

**LOCAL AGENCY FORMATION COMMISSION OF  
ORANGE COUNTY**

**REGULAR MEETING AGENDA**

**Wednesday, May 8, 2024  
8:15 a.m.**

**County Administrative North (CAN)  
First Floor Multipurpose Room 101  
400 W. Civic Center Drive, Santa Ana, CA 92701**

*Any member of the public may request to speak on any agenda item at the time the Commission is considering the item.*

**1. CALL THE MEETING TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**4. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION  
(Communications received after agenda distribution for agendized items.)**

**5. PUBLIC COMMENT**

This is an opportunity for members of the public to address the Commission on items not on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken by the Commission on off-agenda items unless authorized by law.

**6. CONSENT CALENDAR**

**a.) April 10, 2024 – Regular Commission Meeting Minutes**

The Commission will consider approval of the April 10, 2024 meeting minutes.

**b.) Amendments to the Local Guidelines for Implementing the California Environmental Quality Act (CEQA)**

The Commission will consider amendments to the local guidelines for implementing CEQA.

**7. PUBLIC HEARING**

**a.) Final OC LAFCO Fiscal Year 2024-25 Budget**

The Commission will consider adoption of the final budget for Fiscal Year 2024-25.

**8. COMMISSION DISCUSSION AND ACTION**

**a.) Second Amendment to Professional Consultant Services Agreement with Eide Bailly**

The Commission will consider approval of an amendment to the professional services agreement with Eide Bailly for accountant consulting services.

**9. COMMISSIONER COMMENTS**

This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No discussion or action may occur or be taken except to place the item on a future agenda if approved by the Commission majority.

**10. EXECUTIVE OFFICER'S REPORT**

Executive Officer's announcement of upcoming events and brief report on activities of the Executive Officer since the last meeting.

**11. INFORMATIONAL ITEMS & ANNOUNCEMENTS**

No informational items and announcements.

**12. CLOSED SESSION**

No closed session items scheduled.

**13. ADJOURNMENT OF REGULAR COMMISSION MEETING**

The next Regular Commission Meeting will be held on Wednesday, June 12, 2024 at 8:15 a.m. at the County Administrative North (CAN), First Floor Multipurpose Room 101, 400 W. Civic Center Drive, Santa Ana, CA 92701.

#### **PUBLIC PARTICIPATION:**

The Local Agency Formation Commission of Orange County welcomes your participation. The public may share general comments or comments on agenda items through the following options:

- 1) **In-person** comments may be provided during the general comment period on off-agenda items and during the hearing of a specific agenda item. In accordance with the OC LAFCO guidelines, each speaker's comments may not exceed three (3) minutes for the respective item. If you have documents for the Commission, please bring 15 copies and submit to the Commission Clerk for distribution.
- 2) **Written** general comments or comments on specific agenda items may be submitted by email to the Commission Clerk at [ccarter-benjamin@oclafco.org](mailto:ccarter-benjamin@oclafco.org). Comments received no less than twenty-four (24) hours prior to the regular meeting will be distributed to the Commission and included in the record.

Pursuant to Government Code Section 54957.5, public records that relate to open session agenda items that are distributed to a majority of the Commission less than seventy-two (72) hours prior to the meeting will be made available to the public on the OC LAFCO website at <https://oclafco.org/meetings/>.

State law requires that a participant in an OC LAFCO proceeding who has a financial interest in a decision and who has made a campaign contribution of more than \$250 to any commissioner in the past year must disclose the contribution. If you are affected, please notify the Commission's staff before the hearing.

#### **AMERICANS WITH DISABILITIES ACT (ADA)**

All regular meeting agendas and associated reports are available at <https://oclafco.org/meetings/>. Any person with a disability under the Americans with Disabilities Act (ADA) may receive a copy of the agenda or associated reports upon request. Any person with a disability covered under the ADA may also request a disability-related modification or accommodation, including auxiliary aids or services, to participate in a public meeting. Requests for copies of meeting documents and accommodations shall be made with OC LAFCO staff at (714) 640-5100 at least three business days prior to the respective meeting.

# 2024 MEETING AND EVENTS CALENDAR

Approved November 8, 2023

2024



January						
S	M	T	W	T	F	S
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29	30	31				

- OC LAFCO Regular Meeting (*begins at 8:15 a.m.*)  
**Location:** County Administrative North, First Floor Multipurpose Room 101, 400 W. Civic Center Dr., Santa Ana, CA 92701.
- Office closure due to legal holidays and flexible work schedule.
- CALAFCO Annual Conference - October 16 - 18, 2024 at Tenaya Lodge at Yosemite.

## DRAFT MINUTES

### OC LAFCO REGULAR MEETING

Wednesday, April 10, 2024  
8:15 a.m.

County Administrative North (CAN)  
First Floor Multipurpose Room 101  
400 W. Civic Center Drive, Santa Ana, CA 92701

#### 1. CALL TO ORDER

**Chair Wagner** called the meeting of the Local Agency Formation Commission of Orange County (OC LAFCO) to order at 8:15 a.m.

#### 2. PLEDGE OF ALLEGIANCE

**Commissioner Fisler** led the Pledge of Allegiance.

#### 3. ROLL CALL

The following Commissioners were present:

City Members

Wendy Bucknum (**Vice Chair**)  
Bruce Whitaker  
Carol Moore (**Alt.**)

County Member

Donald P. Wagner (**Chair**)

Special District Members

Douglass Davert  
James Fisler  
Kathryn Freshley (**Alt.**)

Public Members

Derek J. McGregor

The following staff members and general counsel were present:

- Executive Officer Carolyn Emery
- Assistant Executive Officer Luis Tapia
- Policy Analyst II Gavin Centeno
- General Counsel Scott Smith

**4. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION  
(Received After Agenda Distribution)**

The Executive Officer noted that no supplemental communication was received.

**5. PUBLIC COMMENT**

**Chair Wagner** requested public comments on any non-agenda items. The Executive Officer noted that there were no requests to speak from the public.

**Chair Wagner** closed the hearing of public comments.

**6. CONSENT CALENDAR**

**Chair Wagner** called for a motion on the consent calendar. **Commissioner Fisler** requested agenda item 6c be pulled. **Chair Wagner** called for a motion on the approval of the balance of the consent calendar, and there were no requests from the public to speak on the item. **Commissioner Whitaker** motioned for approval of the balance of the consent calendar, and **Commissioner Bucknum** seconded the motion.

**6a. – March 13, 2024 - Regular Commission Meeting Minutes**

**6b. – Fiscal Year 2023-24 Quarterly Financial Report (Third Quarter)**

**MOTION:** Approve Consent Calendar Items 6a and 6b. (Bruce Whitaker)  
**SECOND:** Wendy Bucknum  
**FOR:** Bruce Whitaker, Wendy Bucknum, Douglass Davert, James Fisler,  
Derek J. McGregor, Donald P. Wagner  
**AGAINST:** None  
**ABSTAIN:** None

**MOTION PASSED: 6-0.**

**Chair Wagner** noted the item pulled by **Commissioner Fisler** and opened it for discussion by the Commission. **Commissioner Fisler** provided general comments on the status of H.R. 7525, noted the efforts of Mesa Water District and CSDA in supporting the legislation and motioned for the Commission to support H.R. 7525. **Commissioner Davert** seconded the motion. Commissioners engaged in discussion and made general comments. Executive Officer clarified that motion included direction to staff to prepare a letter of support for the legislation. **Chair Wagner** responded affirmatively.

**6c. – Legislative Report (April 2024)**

**MOTION:** Adopt “*Support*” position for H.R. 7525 – Special District Grant Accessibility Act and direct staff to prepare and send a position letter accordingly. (James Fisler)  
**SECOND:** Douglass Davert  
**FOR:** James Fisler, Douglass Davert, Wendy Bucknum, Derek J. McGregor, Bruce Whitaker, Donald P. Wagner  
**AGAINST:** None  
**ABSTAIN:** None

**MOTION PASSED: 6-0.**

**7. PUBLIC HEARING**

**Chair Wagner** noted that there were no public hearing items scheduled for consideration by the Commission.

**8. COMMISSION DISCUSSION AND ACTION**

**8a. – Transfer to OC LAFCO Public Trust**

Assistant Executive Officer Luis Tapia presented the staff report and recommended action for Commission consideration.

**Chair Wagner** called for Commission discussion and public comments. Commissioners asked questions involving the transfer amount relative to year-end projections and progress towards the agency’s unfunded liability. Staff responded that while the transfer amount of \$15K is conservative, it aligns with recent improvement in market volatility and the Commission’s three-year financial projections. Commissioners made additional comments, and there were no requests from the public to speak on the item.

**Commissioner Davert** motioned to approve the staff recommended action, and **Commissioner McGregor** seconded the motion.

**MOTION:** Approve transfer of \$15K to the OC LAFCO Trust administered by PARS. (Douglass Davert)  
**SECOND:** Derek J. McGregor  
**FOR:** Douglass Davert, Derek J. McGregor, Wendy Bucknum, James Fisler, Bruce Whitaker, Donald P. Wagner  
**AGAINST:** None  
**ABSTAIN:** None

**MOTION PASSED: 6-0.**

**8b. – Commissioner Handbook**

Consultant Bill Kelly stated that the draft handbook was presented at the February meeting, and at that time, Commissioners were asked to review the prepared draft in more detail for discussion at a future meeting. He noted that since that time, additional changes to the draft document had been made by himself, staff and general counsel, and the goal of the handbook is to support the Commission in conducting agency affairs at a high level through best practices.

**Chair Wagner** opened for Commission discussion. Commissioners asked questions and noted concerns regarding enforcement of items within the handbook, balance of responsibility for staff and the Commission, unintended consequences, and that other LAFCOs had not adopted a handbook. Commissioners expressed having guidelines in place to clarify OC LAFCO’s role and authority would be helpful and that more wordsmithing and time to review the draft is needed.

**Commissioner Fisler** motioned to table the item and start over with preparation of a new document for onboarding of new Commissioners. **Commissioner Davert** seconded the motion and added the draft, although well-intentioned, was not a good fit for the Commission. **Chair Wagner** opened for further discussion on tabling of the item, noting that it may not be the consensus of the majority, and asked for the consultant’s thoughts on how to move forward with a document that addresses the concerns stated. Mr. Kelly responded that the document is intended to be helpful to the Commission and staff and serves to communicate to agencies and the public how the Commission functions. He suggested that Commissioners note the specific sections of concern and send them to the Executive Officer for consultant and staff to attempt revisions to the document.

**Commissioner Bucknum** made a substitute motion to continue the item for a maximum of 90 days to allow Commissioners to provide input to staff on important sections to keep and others to remove. **Commissioner McGregor** seconded the motion. **Chair Wagner** clarified that the draft would be brought back to the Commission within 90 days. **Commissioner Bucknum** responded affirmatively.

- MOTION:** Continue consideration of the draft Commissioner Handbook for 90 days to allow Commissioners to provide input to staff. (Wendy Bucknum)
- SECOND:** Derek J. McGregor
- FOR:** Wendy Bucknum, Derek J. McGregor, Douglass Davert, James Fisler, Bruce Whitaker, Donald P. Wagner
- AGAINST:** None
- ABSTAIN:** None

**MOTION PASSED: 6-0.**



**9. COMMISSIONER COMMENTS**

There were no general comments from Commissioners.

**10. EXECUTIVE OFFICER’S REPORT**

The Executive Officer noted that there were no additional items to report.

**11. INFORMATIONAL ITEMS & ANNOUNCEMENTS**

**Chair Wagner** noted that there were no informational items or announcements.

**12. CLOSED SESSION**

**Chair Wagner** and general counsel noted that there was no closed session item scheduled for discussion by the Commission.

**13. ADJOURNMENT OF THE REGULAR COMMISSION MEETING**

**Chair Wagner** adjourned the Regular Commission Meeting at 9:24 a.m. to May 8, 2024.

Donald P. Wagner, Chair  
Orange County Local Agency Formation Commission

ATTEST:

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

**REGULAR MEMBERS**

CHAIR  
**Donald P. Wagner**  
County Member

VICE CHAIR  
**Wendy Bucknum**  
City Member

IMMEDIATE PAST CHAIR  
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**VACANT**  
County Member

**STAFF**

**Carolyn Emery**  
Executive Officer

**Scott Smith**  
General Counsel

**MEETING DATE:** May 8, 2024

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

**FROM:** Executive Officer  
Policy Analyst II

**SUBJECT:** Amendments to the Local Guidelines for  
Implementing the California Environmental Quality  
Act (CEQA)

**BACKGROUND**

Pursuant to Section 21082 of the California Public Resources Code (Environmental Quality), the Commission adopted Local Guidelines for Implementing the California Environmental Quality Act (“Guidelines”). The Guidelines were developed by Best Best & Krieger LLP to guide OC LAFCO on actions involving CEQA for projects or applications within the Commission’s purview. For most projects considered by the Commission, OC LAFCO is the responsible agency under CEQA. However, OC LAFCO may also serve as the lead agency for Commission-initiated projects or applications filed by landowners.

The Guidelines are reviewed annually and updated, as necessary, by Best Best & Krieger to align with changes in State law. Staff is recommending the Commission adopt the amended local guidelines to incorporate the recent changes discussed in the next section of this report.

**2024 LOCAL CEQA GUIDELINES**

The attached memorandum provides a detailed summary of the revisions and additions to the current Guidelines. The key revisions for potential OC LAFCO actions are summarized as follows:

- **Notices of Determination and Notices of Exemption (Sections 3.04, 6.20, & 7.39)**

Current State law requires that local agencies file a Notice of Determination (NOD) or a Notice of Exemption (NOE) with the County Clerk. These sections have been amended to require local agencies to file an NOD or NOE with both the County Clerk and State Clearinghouse of the Office of Planning and Research. OC LAFCO staff has incorporated this change into the agency’s internal procedures for future projects involving Commission-adopted NODs and NOEs.

- **Administrative Records (10.03)**

This section previously allowed a petitioner to request a public agency to prepare administrative records during litigation. The section has been amended to allow a public agency to deny the petitioner's request within five days of receiving the request. Additionally, the amendment further clarifies that an administrative record does not need to include communications that are logistical in nature, such as scheduling or meeting invitations.

- **Department of Fish and Wildlife Fees:**

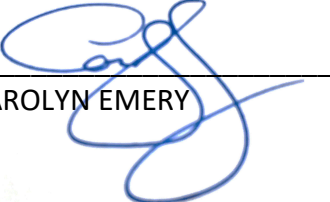
The Department of Fish and Wildlife has increased the fees for filing environmental documents effective January 1, 2024. The current fees are reflected in the OC LAFCO Fee Schedule.

### RECOMMENDED ACTION

Staff recommends the Commission:

1. Adopt OC LAFCO Resolution No. CP 24-04 amending and approving the "Local Guidelines for Implementing the California Environmental Quality Act." (*Attachment 2*)

Respectfully submitted,

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

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

Attachments:

1. 2024 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
2. Form of OC LAFCO Resolution No. CP 24-04

## Memorandum

**TO:** Orange County Local Agency Formation Commission  
**FROM:** Best Best & Krieger LLP  
**DATE:** March 22, 2024  
**RE:** Summary of Changes to Local CEQA Guidelines

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In 2023, the California Legislature revised the California Environmental Quality Act (“CEQA”) to exempt certain affordable housing projects, expand the circumstances in which Notices of Determination and Notices of Exemption must be filed with the State Clearinghouse, and provide public agencies with increased control over the preparation of the administrative record in litigation. We have revised the Commission’s Local Guidelines for Implementing CEQA (“Local Guidelines”) to account for these CEQA developments. This memorandum summarizes the substantive amendments to the Commission’s Local Guidelines.

The Local Guidelines and this memorandum are designed to help the Commission comply with CEQA when considering a project subject to CEQA. We still recommend, however, that you consult with an attorney when you have specific questions on major, controversial, or unusual projects or activities.

The Local Guidelines, the related CEQA forms, and other important legal alerts may be accessed via the Best Best & Krieger CEQA client portal. For technical support, please contact Tammy Ingram at [tammy.ingram@bbklaw.com](mailto:tammy.ingram@bbklaw.com).

### **REVISIONS TO LOCAL GUIDELINES**

#### **1. SECTIONS 3.04, 6.20, & 7.39 – NOTICES OF DETERMINATION & NOTICES OF EXEMPTION**

Public Resources Code section 21152 has been amended to require a local agency to file a Notice of Determination (“NOD”) with both the County Clerk and the State Clearinghouse in the Office of Planning and Research (“OPR”) within five working days of the agency approving a project subject to CEQA. The Legislature further amended Section 21152 to provide that when a local agency files a Notice of Exemption (“NOE”), the agency should file the NOE with both the County Clerk and the State Clearinghouse.

We have revised Sections 3.04, 6.20, and 7.39 of the Local Guidelines to account for the expanded circumstances in which an agency must file an NOD or NOE with the State Clearinghouse.

#### **2. SECTION 9.10 – EXEMPTION FOR A RESPONSIBLE AGENCY’S PROVISION OF FINANCIAL ASSISTANCE FOR THE DEVELOPMENT OF AFFORDABLE HOUSING**

Public Resources Code section 21080.10(b) has been amended to exempt action taken by a local agency not acting as the lead agency to provide financial assistance or insurance for the

development and construction of residential housing for persons and families of low- or moderate-income, if the project at issue will be reviewed pursuant to CEQA by another public agency.

We have added Section 9.10 to the Local Guidelines to account for this exemption.

### **3. SECTION 9.11 – EXEMPTION FOR SPECIFIED AFFORDABLE HOUSING PROJECTS**

The Legislature has added Section 21080.40 to the Public Resources Code, which includes a new statutory exemption under CEQA for affordable housing projects that meet the section’s specified requirements. The section exempts from CEQA certain actions taken by lead agencies relating to 100 percent affordable housing projects (as defined), including (i) the issuance of an entitlement by a public agency for an affordable housing project, (ii) an action to lease, convey, or encumber land owned by a public agency for an affordable housing project, (iii) an action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project; (iv) rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project, or (iv) an action to provide financial assistance in furtherance of implementing an affordable housing project.

We have added Section 9.11 to the Local Guidelines to account for this exemption.

### **4. SECTION 9.12 – EXEMPTION FOR HOUSING DEVELOPMENTS ON LAND OWNED BY INSTITUTIONS OF HIGHER EDUCATION AND RELIGIOUS INSTITUTIONS**

The Legislature has added Section 65913.16 to the Government Code, which provides for the ministerial approval of a “housing development project” (meeting specified requirements) located on land owned on or before January 1, 2024 by an independent institution of higher education or a religious institution.

We have added Section 9.12 to the Local Guidelines to account for this exemption.

### **5. SECTION 10.03 – ADMINISTRATIVE RECORDS**

Public Resources Code section 21167.6 has been amended to provide public agencies with increased control over preparation of the administrative record during litigation. In particular, a public agency may now deny a petitioner’s request to prepare the administrative record, provided that it issues the denial within five business days of receiving the petitioner’s request to prepare the administrative record.

Public Resources Code section 21167.6 has further been amended to clarify that an administrative record need not include (1) communications and emails of a logistical nature, such as meeting invitations or scheduling communications; or (2) documents subject to a privilege or exemption set forth in the California Public Records Act.

We have revised Section 10.03 of the Local Guidelines to be consistent with Public Resources Code section 21167.6, as amended.

### **Other Changes**

Effective January 1, 2024, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,916.75; for an EIR, the new filing fee is \$4,051.25; and for an environmental document prepared pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,377.25.

### **Conclusion**

As always, CEQA remains complicated and, at times, challenging to apply. The only constant in this area of law is how quickly the rules change. Should you have questions about any of the provisions discussed above, please contact a BB&K attorney for assistance.

**BEST BEST & KRIEGER LLP**

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF  
ORANGE COUNTY AMENDING AND ADOPTING LOCAL GUIDELINES FOR  
IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT  
(PUB. RESOURCES CODE §§ 21000 ET SEQ.)**

**(CP 24-04)**

**May 8, 2024**

On motion of Commissioner \_\_\_\_\_, duly seconded and carried, the following resolution was adopted.

**WHEREAS**, the California Legislature has amended the California Environmental Quality Act (“CEQA”) (Pub. Resources Code §§ 21000 et seq.), the Natural Resources Agency has amended portions of the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.), and the California courts have interpreted specific provisions of CEQA and the State CEQA Guidelines; and

**WHEREAS**, Public Resources Code section 21082 requires all public agencies to adopt objectives, criteria, and procedures for (1) the evaluation of public and private projects undertaken or approved by such public agencies, and (2) the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

**WHEREAS**, the Local Agency Formation Commission of Orange County (“OC LAFCO”) must revise its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA and the State CEQA Guidelines.

**NOW, THEREFORE**, the OC LAFCO hereby resolves as follows:

**SECTION 1.** The OC LAFCO hereby adopts the “2024 Local Guidelines for Implementing the California Environmental Quality Act,” a copy of which is on file at the offices of the OC LAFCO and is available for inspection by the public.

**SECTION 2.** All prior actions of the OC LAFCO enacting earlier guidelines are hereby repealed.

AYES:

NOES:

STATE OF CALIFORNIA)

) SS.

COUNTY OF ORANGE )

I, Donald P. Wagner, Chair of the Local Agency Formation Commission of Orange County, California, hereby certify that the above and foregoing resolution was duly and regularly adopted by said Commission at a regular meeting thereof, held on the 8<sup>th</sup> day of May 2024.

IN WITNESS WHEREOF, I have hereunto set my hand this 8<sup>th</sup> day of May 2024.

DONALD P. WAGNER  
Chair of the Local Agency Formation Commission of  
Orange County

By: \_\_\_\_\_  
DONALD P. WAGNER

ATTEST:

\_\_\_\_\_  
Carolyn Emery, Executive Officer  
Orange County Local Agency Formation Commission



**REGULAR MEMBERS**

CHAIR  
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County Member

VICE CHAIR  
**Wendy Bucknum**  
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IMMEDIATE PAST CHAIR  
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**STAFF**

**Carolyn Emery**  
Executive Officer

**Scott Smith**  
General Counsel

**MEETING DATE:** May 8, 2024

**7a** | Public  
Hearing

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

**FROM:** Executive Officer  
Assistant Executive Officer

**SUBJECT:** Final OC LAFCO Fiscal Year 2024-25 Budget

**BACKGROUND**

On March 13, 2024, the Commission adopted the proposed FY 2024-25 budget. Subsequently, the documents were distributed to each of the agencies for review and comment. State law requires that the Commission also adopt a final budget at a public hearing.

The final OC LAFCO budget for FY 2024-25 (Attachment 1) totals \$1,860,050. The final budget revenues include a total apportionment of \$1,581,320, which is equally divided amongst the County, cities, and special districts. The proposed apportionment for the County is \$527,107. The FY 2024-25 apportionments of each city and special district are reflected in Attachments 1a and 1b. Upon approval of the final budget by the Commission, the County Auditor-Controller will request remittance of the respective payment from each of the funding agencies.

**AGENCY COMMENTS**

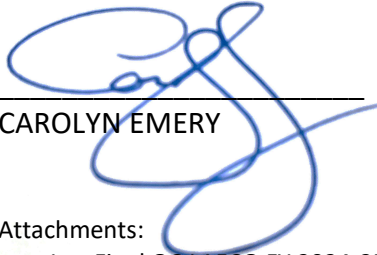
On March 13, 2024, the proposed FY 2024-25 OC LAFCO Budget was distributed to the Board of Supervisors, County Executive Office, and each city and independent special district for review and comment. Additionally, in accordance with State law, a notice of public hearing of the final budget was published in the Orange County Register on April 16, 2024. At the time of the agenda posting on May 1, 2024, OC LAFCO had not received any written comments.

**RECOMMENDED ACTIONS**

Staff recommends the Commission:


1. Adopt the Final Fiscal Year 2024-25 Budget.
2. Direct the Executive Officer to transmit the final budget to the Board of Supervisors, cities, independent special districts, and the County Auditor-Controller.

Respectfully Submitted,



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CAROLYN EMERY



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LUIS TAPIA

Attachments:

1. Final OC LAFCO FY 2024-25 Budget
  - a. OC LAFCO City Apportionments for FY 2024-25 (prepared by the Auditor-Controller)
  - b. OC LAFCO Special District Apportionments for FY 2024-25 (prepared by the Auditor-Controller)



**Orange County Local Agency Formation Commission**  
**Final Budget**  
 Fiscal Year 2024/25

	FY 23/24 Adopted Budget	FY 24/25 Final Budget	\$ Budget Variance	% Budget Variance
<b>Apportionment Increase Factor (%)</b>				
	<b>15.0%</b>	<b>12.0%</b>		
<b>1 Revenue &amp; Cash Reserves Use / (Addition)</b>				
2 Cash Reserves Use / (Addition)	\$ 318,390	\$ 240,340	\$ (78,050)	-24.5%
3 4000 LAFCO Apportionment	1,411,890	1,581,320	169,430	12.0%
4 4200 Interest	14,200	38,390	24,190	170.4%
<b>5 Total Revenue &amp; Cash Reserves Use / (Addition)</b>	<b>1,744,480</b>	<b>1,860,050</b>	<b>115,570</b>	<b>6.6%</b>
<b>6 Expense</b>				
<b>7 Salaries &amp; Benefits</b>				
8 5000 Salaries	621,200	657,300	36,100	5.8%
9 5010 Hourly Employees	20,800	20,800	-	0.0%
10 5106 Retirement	247,700	265,900	18,200	7.3%
11 5109 Retiree Health Benefits	22,000	22,000	-	0.0%
12 5108 Health Insurance	68,500	88,900	20,400	29.8%
13 5110 Dental Insurance	6,900	11,600	4,700	68.1%
14 5112 Life Insurance	420	420	-	0.0%
15 5118 Unemployment Insurance	620	200	(420)	-67.7%
16 5119 Health Reimbursement Arrangement	-	7,800	7,800	0.0%
17 5102 Optional Benefit Plan	18,500	18,500	-	0.0%
18 5104 Deferred Compensation	17,900	19,000	1,100	6.1%
19 5116 Medicare	9,400	10,200	800	8.5%
20 5114 Worker's Compensation	2,550	-	(2,550)	0.0%
21 5120 Salary Continuance	1,560	1,650	90	5.8%
22 5122 Accidental Death Insurance	120	120	-	0.0%
23 5125 Executive Car Allowance	7,200	7,200	-	0.0%
<b>24 Salaries &amp; Benefits Total</b>	<b>1,045,370</b>	<b>1,131,590</b>	<b>86,220</b>	<b>8.2%</b>
<b>25 Operations, Prof. Services &amp; Other</b>				
<b>26 Office Operations</b>				
27 5150 Information Technology	32,850	21,600	(11,250)	-34.2%
28 5151 Internet & Electronic Services	16,480	20,500	4,020	24.4%
29 5200 County Charges	10,300	12,000	1,700	16.5%
30 5250 Insurance	14,030	15,760	1,730	12.3%
31 5350 Membership/Subscriptions	39,900	40,400	500	1.3%
32 5450 Office Equipment/Supplies	24,100	26,100	2,000	8.3%
<b>33 Professional Services</b>				
34 5510 Legal	60,000	60,000	-	0.0%
35 5520 Audit/Accounting	53,000	57,000	4,000	7.5%
36 5530 Human Resources	20,000	35,000	15,000	75.0%
37 5540 Other Professional	180,000	200,000	20,000	11.1%
<b>38 Other Expense</b>				
39 5535 Mapping	13,900	4,000	(9,900)	-71.2%
40 5550 Investment Admin Fees	850	850	-	0.0%
41 5600 Public Noticing / Communications	14,800	12,000	(2,800)	-18.9%
42 5610 Unincorporated Areas Program	18,000	11,000	(7,000)	-38.9%
43 5650 Rents/Improvements/Maintenance	111,600	115,000	3,400	3.0%
44 5675 Equipment Leases & Maintenance	7,700	8,100	400	5.2%
45 5700 Commissioner/Staff Expenses	7,000	5,000	(2,000)	-28.6%
46 5710 Commission Stipends & Taxes/Fees	16,000	16,450	450	2.8%
47 5750 Professional Development	25,000	20,000	(5,000)	-20.0%
48 5800 Registration/Travel	21,300	35,300	14,000	65.7%
49 5850 Commission Meeting Expenses	12,300	12,400	100	0.8%
<b>50 Operations, Prof. Services &amp; Other Total</b>	<b>699,110</b>	<b>728,460</b>	<b>29,350</b>	<b>4.2%</b>
<b>51 Total Expense</b>	<b>1,744,480</b>	<b>1,860,050</b>	<b>115,570</b>	<b>6.6%</b>
<b>52 Net Budget</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0%</b>



**Orange County Local Agency Formation Commission**  
**Final Budget**  
 Fiscal Year 2024/25

	FY 23/24 Adopted Budget	FY 24/25 Final Budget	\$ Budget Variance	% Budget Variance
<b>Projected Cash Reserves</b>				
<b>Reserved Cash</b>				
Contingency Reserve	100,000	\$ 100,000		
Litigation Reserve	75,000	75,000		
Unfunded Liability Reserve	30,000	30,000		
Operating Reserve (25% Budgeted Expenses)	436,120	465,013		
<b>Total Reserved Cash</b>	<b>641,120</b>	<b>670,013</b>		
<b>Unreserved Cash</b>				
Balance at the Beginning of FY	825,635	514,377		
Addition / (Drawdown) to Unreserved Cash	(318,390)	(240,340)		
<b>Total Unreserved Cash</b>	<b>507,245</b>	<b>274,037</b>		
<b>Total Projected Cash Reserves</b>	<b>\$ 1,148,365</b>	<b>\$ 944,049</b>		

## OC LAFCO FY 2024-25 BUDGET CATEGORIES

**REVENUES**

The following summarizes the revenue categories of the OC LAFCO Budget:

**4000 OC LAFCO Apportionment**

These funds are provided by the County, independent special districts and cities. The County pays 1/3 of the total apportionment cost. The cost allocation formulas for the cities and special districts are in accordance with the alternative formulas adopted by the City Selection Committee and the Independent Special Districts Selection Committee respectively.

**4050 Filing Fees**

These funds are provided by incoming project applications, including but not limited to annexations, reorganizations, incorporations, dissolutions, and consolidations. Filing fees vary with each project received and are not budgeted as revenue due to the uncertainty of when applications will be filed. Filing fees are collected to offset OC LAFCO salaries, benefits and other expenditures associated with applications.

**4150 Miscellaneous Revenue**

These funds are incurred by nonoperational income including but not limited to reimbursements.

**4200 Interest**

These funds are the interest earned from the agency's bank and County payroll accounts and investment portfolio, including the Local Agency Investment Fund (LAIF) and Orange County Fund (OC Fund).

**EXPENDITURES**

The following summarizes the expenditure categories of the OC LAFCO Budget:

**5000-5125 Salaries and Benefits**

These categories include costs incurred for OC LAFCO employee salaries and benefits, including retirement, life, accidental and disability insurance, health and dental insurance, and Medicare. OC LAFCO contracts with the County of Orange for payroll and benefit services.

**5150 Information Technology**

This category includes costs incurred for the technical support for regular maintenance and upgrades to the OC LAFCO computer systems and website. OC LAFCO contracts with independent consultants for IT and website services.

**5151 Internet and Electronic Services**

This category includes costs for the usage, technical support, equipment, leasing and maintenance of business electronic devices and internet services.

## OC LAFCO FY 2024-25 BUDGET CATEGORIES

**5200 County Charges**

This category includes costs incurred for payroll processing, records archiving and storage, and billing, collection and intranet services provided by the County of Orange.

**5250 Insurance**

This category includes costs incurred for insurance coverage. OC LAFCO contracts with the County and a joint powers authority for the following coverages for instances that occur during the general operation of the agency.

- General Liability– Includes coverage for personal injury (including bodily injury and property damage), non-owned auto liability, public officials’ errors and omissions and employment practices liability.
- Crime – Includes coverage for employee or non-employee theft, burglary, forgery or alteration, computer fraud, funds transfer fraud.
- Property - Includes per occurrence, all perils coverage for damage to property including personal property and business interruption coverage.
- Workers’ Compensation – Includes coverage for employees involving work-related injuries.

**5350 Membership/Subscriptions**

This category includes memberships and subscriptions fees to CALAFCO, CSDA, OCBC, CDR and other applicable memberships.

**5450 Office Equipment and Supplies**

This category includes costs incurred for the purchase of office supplies and equipment, computers, and software that support agency operations.

**5500 Professional Services**

This category includes costs incurred for professional services provided to OC LAFCO. The following are subcategories for professional services:

- ✓ **5510 Legal** – OC LAFCO general counsel services.
- ✓ **5520 Auditing/Accounting** – Bookkeeping, accounting and auditing services. OC LAFCO audited financial statements are prepared by an independent auditor.
- ✓ **5530 Human Resources** – Personnel services that may be provided by an independent consultant for assistance with recruitment, employment labor, professional development and other human resource areas.
- ✓ **5535 Mapping** – OC LAFCO’s Geographic Information System (GIS) and other mapping programs.

## OC LAFCO FY 2024-25 BUDGET CATEGORIES

- ✓ **5540 Other Professional Services** – Consulting and professional services for meeting facilitation, peer reviews, and preparation of Municipal Service Reviews, fiscal studies and other studies, reports and projects.

**5550 Investment Admin Fees**

This category includes costs incurred for administrative fees charged by the County of Orange for financial services related to the investment and payroll accounts.

**5600 Public Noticing/Communications**

This category includes costs incurred for required legal notices and other communications for Commission-initiated and other projects (e.g., spheres of influence reviews and updates, municipal service reviews, and annual budget adoption) that are not reimbursable through application fees.

**5610 Unincorporated Areas Program**

This category includes costs incurred for the processing of applications under the Commission's Unincorporated Areas Program.

**5650 Rents/Improvements/Maintenance**

This category includes costs for leasing, improvements, and maintenance of OC LAFCO office space.

**5675 Equipment Leases/Maintenance**

This category includes costs for leasing and maintenance of the OC LAFCO copier and printers.

**5700 Commissioner/Staff Expenses**

This category includes miscellaneous business expenses incurred by Commissioners and staff.

**5710 Commissioner Stipends & Taxes/Fees**

This category includes Commissioner meeting stipends and related employment taxes and fees.

**5750 Professional Development**

This category includes costs related to employee professional development (e.g., college/university degree programs and courses, certificate programs, leadership seminars).

**5800 Transportation/Travel/Registration**

This category includes costs incurred for registration, transportation, and travel expenses for commissioners and staff to attend CALAFCO conference, workshop, and board meetings and other business-related meetings and activities.

**5850 Commission Meeting Expenses**

This category includes costs incurred for communications, room rental, parking and miscellaneous expenses for Commission meetings.

## OC LAFCO FY 2024-25 BUDGET CATEGORIES

**RESERVES****Contingency Reserve**

Restricted funds used to cover any unforeseen future agency loss and/or urgency (i.e., property or equipment damage, loss or theft).

**Reserve for Litigation**

Restricted funds used for costs related to agency litigation not covered by application fees and deposits.

**Unfunded Liability Reserve**

Restricted funds used to offset anticipated agency liabilities (i.e., employee compensated absences).



## OC LAFCO FY 2024-25 City Allocations

City	FY 2024-25 City Allocation
Aliso Viejo	\$ 8,258.01
Anaheim	55,434.05
Brea	9,874.46
Buena Park	13,300.65
Costa Mesa	18,308.17
Cypress	8,047.16
Dana Point	6,079.30
Fountain Valley	9,716.33
Fullerton	24,211.77
Garden Grove	26,021.50
Huntington Beach	32,118.37
Irvine	57,507.33
Laguna Beach	5,622.47
Laguna Hills	5,815.75
Laguna Niguel	12,510.00
Laguna Woods	3,145.07
La Habra	9,769.04
Lake Forest	15,813.20
La Palma	2,389.55
Los Alamitos	2,776.10
Mission Viejo	16,779.57
Newport Beach	18,466.30
Orange	24,897.01
Placentia	8,398.57
Rancho Santa Margarita	9,839.32
San Clemente	13,529.07
San Juan Capistrano	8,925.67
Santa Ana	44,206.68
Seal Beach	6,852.39
Stanton	5,604.90
Tustin	13,037.11
Villa Park	1,370.48
Westminster	13,950.75
Yorba Linda	14,530.57
<b>TOTAL</b>	<b>\$ 527,106.67</b>

## OC LAFCO FY 2024-25 Special District Allocations

District	ISDOC Formula Calculation FY 2024-25
Silverado-Modjeska Rec. & Park	\$ 632.53
Surfside Colony Stormwater	632.53
Surfside Colony CSD	632.53
Rossmoor/Los Alamitos Area Sewer District	3,057.22
Capistrano Bay CSD	3,057.22
Rossmoor CSD	3,057.22
Three Arch Bay CSD	3,057.22
Emerald Bay CSD	3,057.22
Buena Park Library District	3,057.22
Placentia Library District	3,057.22
Orange County Cemetery District	4,585.83
Orange County Vector Control District	6,114.44
<b>Total Non-Enterprise Districts</b>	<b>\$ 33,998.40</b>
Sunset Beach Sanitary District	6,114.44
Serrano Water District	18,290.60
East Orange Co. Water District	24,352.33
Midway City Sanitary District	24,352.33
Trabuco Canyon Water District	24,352.33
Costa Mesa Sanitary District	24,352.33
El Toro Water District	30,466.77
Mesa Water District	30,466.77
Yorba Linda Water District	36,528.49
South Coast Water District	36,528.49
Moulton Niguel Water District	42,642.93
Santa Margarita Water District	42,642.93
Municipal Water District of O.C.	48,651.94
Orange County Water District	48,651.94
Irvine Ranch Water District	54,713.65
<b>Total Enterprise Districts</b>	<b>\$ 493,108.27</b>
<b>Total Special Districts</b>	<b>\$ 527,106.67</b>

Prepared by A-C/GA: Daiana Hwang  
 Completed date: 2/21/2024  
 Printed on: 2/26/2024

**8a** | Commission  
Discussion

**REGULAR MEMBERS**

CHAIR

**Donald P. Wagner**

County Member

VICE CHAIR

**Wendy Bucknum**

City Member

IMMEDIATE PAST CHAIR

**Douglass Davert**

Special District Member

**James Fisler**

Special District Member

**Derek J. McGregor**

Public Member

**Bruce Whitaker**

City Member

**VACANT**

County Member

**ALTERNATES**

**Kathryn Freshley**

Special District Member

**Carol Moore**

City Member

**Lou Penrose**

Public Member

**VACANT**

County Member

**STAFF**

**Carolyn Emery**

Executive Officer

**Scott Smith**

General Counsel

**MEETING DATE:** May 8, 2024

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

**FROM:** Executive Officer  
Assistant Executive Officer

**SUBJECT:** Second Amendment to Professional Services  
Agreement with Eide Bailly LLP

**BACKGROUND**

The Commission initially approved a professional services agreement with Eide Bailly LLP in 2020 to provide independent accountant consulting services. Amendments to the agreement to allow for changes to the firm's scope of services and an increase to the billable rates and total amount of compensation were approved by the Commission on April 13, 2022. Provisions within the current agreement also allow for increases to the billable rates upon annual renewal of the agreement.

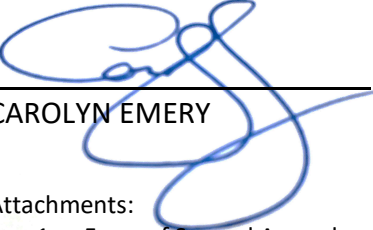
Over the past two fiscal cycles, Eide Bailly's billable rates have experienced annual adjustments ranging from 7.5 to 8.5 percent due to cost-of-living (COLA) and administrative overhead inflation. Most recently, OC LAFCO staff met with the firm's representatives to discuss an amendment to the agreement that would allow for an aggregate adjustment to annual rates in line with COLA and other inflation measures up to five percent (5%). Eide Bailly has accepted this amendment, and amendments to the relative provisions within the firm's agreement with OC LAFCO are shown in Attachment 2. As noted, all other provisions remain unchanged.

If approved by the Commission, respective amendments to the agreement will take effect on July 1, 2024, with a total agreement amount for fiscal year 2024-25 of \$49,216. This amount has been appropriated accordingly in the final 2024-25 budget, and staff is recommending approval of the second amendment to the Eide Bailly professional services agreement.

**RECOMMENDED ACTION**

1. Approve the Second Amendment to Professional Consultant Services Agreement with Eide Bailly LLP and authorize the Executive Officer to execute the amendment.

Respectfully Submitted,



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CAROLYN EMERY



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LUIS TAPIA

Attachments:

1. Form of Second Amendment to Professional Services Agreement between OC LAFCO and Eide Bailly
2. First Amendment to Professional Services Agreement between OC LAFCO and Eide Bailly (approved 4/13/2022)
3. Professional Services Agreement between OC LAFCO and Eide Bailly (Approved 7/7/2020)

**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION**  
**SECOND AMENDMENT TO**  
**PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Second Amendment to Professional Consultant Services Agreement ("Second Amendment") is made and entered into this \_\_\_ day of May, 2024 by and between the ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION, ("**LAFCO**"), a government entity organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cal. Gov. Code §§ 56000 et seq.) and Eide Bailly ("**Consultant**"). LAFCO and Consultant are sometimes individually referred to herein as "**Party**" and collectively as "**Parties**."

**2. RECITALS.**

**2.1 Agreement.** The Parties entered into that certain Agreement for Professional Consultant Services dated July 8, 2020 for the provision of certain professional independent accountant consulting services required by the LAFCO ("Agreement").

**2.2 First Amendment.** The Parties entered into that certain First Amendment to Agreement for Professional Consultant Services dated April 13, 2022 in order to expand the Scope of Services, increase the rates of compensation and increase the total amount of compensation under the Agreement.

**2.3 Second Amendment.** The Parties now desire to amend the Agreement in order to clarify terms related to the rates of compensation and increase the total amount of compensation under the Agreement.

**3. TERMS.**

**3.1 Compensation.** Section 3.3.1 of the Agreement is hereby amended in its entirety to read as follows:

"Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B-1" ("Compensation") attached hereto and incorporated herein by reference. The total compensation shall not exceed forty-nine thousand dollars (\$49,216.00) in total compensation per fiscal year. Extra Work is not authorized unless authorized by a written amendment to this Agreement executed by both Parties."

**3.2 Rates of Compensation.** Exhibit "B" of the Agreement is hereby amended in its entirety and replaced in the form of Exhibit "B-1" to this Second Amendment attached hereto and incorporated herein by reference.

**3.3 Rate Increases.** Section 3.3.4 of the Agreement is hereby amended in its entirety to read as follows:

"LAFCO, at its sole discretion, may authorize increases to the hourly rates of

compensation paid to Consultant under this Agreement pursuant to the terms set forth in Exhibit "B-1" herein."

**3.4 Remaining Provisions of Agreement.** Except as otherwise specifically set forth in this Second Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

**ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION**

**EIDE BAILLY**

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

By: \_\_\_\_\_  
Cindy Byerrum  
Partner

**ATTEST:**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Scott C. Smith  
General Counsel

**EXHIBIT "B-1" TO SECOND AMENDMENT****COMPENSATION**

Consultant shall submit statements for services to LAFCO pursuant to Section 3.3.2 for the life of the Project or termination of this Agreement pursuant to Section 3.5.1 of the Agreement. Statements for services shall itemize charges as they relate to the completion of tasks assigned by LAFCO that fall within the Services defined in Exhibit "A" and listed below. Statements for services shall reflect the hourly rate of the Consultant for the services identified in the table shown below.

**Hourly compensation rates are as follows:**

Partner	\$325
Senior Manager	\$250 - \$275
Manager	\$205 - \$250
Senior Associate	\$165 - \$205
Associate	\$165 - \$205

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, as authorized at LAFCO's sole discretion, except that the aggregate amount of any increase in rates, including but not limited to those related to the cost of living and/or technology security, shall not exceed an amount equal to five percent (5%) of the rates for the year prior.

**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION**

**FIRST AMENDMENT TO  
PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This First Amendment to Professional Consultant Services Agreement is made and entered into this 13th day of April 2022 by and between the ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION, ("**LAFCO**"), a government entity organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cal. Gov. Code §§ 56000 et seq.) and Eide Bailly ("**Consultant**"). LAFCO and Consultant are sometimes individually referred to herein as "**Party**" and collectively as "**Parties**."

**2. RECITALS.**

**2.1 Agreement.** The Parties entered into that certain Agreement for Professional Consultant Services dated July 8, 2020 for the provision of certain professional independent accountant consulting services required by the LAFCO ("Agreement").

**2.2 First Amendment.** The Parties now desire to amend the Agreement in order to expand the Scope of Services, increase the rates of compensation and increase the total amount of compensation under the Agreement.

**3. TERMS.**

**3.1 Scope of Services.** Exhibit "A" of the Agreement is hereby amended in its entirety and replaced in the form of Exhibit "A-1" to this First Amendment attached hereto and incorporated herein by reference.

**3.2 Compensation.** Section 3.3.1 of the Agreement is hereby amended in its entirety to read as follows:

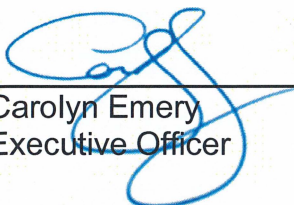
"Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B-1" ("Compensation") attached hereto and incorporated herein by reference. The total compensation shall not exceed forty-two thousand dollars (\$42,000.00) in total compensation per fiscal year. Extra Work is not authorized unless authorized by a written amendment to this Agreement executed by both Parties."

**3.3 Rates of Compensation.** Exhibit "B" of the Agreement is hereby amended in its entirety and replaced in the form of Exhibit "B-1" to this First Amendment attached hereto and incorporated herein by reference.



**3.4 Remaining Provisions of Agreement.** Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.


**ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION**

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

**EIDE BAILLY**

By:   
\_\_\_\_\_  
Cindy Byerum  
Partner

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
Scott C. Smith  
General Counsel

**ATTEST:**

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

**EXHIBIT "A-1"**  
**SCOPE OF SERVICES**

The LAFCO Accountant works under the direct supervision of the Executive Officer to perform all bookkeeping activities in addition to the preparation of quarterly financial reports for the Commission and assistance with annual budget and audit preparation.

The LAFCO Accountant shall provide general duties of the Commission's finance manager including, but not limited to the following activities.

1. Perform all bookkeeping activities including but not limited to:
  - a. Entering bills on a weekly or bi-weekly basis
  - b. Entering deposits as received
  - c. Preparing all journal entries needed, including but not limited to, prepaid expenses, payroll, investment and PARS transactions, and GASB 68/75 entries
  - d. Preparing the annual overhead calculation for staff burden rates
  - e. Reconciling the County reports to the accounting and budget on a detail level.
  - f. Preparing the bank account reconciliations
2. Monthly review of agency's financial accounting
3. Monthly reconciliations of bank and cash accounts
4. Monthly or quarterly account reconciliations
5. Preparation of annual 1099 statements for OC LAFCO consultants and vendors
6. Preparation of quarterly budget updates for Commission consideration
7. Budget preparation assistance
8. All audit preparation and coordination with the auditor
9. Review banking fees, wire transfer, and online banking options for fee reductions and administrative improvements.

**EXHIBIT "B-1"**  
**COMPENSATION**

Consultant shall submit statements for services to LAFCO pursuant to Section 3.3.2 for the life of the Project or termination of this Agreement pursuant to Section 3.5.1 of the Agreement. Statements for services shall itemize charges as they relate to the completion of tasks assigned by LAFCO that fall within the Services defined in Exhibit "A" and listed below. Statements for services shall reflect the hourly rate of the Consultant for the services identified in the table shown below.

**Hourly compensation rates are as follows:**

Cindy Byerrum, Partner	\$225 per hour
Ian Berg, Senior Manager	\$185 per hour
Scott Nelsen, Manager	\$165 per hour
Senior Associate	\$140 per hour
Staff Accountant	\$115 per hour
Assistant	\$ 95 per hour

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange.

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

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 8th day of July 2020 ("**Effective Date**") by and between the ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION, ("**LAFCO**"), a government entity organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Cal. Gov. Code §§ 56000 et seq.) and Eide Bailly ("**Consultant**"). LAFCO and Consultant are sometimes individually referred to herein as "**Party**" and collectively as "**Parties**."

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional independent accountant consulting services required by the LAFCO on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional independent accountant consulting services to public clients, is licensed in the State of California, and is familiar with the plans of LAFCO.

**2.2 Project.**

LAFCO desires to engage Consultant to render such professional independent accountant consulting services ("**Services**") in support of LAFCO's finance, accounting, budgeting and bookkeeping requirements ("**Project**") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the LAFCO all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide the Services. The Services are more particularly described in Exhibit "A" ("**Scope of Work**") attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date above and shall renew annually without further action or notification by the Parties on a year-to-year basis, until terminated in accordance with the procedures outlined in Section 3.5.1 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.

### 3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The 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. LAFCO retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term 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. Neither LAFCO, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, LAFCO shall respond to Consultant's submittals in a timely manner. Upon request of LAFCO, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of LAFCO.

3.2.4 Substitution of Key Personnel. Consultant has represented to LAFCO that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of LAFCO. In the event that LAFCO and Consultant cannot agree as to the substitution of key personnel, LAFCO shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the LAFCO, or who are determined by the LAFCO to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the LAFCO. The key personnel for performance of this Agreement are as follows: **Cindy Byerrum, Partner.**

3.2.5 LAFCO's Representative. The LAFCO hereby designates **Carolyn Emery, Executive Officer**, or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("LAFCO's Representative"). LAFCO's Representative shall have the power to act on behalf of the LAFCO for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The LAFCO Representative shall be authorized to act on LAFCO's behalf and to execute all necessary documents which enlarge the Scope of Work or change the

Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the LAFCO Representative, LAFCO's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Cindy Byerrum, Managing Principal, or her designee, to act as its representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. . The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with LAFCO staff in the performance of Services and shall be available to LAFCO's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the LAFCO, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the LAFCO to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the LAFCO, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold LAFCO, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference



incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the LAFCO.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" ("**Compensation**") attached hereto and incorporated herein by reference. The total compensation shall not exceed **thirty-six thousand dollars (\$36,000.00)** in total compensation per fiscal year. Extra Work is not authorized unless authorized by a written amendment to this Agreement executed by both Parties.

3.3.2 Payment of Compensation. Consultant shall submit to LAFCO a monthly statement for services which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. LAFCO shall, within 45 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the LAFCO disputes any of Consultant's fees, the LAFCO shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by LAFCO or included in Exhibit "A" of this Agreement.

3.3.4 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "B" may be adjusted each year at the time of renewal as set forth in Exhibit "B."

3.3.5 Extra Work. If LAFCO requests that Consultant perform work which is determined by LAFCO to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement ("**Extra Work**"). , the Parties shall execute an amendment to this Agreement before performance of such services. LAFCO shall not be liable for work performed beyond the Scope of Work nor work in excess of the maximum annual compensation specified in Section 3.3.1 of this Agreement. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of LAFCO during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. LAFCO may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to LAFCO, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, LAFCO may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, LAFCO may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	Eide Bailly 10681 Foothill Blvd #300 Rancho Cucamonga, CA 91730 ATTN: <b>Cindy Byerrum, Partner</b>
LAFCO:	Orange County Local Agency Formation Commission 12 Civic Center Plaza, Rm. 235 Santa Ana, CA 92701 ATTN: <b>Carolyn Emery, Executive Officer</b>

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

#### 3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for LAFCO to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are



prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that LAFCO is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the LAFCO. LAFCO shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at LAFCO's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of LAFCO, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use LAFCO's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of LAFCO.

3.5.3.3 Confidential Information. The LAFCO shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the LAFCO's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the LAFCO shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give LAFCO written notice of Consultant's objection to the LAFCO's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the LAFCO, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. LAFCO shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with LAFCO's choice of legal counsel), and hold LAFCO harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that LAFCO release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

3.5.6 Scope of Indemnity. Consultant agrees to protect, save, defend and hold harmless LAFCO, its Board, and each member thereof, its employees and authorized volunteers, from any and all claims, liabilities, expenses or damages of any nature, including

attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with the negligent acts, errors or omissions or willful misconduct by Consultant, Consultant's agents, officers, employees, subconsultants, or independent consultants hired by Consultant under this Agreement. The only exception to Consultant's responsibility to protect, save, defend and hold harmless LAFCO, is due to the sole negligence, willful misconduct or active negligence of LAFCO. This hold harmless Agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 LAFCO's Right to Employ Other Consultants. LAFCO reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the LAFCO. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to LAFCO include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit,

privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, LAFCO shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of LAFCO, during the term of his or her service with LAFCO, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of LAFCO's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of LAFCO. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

SIGNATURE PAGE

**ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION**

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


**EIDE BAILLY**

By:   
\_\_\_\_\_  
Cindy Byerum  
Partner

**ATTEST:**

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

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
Scott C. Smith  
General Counsel

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

The LAFCO Accountant works under the direct supervision of the Executive Officer to perform all bookkeeping activities in addition to the preparation of quarterly financial reports for the Commission and assistance with annual budget and audit preparation.

The LAFCO Accountant shall provide general duties of the Commission's finance manager including, but not limited to the following activities.

1. Perform all bookkeeping activities including but not limited to:
  - a. Entering bills on a weekly or bi-weekly basis
  - b. Entering deposits as received
  - c. Preparing all journal entries needed, including but not limited to, prepaid expenses, payroll, investment transactions, and GASB 68/71 entries
  - d. Preparing the annual overhead calculation for staff burden rates
  - e. Reconciling the County reports to the accounting and budget on a detail level.
  - f. Preparing the bank account reconciliations by PCG staff with final review by Cindy Byerrum
  - g. Working with LAFCO staff on one-time effort to create a new accounting financial file.
2. Monthly review of agency's financial accounting
3. Monthly reconciliations of bank and cash accounts
4. Monthly or quarterly account reconciliations
5. Preparation of annual 1099 statements for LAFCO consultants and vendors
6. Preparation of quarterly budget updates for Commission consideration
7. Budget preparation assistance
8. All audit preparation and coordination with the auditor
9. Review banking fees, wire transfer, and online banking options for fee reductions and administrative improvements.



**EXHIBIT "B"**  
**COMPENSATION**

Consultant shall submit statements for services to LAFCO pursuant to Section 3.3.2 for the life of the Project or termination of this Agreement pursuant to Section 3.5.1 of the Agreement. Statements for services shall itemize charges as they relate to the completion of tasks assigned by LAFCO that fall within the Services defined in Exhibit "A" and listed below. Statements for services shall reflect the hourly rate of the Consultant for the services identified in the table shown below in this Exhibit "B."

**Hourly compensation rates are as follows:**

Cindy Byerrum, Partner	\$165 per hour
Ian Berg, Senior Associate	\$ 90 per hour
Scott Nelsen, or other Junior Staff	\$ 70 per hour

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange.

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

**3.7 Insurance**

3.7.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the LAFCO that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the LAFCO that the subconsultant has secured all insurance required under this section.

3.7.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Code 1), or if Consultant has no owned autos, "Hired Auto" (Code 8) and "Non-Owned Auto" (Code 9), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. **\*\*\*NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; or (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees)

(C) **Workers' Compensation/Employer's Liability:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease. If Consultant has no employees or agents, Consultant shall not be required to maintain Workers' Compensation Insurance. However, in the event that Consultant hires employees or agents during the term of this Agreement, Consultant shall obtain and maintain Workers' Compensation/Employer's Liability Insurance in accordance with this Section.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.7.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the LAFCO to add the following provisions to the insurance policies:

(A) Commercial General Liability

- (1) Additional Insured: The LAFCO, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.
- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the LAFCO except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

- (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the LAFCO except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions):

- (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the



LAFCO except ten (10) days shall be allowed for non-payment of premium.

(2) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must “pay on behalf of” the insured and include a provision establishing the insurer’s duty to defend.

(D) Workers' Compensation:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the LAFCO except ten (10) days shall be allowed for non-payment of premium.

(2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the LAFCO, its officials, officers, employees, agents, and volunteers.

3.7.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the LAFCO, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.7.5 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall contain or be endorsed to waive subrogation against the LAFCO, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby grants to LAFCO a waiver of any right to subrogation which any insurer of said Consultant may acquire against the LAFCO by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the LAFCO has received a waiver of subrogation endorsement from the insurer. Consultant shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.7.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the LAFCO and shall protect the LAFCO, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.7.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the LAFCO, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not

been submitted to the LAFCO for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the LAFCO. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the LAFCO evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.7.8 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, LAFCO has the right but not the duty to obtain the insurance it deems necessary and any premium paid by LAFCO will be promptly reimbursed by Consultant or LAFCO will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, LAFCO may cancel this Agreement effective upon notice.

3.7.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.7.10 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the LAFCO to inform Consultant of non-compliance with any requirement imposes no additional obligation on the LAFCO nor does it waive any rights hereunder.

3.7.11 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. If the Consultant maintains higher limits than the minimums contained herein, the LAFCO requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the LAFCO.

3.7.12 Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

(A) The Retroactive Date must be shown and must be before the effective date of the Agreement or the beginning of work under this Agreement.

(B) Such insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of all services under this Agreement.

(C) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the effective date of the Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of all services under this Agreement

(D) Special Risks or Circumstances. LAFCO reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

3.7.13 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the LAFCO, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the LAFCO, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has provided LAFCO with satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement.