



July 8, 2020

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STAFF

CAROLYN EMERY
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer

SUBJECT: Professional Services Agreement with Bob Hall & Associates

BACKGROUND

The Assistant Executive Officer became vacant on May 15, 2020. A key OC LAFCO staff member, the Assistant Executive Officer assists the Executive Officer in carrying out the policies and directives of the Commission and fostering relationships among the executive staff of our cities, special districts and the County. Additionally, the Assistant Executive Officer is responsible for managing complex projects that may involve sensitive matters and acting in place of the Executive Officer in her absence. While staff has continued to move the Commission's annual work plan forward and the current pandemic has presented many challenges, it is important to move forward at this time with the recruitment for this key staff position.

In order to move this process forward expeditiously, OC LAFCO requested and received a proposal from Bob Hall & Associates. A local firm based in Huntington Beach, Bob Hall & Associates has substantial experience in similar recruitments and a keen knowledge of talent and strong network base in Orange County and Southern California. The professional services agreement with Bob Hall and Associates is attached for Commission consideration. The agreement includes the recruitment fee of \$15,500 plus costs (approximately \$2,500) for a total amount not to exceed \$18,000. The additional costs include advertising, printing, postage and delivery, and expenses related to background research and verification of final candidates. If approved by the Commission, Mr. Bob Hall will be the lead project director for the recruitment that will be conducted within a 90 to 120-day period.

Based on the firm's experience and projected timeline, staff is recommending approval of the professional services agreement with

Bob Hall and Associates. If approved, the costs of the agreement will be allocated to the Human Resources and Professional Services line items within the FY 2020-2021 budget.

RECOMMENDATION

Staff recommends that the Commission:

1. Approve the professional services agreement with Bob Hall and Associates.

Respectfully submitted,



CAROLYN EMERY

Attachment:

- A. Professional Services Agreement with Bob Hall and Associates

**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION
PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

This Agreement is made effective _____, 2020 by and between ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter referred to as "LAFCO"), organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended (Government Code Sections 56000 et seq.), and Bob Hall & Associates (hereinafter referred to as "Consultant").

RECITALS

A. LAFCO is a public agency of the State of California and is in need of professional consulting services for the recruitment of the Assistant Executive Officer position (hereinafter referred to as "the Project").

B. Consultant is qualified by virtue of experience, training, education and expertise to provide such services.

C. This Agreement is to establish the terms and conditions for LAFCO to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Term and Time of Performance.

The term of this Agreement shall be from the effective date through March 1, 2021 unless terminated in accordance with the procedures outlined in Section 15 of this Agreement or Project is completed prior to March 1, 2021. Consultant shall perform its services hereunder in a prompt and timely manner and shall commence performance upon the execution of this Agreement.

2. Services.

Consultant shall provide LAFCO with the services described in the Scope of Services attached hereto as Exhibit "A."

3. Compensation.

a. Subject to paragraph 3(b) below, LAFCO shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed the sum of \$18,000, without written amendment to this Agreement.

c. Consultant shall submit to LAFCO a statement for services rendered. LAFCO shall cause payment to be made to Consultant within thirty (30) working days from receipt of statement for services and LAFCO's determination that Consultant has adequately performed those services for which LAFCO has been invoiced.

4. Additional Work

If changes in the work seem merited by Consultant or LAFCO, and informal consultations with the other party indicate that a change is warranted, it shall be processed by LAFCO in the following manner: Consultant shall forward a letter outlining the changes to LAFCO with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by LAFCO and executed by both parties before performance of such services or LAFCO will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

5. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the contract for inspection by LAFCO.

6. Delays in Performance.

Neither LAFCO nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Sub-consultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of LAFCO, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates and sub-consultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

It is agreed that Consultant shall act and be an independent contractor and is not an agent or employee of LAFCO and is not entitled to participate in any compensation plans or other benefits LAFCO provides for its employees. All services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the services, subject to the requirements of this Agreement. Any additional personnel performing the services under this Agreement on behalf of Consultant shall also not be employees of LAFCO and shall at all times be under Consultant's exclusive direction and control. Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance and workers' compensation insurance.

11. Integration.

This Agreement represents the entire understanding of LAFCO and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

12. Insurance.

Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, all insurance set forth in "Exhibit C" hereto, in a form and with insurance companies acceptable to LAFCO.

13. Indemnification.

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold LAFCO, its Board, members of the Board, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's

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fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

In addition, Consultant shall defend, with counsel of LAFCO's choosing and, to the extent permitted by Civil Code Section 2782.8, at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this section that may be brought or instituted against LAFCO or its Board, members of the Board, employees, and authorized volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against LAFCO or its Board, members of the Board, employees, and authorized volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse LAFCO for the cost of any settlement paid by LAFCO or its Board, members of the Board, employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for LAFCO's attorney's fees and costs, including expert witness fees. Consultant shall reimburse LAFCO and its Board, members of the Board, employees, and/or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by LAFCO, its Board, members of the Board, employees, or authorized volunteers.

14. Laws, Venue, and Attorneys' Fees.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Orange, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

15. Termination or Abandonment.

a. LAFCO may terminate this Agreement for any reason or no reason by giving thirty (30) calendar days' written notice of termination. LAFCO shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by LAFCO and Consultant of the portion of such task completed but not paid prior to said termination. LAFCO shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to LAFCO only in the event of

substantial failure by LAFCO to perform in accordance with the terms of this Agreement through no fault of Consultant.

16. Key Personnel.

Consultant shall assign Bob Hall, as the Project Lead Director. The Project Lead Director shall not be removed from the Project or reassigned without the prior written consent of LAFCO.

17. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

LAFCO:
Attn: Carolyn Emery, Executive Officer
LAFCO
2677 Main Street, Suite 1050
Santa Ana, CA 92705

Consultant:
Attn: Bob Hall
Bob Hall & Associates
21050 Pacific City Cir, Suite 5123
Huntington Beach, CA 92648

and shall be effective upon receipt thereof.

18. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than LAFCO and the Consultant.

19. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Acknowledgment.

Consultant acknowledges that by executing this agreement, they are also, in good faith, determining that the appointment meets each of the requirements set forth in Government Code Section 7522.56, including the unemployment insurance requirement. That is, while LAFCO is not in a position to do so, by signing the acknowledgement at the conclusion of this agreement, the Consultant is certifying that they have not received unemployment insurance payments within the past 12 months arising from work performed as a retiree for any public employer. Further, LAFCO has no way of monitoring the hours that Consultant works for another OCERS employer. As such, it is the responsibility of the Consultant to ensure that the total hours worked for LAFCO and any other OCERS employer do not exceed 960 hours in the aggregate during the fiscal year.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION**

BOB HALL & ASSOCIATES

By: _____
Carolyn Emery, Executive Officer
for the Orange County Local Agency
Formation Commission

By: _____
Bob Hall
for Bob Hall & Associates

Dated: _____

Dated: _____

Approved as to form:

General Counsel, Orange County Local
Agency Formation Commission

**EXHIBIT “A”
SCOPE AND SCHEDULE OF SERVICES**

The recruitment process will be conducted in a 90 to 120-day period and consist of the following tasks:

<p>MONTH 1</p>	<ul style="list-style-type: none"> ▪ <i>Week 1:</i> Bob Hall & Associates selected as search firm. ▪ <i>Week 2:</i> Consultant meets with the agency to establish position criteria. ▪ <i>Weeks 3 & 4:</i> Active recruiting and screening.
<p>MONTH 2</p>	<ul style="list-style-type: none"> ▪ <i>Week 1 & 2:</i> Active recruiting and screening continued. ▪ <i>Weeks 3 & 4:</i> Consultant interviews, preliminary reference checks, and submits finalists to LAFCO Executive Officer
<p>MONTH 3</p>	<ul style="list-style-type: none"> ▪ <i>Week 1:</i> Candidate Interviews with LAFCO Executive Officer and/or Panel ▪ <i>Week 2:</i> Candidate Selected and Negotiations ▪ <i>Week 3:</i> Selection Made

Bob Hall & Associates’ Guarantee

The Bob Hall & Associates team guarantees industry-standard services. If within one year following appointment, selected candidate resigns or is terminated for cause, our team will conduct another search free of professional services charges. However, the organization is expected to pay for incurred costs.

EXHIBIT "B"
SCHEDULE OF CHARGES/PAYMENTS

Professional Fees
 for
 BOB HALL & ASSOCIATES

The following fee schedule shall apply to work performed under this Agreement:

<u>Professional Fees for Recruitment Process</u>	
Upon execution of the Agreement	\$5,000
Following Presentation of Candidates	\$5,000
Upon Acceptance of Offer of Employment by Candidate	\$5,500
<u>Additional Costs (advertising, printing, postage and delivery, and background verification)</u>	\$2,500
TOTAL NOT TO EXCEED:	\$18,000

In accordance with Section 3(b) of this agreement, the contract amount shall not exceed \$18,000. Consultant shall submit statements for services incurred to LAFCO pursuant to paragraph 3(b) for the life of the Project or termination of the Agreement pursuant to paragraph 15(a) of the Agreement. Statements for services shall itemize charges and additional costs as they relate to the completion of tasks defined in Exhibit A. Additional costs are limited to those indicated within this schedule of charges/payments. Statements for services shall reflect the time incurred in performing the services under this Agreement, in accordance with the fee schedule set forth in this Exhibit B, and subject provisions of Section 2 of this agreement.

EXHIBIT "C"
INSURANCE REQUIREMENTS

1. Commercial General Liability

- a. The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Commercial General Liability insurance shall be at least as broad as the following: ISO Commercial General Liability coverage (Occurrence Form CG 0001)
- c. Commercial General Liability Insurance must include coverage for the following:
 - i. Bodily Injury and Property Damage
 - ii. Personal Injury/Advertising Injury
 - iii. Premises/Operations Liability
- d. All such policies shall give LAFCO, its Board, members of the Board, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent.
- e. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by LAFCO.

2. Automobile Liability

- a. At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Automobile Liability Insurance shall be at least as broad as: ISO Form Number CA 0001 covering automobile liability (Coverage Symbol 1, any auto).
- c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by LAFCO.

3. Workers' Compensation/Employer's Liability

- a. Consultant currently has no employees. In the event Consultant hires employees during the term of this Agreement:
 - i. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in

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accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

- ii. Consultant further certifies and acknowledges that he/she has no employees and that he/she will not employ any person(s) in the work to be performed for LAFCO under this Agreement. With no employees, Consultant further acknowledges that he/she is not subject to the Workers' Compensation Act of the State of California. By execution of this Agreement, Consultant hereby agrees to notify LAFCO in writing, prior to hiring any person(s), full time or part time, to assist in this Agreement and to secure workers' compensation insurance prior to any person beginning work or assisting in the performance of work under this Agreement.
- iii. Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this Agreement, workers' compensation of the same type and limits as specified in this section.
- iv. Such insurance shall include an insurer's Waiver of Subrogation in favor of LAFCO and will be in a form and with insurance companies acceptable to LAFCO.

4. Minimum Policy Limits Required

- a. The following insurance limits are required for the Agreement:

	Combined Single Limit
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability/ Workers' Compensation	\$1,000,000 per occurrence/ Statutory

5. Evidence Required

- a. Prior to execution of the Agreement, the Consultant shall file with LAFCO evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD

Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

6. Required Policy Provisions

- a. Certificates of insurance and policy endorsements shall require 30 days (10 days for non-payment of premium) notice of cancellation to LAFCO. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates. If any of the required coverage expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to LAFCO at least ten (10) days prior to the expiration date.
- b. The Commercial General Liability policy shall contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by LAFCO or any named insureds shall not be called upon to contribute to any loss.
- c. The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three (3) years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

7. Qualifying Insurers

- a. All policies required shall be issued by acceptable insurance companies, as determined by LAFCO, which satisfy the following minimum requirements:
- b. Insurance carriers shall have a current AM Best rating of not less than “A-” policyholder's rating and a financial rating of not less than “Class VII,” unless otherwise approved in advance by LAFCO.

8. Additional Insurance Provisions

- a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by LAFCO, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

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- b. If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents LAFCO may terminate the Agreement.
- c. The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.
- d. LAFCO may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- e. Neither LAFCO, its Board, members of the Board, employees, or authorized volunteers shall be personally responsible for any liability arising under or by virtue of the Agreement.