

April 13, 2022

**8a** | Commission  
Discussion

### REGULAR MEMBERS

CHAIR  
**Douglass Davert**  
Special District Member

VICE CHAIR  
**Donald P. Wagner**  
County Member

IMMEDIATE PAST CHAIR  
**Derek J. McGregor**  
Public Member

**Lisa Bartlett**  
County Member

**Wendy Bucknum**  
City Member

**James Fisler**  
Special District Member

**Mike Posey**  
City Member

### ALTERNATES

**Andrew Do**  
County Member

**Kathryn Freshley**  
Special District Member

**Peggy Huang**  
City Member

**Lou Penrose**  
Public Member

### STAFF

**Carolyn Emery**  
Executive Officer

**Scott Smith**  
General Counsel

**TO:** Local Agency Formation Commission  
of Orange County

**FROM:** Executive Officer  
Policy Analyst

**SUBJECT:** Professional Services Agreement with Berkson Associates

### BACKGROUND

In 2011, OC LAFCO launched the Fiscal Indicators web-based program. The program was developed through a stakeholder effort with cities and special districts and ultimately resulted in a user-friendly financial “dashboard” that provides a general indication of an agency’s overall fiscal health. Additionally, a key use of the fiscal indicators is to assist the Commission in addressing the financial ability of cities and special districts to continue providing efficient services to Orange County residents, a key determination of municipal service reviews (MSRs).

With the fourth cycle of MSRs underway, staff recognized the fiscal indicators as a key tool for preparing the reviews, and has worked with consultant, Berkson Associates to enhance the effectiveness of the indicators. Improvement to the fiscal indicators includes quantitative and benchmark metrics that will be developed through data from agencies’ budgets and other financial documents. Additionally, the enhancements support more efficiency in the ongoing maintenance of this data for current and future MSRs that are less cumbersome for staff.

With the Fiscal Indicators Program now improved and ready for use, this report includes a recommendation to approve a professional services agreement with Berkson Associates to develop the fiscal indicators for the Southwest and West MSR regions. The two MSRs are identified in the FY 2021-22 Work Plan, and the scope of service within the Agreement includes the preparation of fiscal indicators for 13 cities and 11 special districts. Richard Berkson, Principal of Berkson Associates, has over 30 years of experience providing clear and concise fiscal and financial analysis of local government organizations. In addition to working with local agencies throughout the state, Mr. Berkson’s experience includes the evaluation and preparation of fiscal studies for several LAFCOs involving MSRs and other complex changes of organization and reorganizations (i.e., incorporations, consolidations and dissolutions). His most recent

experience with OC LAFCO includes the preparation of the fiscal analysis for San Juan Capistrano's Water and Wastewater Utilities and refining the fiscal indicators program. Both Richard's professional expertise and prior experience with OC LAFCO will be beneficial in the preparation of the fiscal indicators for the Southwest and West MSRs.

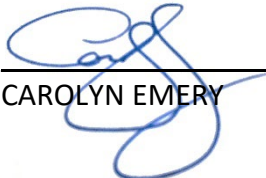
The Agreement, which includes the scope of services and costs, is referenced as Attachment 1 to this staff report and includes a total-not-to-exceed of \$15,000. If approved by the Commission and as indicated in the scope of services, Mr. Berkson would work collaboratively with the consultant selected to prepare the Southwest and West MSRs. That agreement will be presented to the Commission at the May meeting for consideration.

**RECOMMENDED ACTION**

Staff recommends the Commission:

1. Approve the professional services agreement between OC LAFCO and Berkson Associates.
2. Authorize the Executive Officer to execute the agreement.

Respectfully submitted,

  
\_\_\_\_\_  
CAROLYN EMERY

  
\_\_\_\_\_  
GAVIN CENTENO

Attachment:

1. Professional Services Agreement between OC LAFCO and Berkson Associates

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

This Agreement is made effective, \_\_\_\_\_, 2022, 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 Berkson 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 to assist in updating the fiscal indicators web-based program for agencies located within the Southwest and West MSR regions (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 August 31, 2022, unless terminated in accordance with the procedures outlined in Section 15 of this Agreement. 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. The compensation for services rendered by Consultant pursuant to Exhibit “A” shall not exceed \$15,000.

c. Consultant shall invoice monthly for completed tasks and actual costs, as shown in Exhibit B.

d. 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.

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

b. Consultant shall assist LAFCO in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

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 the alleged negligent acts, errors or omissions caused by the negligence, 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 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 arising out of, pertaining to, or incident to the alleged negligent acts, errors or omissions caused by the negligence, 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 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. Consultant shall have no duty or obligation to defend, indemnify, and/or pay settlement expenses of LAFCO, its Board, its Board members, employees, or authorized volunteers due to the negligence, errors or omissions caused by the sole negligence, and/or willful misconduct of LAFCO, its Board, its Board members, 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 Richard Berkson as the Principal Consultant. The Principal Consultant 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:  
Carolyn Emery, Executive Officer  
OC LAFCO  
2677 N. Main Street, Suite 1050  
Santa Ana, CA 92705

Consultant:  
Richard Berkson, Principal  
Berkson Associates  
34 Terrace Avenue  
San Anselmo, CA 94996

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.

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

**ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION**

**BERKSON ASSOCIATES**

By: \_\_\_\_\_  
Carolyn Emery, Executive Officer

By: \_\_\_\_\_  
Richard Berkson, Principal

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Scott C. Smith, General Counsel  
Orange County Local Agency Formation Commission

Attest:

\_\_\_\_\_  
Cheryl Carter-Benjamin Commission  
Clerk



**EXHIBIT “A”****SCOPE AND SCHEDULE OF SERVICES****Task 1: Compile past revenues, expenditures, and balance (reserve) data for each agency from financial reports.**

Compile financial documents for each of the 24 agencies being reviewed for the Southwest and West MSR regions. The documents shall include financial audits from FY 2017-18 through FY 2020-21 and adopted budgets for the same period plus FY2021-22 and FY2022-23. Consultant will coordinate the request for financial documents with the MSR consultant, as part of the MSR preparation/survey process.

**Deliverable:** Data summary in spreadsheet tables for revenue, expenditure, and balance (reserve) information.

**Schedule:** June 1 – June 31

**Task 2: Prepare Fiscal Indicators for each Agency (24 agencies)**

Provide key indicators of financial capacity for each item (total revenue, expenditure, and balances over time). These items are primary indicators of the financial conditions of an agency that can point towards and be supplemented by more in-depth analysis by LAFCO.

**Deliverable:** Brief paragraph synopsis to highlight key findings of indicators that include:

- Revenue changes annually and over time, compared to expenditures
- Expenditure changes annually and over time, compared to long-term inflation
- Reserves vs. expenditures

**Schedule:** June 15 – July 15

**Task 3: Provide spreadsheets with the data and indicators**

Develop spreadsheets that include the data compiled and indicators for ongoing use and update by LAFCO for the purpose of identifying and reporting fiscal trends and indicators.

**Deliverable:** Spreadsheets with data and indicators for LAFCO use only.

**Schedule:** July 31

**EXHIBIT “B”**  
**SCHEDULE OF CHARGES/PAYMENTS**

Fee Schedule for  
 Berkson Associates

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

<b>Name, Title</b>	<b>Hourly Rate</b>
<b>Richard Berkson, Consultant</b>	<b>\$250.00</b>
<b>Data Entry Staff</b>	<b>\$50.00</b>
<b>Task 1: Compile past Financial data</b>	<b>\$8,000</b>
<b>Task 2: Prepare Fiscal Indicators (24 agencies)</b>	<b>\$4,000</b>
<b>Task 3: Provide spreadsheets with data and indicators</b>	<b><u>\$3,000</u></b>
<b>Total not to Exceed</b>	<b>\$15,000</b>

\*Charges assume that all meetings are held by conference calls or video conferencing.

Consultant shall bill LAFCO for the actual hours incurred in performing the services required under this Agreement in accordance with the fee schedule set forth in this Exhibit B and subject to the provisions of Section 3 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 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 accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

- b. 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.
- c. 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.
- 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.