

**8a** | Commission  
Discussion

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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.

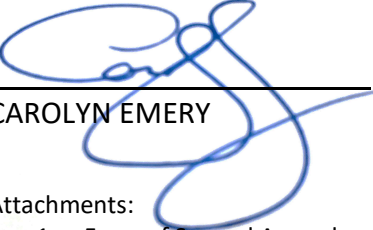
Over the past two fiscal cycles, Eide Bailly's billable rates have experienced annual adjustments ranging from 7.5 to 8.5 percent due to cost-of-living (COLA) and administrative overhead inflation. Most recently, OC LAFCO staff met with the firm's representatives to discuss an amendment to the agreement 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.

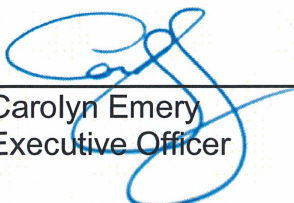
**3.2 Compensation.** Section 3.3.1 of the Agreement is hereby amended in its entirety to read as follows:

"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.