointed on account of its solvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Agreement and shall fail immediately to correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, SBCAG may, without prejudice to any other rights or remedies SBCAG may have, (a) hold in abeyance further payments to CONTRACTOR; (b) stop any services of CONTRACTOR or its subconsultants related to such failure until such failure is remedied; and/or (c) terminate this Agreement by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCAG, all finished or unfinished documents, data, studies, and reports prepared by the CONTRACTOR shall, at the option of SBCAG, become its property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. A waiver by SBCAG of one default of CONTRACTOR shall not be considered to be a waiver of any

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subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Agreement.

- 17.2 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCAG, satisfactory in form and content to SBCAG and verified by SBCAG. In no event shall CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

### **Article 18**

### **Claims**

CONTRACTOR shall give SBCAG written notice within thirty (30) days after the happening of any event which CONTRACTOR believes may give rise to a claim by CONTRACTOR for an increase in the Agreement Price or in the scheduled time for performance. Within forty-five (45) days after the happening of such events, CONTRACTOR shall supply SBCAG with a statement supporting CONTRACTOR's claim, which statement shall include CONTRACTOR's detailed estimate of the change in Agreement Price and scheduled time occasioned thereby. SBCAG shall not be liable for, and CONTRACTOR hereby waives, any claim or potential claim of CONTRACTOR of which CONTRACTOR knew or should have known and which was not reported by CONTRACTOR in accordance with the provisions of this Article. CONTRACTOR agrees to continue performance of the Work during the time any claim of CONTRACTOR hereunder is pending. SBCAG shall make every effort to respond to claims in a timely manner. SBCAG shall not be bound to any adjustments in the Agreement Price or scheduled time for CONTRACTOR's claim unless expressly agreed to by SBCAG in writing and any such adjustments in the Agreement Price so agreed to in writing shall be paid to CONTRACTOR by SBCAG. No claim hereunder by CONTRACTOR shall be allowed if asserted after final payments under this Agreement.

### **Article 19**

### **Indemnity**

- 19.1 CONTRACTOR agrees to indemnify and hold harmless, SBCAG, and their officers, employees (past and present), agents, representatives, and grantor agencies, from and against:
- 19.1.1 Any claim, cause of action, liability, loss, cost or expense arising from infringement or improper appropriation or use by SBCAG of trade secrets, proprietary information, know-how, copyright rights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to SBCAG by CONTRACTOR in connection with performance of the Work; and
  - 19.1.2 Any claim, cause of action, liability, loss, cost or expense, on account of injury to or death of persons or damage to or loss of property arising out of the negligent or wrongful acts of CONTRACTOR or its subconsultants, employees, or agents, in the performance of the Work, and including any expenses for attorneys' fees incurred by SBCAG for legal action to enforce CONTRACTOR's indemnification obligations hereunder, but excepting where the injury or death of persons or damage or loss of property was caused by the negligence or willful misconduct of the party to be indemnified.

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- 19.2 SBCAG shall hold harmless and indemnify the CONTRACTOR and its officers and employees from and against losses, liability, damages, and costs arising out of the negligent acts, errors, or omissions of SBCAG or those for whom SBCAG is legally liable.

### **Article 20**

### **Insurance**

- 20.1 During performance of this Agreement, CONTRACTOR shall procure and maintain at its sole cost and expense the following required insurance coverages with insurance companies acceptable to SBCAG:
- 20.1.1 Statutory Workers' Compensation and Employers' Liability Insurance shall cover all employees while performing any work incidental to the performance of this Agreement.
- 20.1.2 General and Automobile Liability Insurance. General Liability Insurance shall include personal injury liability coverage, coverage for all premises and operations of the CONTRACTOR and/or agents or subcontractors of CONTRACTOR, and contractual liability coverage for this Agreement. Automobile Liability Insurance shall cover all owned, non-owned, and hired motor vehicles, which are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. SBCAG, its officers, employees and agents shall be named as additional insured on any policy. The limit of liability of said policy or policies for general and automobile liability shall be at least \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Personal injury liability coverage shall also be in the amount of at least \$1,000,000 per occurrence and aggregate. Said policy or policies shall contain a provision or endorsement that the insurance as is afforded by this policy shall be primary and contributory to the full limits stated in the declarations, and if SBCAG has other valid and collectible insurance for a loss covered by the policy, that other insurance shall be excess only.
- 20.2 Current certificates for required insurance shall be maintained at all times during performance of this Agreement as a condition precedent to payment by SBCAG under this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by SBCAG, CONTRACTOR shall provide certified copies of any insurance policies to SBCAG within ten (10) working days. The policies of insurance shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by SBCAG.

### **Article 21**

### **Independent Contractor**

CONTRACTOR is and shall be at all times an independent CONTRACTOR as defined by generally accepted auditing standards and the U.S. General Accounting Office's Government Auditing Standards (1988). All Work provided hereunder shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCAG shall rely on CONTRACTOR for results only, and shall have no right at any time to direct or

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supervise CONTRACTOR or CONTRACTOR's employees in the performance of the Work or as to the manner, means and methods by which the Work is performed. All workers furnished by CONTRACTOR pursuant to this Agreement, and all representatives of CONTRACTOR, shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subconsultant(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees of SBCAG.

### **Article 22**

### **Precedence**

- 22.1 The Agreement documents consist of these General Terms and Conditions and Exhibit "A", Scope of Work, and are incorporated herein by reference.
- 22.2 Specific language in the Exhibit(s) shall prevail where there is a conflict with these General Terms and Conditions. The following order of precedence shall otherwise apply:
- 22.2.1 This Agreement, its General Terms and Conditions, and Exhibit(s)
  - 22.2.2 CONTRACTOR's Proposal
  - 22.2.3 SBCAG's Request for Proposals
- 22.3 In the event of a conflict between the documents listed in Article 22, Precedence, or between any other documents which are a party of the Agreement, CONTRACTOR shall notify SBCAG immediately and shall comply with SBCAG's resolution of the conflict.

### **Article 23**

### **Communications and Notices**

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States mail if delivery is by postage paid certified mail (return receipt requested), FAX or private courier. Each such notice shall be sent to the respective party at the address indicated on Page One of the Agreement or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other party in accordance with this section.

### **Article 24**

### **Disputes**

- 24.1 In the event any dispute arises between the parties hereto under or in connection with this Agreement (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, scope of work and/or time of performance), the dispute shall be decided by the SBCAG Executive Director or his duly authorized representative within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONTRACTOR does not agree with the decision, then CONTRACTOR shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of SBCAG. If the Executive Director fails to resolve the dispute in a manner acceptable to CONTRACTOR, then such appeal shall be decided by a court of competent jurisdiction.

## **Agreement for Professional Auditing Services**

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24.2 During resolution of the dispute both parties shall proceed with performance of this Agreement with due diligence.

### **Article 25**

### **Gratuities**

CONTRACTOR, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of SBCAG, gifts, entertainment, payments, loans, or other gratuities to influence the award of an Agreement or obtain favorable treatment under an Agreement.

### **Article 26**

### **Safety**

CONTRACTOR shall comply with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONTRACTOR's operations in the performance of the Work hereunder.

### **Article 27**

### **Governing Law**

This Agreement shall be subject to the law and jurisdiction of the State of California.

### **Article 28**

### **Contingent Fee**

The CONTRACTOR warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, SBCAG has the right to annul this Agreement without liability, pay only for the value of the Work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **Article 29**

### **Option for Extending Agreement**

29.1 CONTRACTOR hereby extends the option to SBCAG to have the same Work performed and render the same type of reports as specified in Exhibit "A", Scope of Work, for the fiscal years ending June 30, 2007 and June 30, 2008. The terms and conditions of this agreement shall remain in effect with the exception of the maximum compensation and the hourly rates contained in Article 3, Agreement Price and Cost Principles. In the event that SBCAG executes the option to have CONTRACTOR perform the same Work and render the same type of reports as specified in Exhibit "A", Scope of Work, the maximum compensation and the hourly rates shall be renegotiated by SBCAG and CONTRACTOR.

29.2 This option may be executed by SBCAG by notifying CONTRACTOR in writing to perform the Work by June 30, 2007 and June 30, 2008.

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### **Article 30**

### **Entire Document**

- 30.1 This Agreement and its Exhibit(s) and attachments constitute the sole and only Agreement governing the Work and supersedes any prior understandings, written or oral, between the parties respecting the within subject matter. All previous proposals, offers, and other communications, written or oral, relative to this Agreement, are superseded except to the extent that they have been incorporated into this Agreement.
- 30.2 No agent, employee or representative of SBCAG has any authority to bind SBCAG to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Agreement, and CONTRACTOR hereby stipulates that it has not relied, and will not rely, on same.

**Agreement for Professional Auditing Services**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

**CONTRACTOR**

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

Name: Michael Moreland

Title: Partner

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

Attest:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SBCAG**

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

Name: Joe Centeno

Title: Chair, SBCAG

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

Attest:

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

Name: Jim Kemp

Title: Executive Director

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

**Approved as to Form:**

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

Name: Kevin E. Ready, Sr.

Title: Deputy County Counsel, SBCAG

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

## **Agreement for Professional Auditing Services**

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### **Exhibit "A"**

### **Scope of Work**

The CONTRACTOR shall perform the following work in a manner consistent with CONTRACTOR's proposal dated May 19, 2006, which is incorporated herein by reference:

The CONTRACTOR shall express an opinion on the fair presentation of SBCAG's general purpose financial statements in conformity with generally accepted accounting principles.

The CONTRACTOR shall provide an "in-relation-to" report on the combining and individual fund financial statements and an "in-relation-to" report on supplementary information based on the auditing procedures applied during the audit of the general purpose financial statements.

The CONTRACTOR shall perform an audit that complies with the Single Audit Act and OMB Circular A-133 and provide an "in-relation-to" report on the schedule of expenditures of federal awards based on the auditing procedures applied during the audit of the general purpose financial statements; a report on compliance with certain provisions of laws, regulations, contracts, and grants; a report on internal control over financial reporting; a report on compliance with the requirements of laws, regulations, contracts, and grants applicable to major federal programs; a report on internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to federal programs; and a schedule of findings and questioned costs.

The CONTRACTOR shall perform compliance audits of eight recipients of Measure D sales tax revenue to verify that these recipients are meeting the Maintenance of Effort requirements set forth by Ordinance Number One of the Santa Barbara County Local Transportation Authority. The CONTRACTOR shall provide a report on compliance with the Maintenance of Effort requirements of Ordinance Number One, including supporting and supplementary report schedules.

The CONTRACTOR shall perform fiscal and compliance audits of eight recipients of Transportation Development Act funding in accordance with generally accepted auditing standards and applicable sections of the Transportation Development Act and the Public Utilities Code. The CONTRACTOR shall provide, for each recipient, a report on the fair presentation of the financial statements of the Transportation Development Act Fund and compliance with the requirements of the Transportation Development Act and the Santa Barbara County Association of Governments. Preparation of the financial statements and supporting and supplementary report schedules shall be the responsibility of the CONTRACTOR.

The CONTRACTOR shall express separate opinions on the fair presentation of the financial statements of both the SBCAG's Local Transportation Fund and the SBCAG's State Transit Assistance Fund, as well as compliance with the requirements of the Transportation Development Act. Preparation of the financial statements and supporting and supplementary report schedules shall be the responsibility of the CONTRACTOR.

The CONTRACTOR shall review the SBCAG's annual Appropriations Limit calculation as required by Section 1.5 of Article XIII B of Proposition 111 and provide an "agreed-upon procedures" report in the format set forth in the Article XIII B Appropriations Limit Uniform Guidelines.