

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

*1112 I Street, Suite #100
Sacramento, California 95814
(916) 874-6458*

June 2, 2010

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer *PB*
RE: FY 2010-11 Contracts

RECOMMENDATION:

Authorize the Executive Officer to sign the attached contracts for FY 2010-11.

- | | | |
|----|------------------------|------------------------|
| A. | Miller, Owen and Trost | Commission Counsel |
| B. | Planning Partners | Environmental Support |
| C. | Lynda Ives | Administrative Support |

DISCUSSION:

The attached contract renewals cover the various on-going consulting services for FY 2010-11. These contracts include amounts for reimbursable project costs as well as funding for general support that is not reimbursable.

The following contract amounts have been included in the FY 2010-11 Final Budget:

	<u>Contract Amount</u>	<u>Revenue</u>	<u>Net Cost</u>
Legal	\$160,000	\$100,000	\$60,000
Environmental	50,000	30,000	20,000
Administrative	<u>25,000</u>	<u> </u>	<u>25,000</u>
Total	\$235,000	\$130,000	\$105,000

**AGREEMENT BETWEEN
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
AND
MILLER, OWEN & TROST
A Professional Corporation**

This Agreement is made and entered into this 30th day of June 2010, by and between the **SACRAMENTO LOCAL AGENCY FORMATION COMMISSION** (hereinafter referred to as “**LAFCo**”), and **MILLER, OWEN & TROST, A Professional Corporation** (hereinafter referred to as “**Contractor**”).

1. **CONTRACTORS OBLIGATION** Contractor shall provide legal services, representation, consultation, research, opinions, and advice. Contractor shall send LAFCo a detailed statement for fees and costs incurred every month.
2. **LAFCO'S RESPONSIBILITIES** For the purposes described in this Agreement, LAFCo shall pay Contractor for services rendered at the hourly rate outlined in Exhibit “A,” attached hereto.

The total amount paid to Contractor under this Agreement shall not exceed \$60,000 for services that are not reimbursed by third parties and \$100,000 for services that are reimbursed by third parties for a total amount not to exceed \$160,000 unless the amount is amended in writing by the parties. The total amount does not include any amounts for litigation. In the event of litigation the contract amount may be amended.

3. **CONTRACTOR'S RESPONSIBILITIES** Contractor shall provide legal services to LAFCo, as requested, in order to assist LAFCo in relation to proceedings undertaken. Contractor's services may include, but are not necessarily be limited to:

Representing LAFCo as general counsel including, but not limited to, litigation if any. If litigation is initiated, the budgeted amount may increase upon written agreement of the parties.

Making recommendations to LAFCo on the development of LAFCo positions on various issues as requested by staff or the Commission.

4. **TERM** The term of this Agreement shall be effective from July 1, 2010, through June 30, 2011. It is the parties' intent that this Agreement may be annually renewed by LAFCo and Contractor.
5. **TERMINATION** This Agreement may be terminated as follows:

By mutual consent of both parties; or

By LAFCo upon written notice thereof to Contractor.

ASSIGNMENT Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of LAFCo, except that claims for money due or to become due Contractor from LAFCo under this Agreement may be assigned by Contract to a bank, trust company, or other financial institution without such approval, written notice of any such transfer shall be furnished promptly to LAFCo. Any attempt at assignment of rights under this Contract except for those specifically consented to by both parties or as stated above shall be void.

MODIFICATION This Agreement may only be modified by a written amendment hereto, executed by both parties.

SEVERABILITY If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

CONFIDENTIAL RELATIONSHIP All dealings of the parties hereto are confidential, and no report, data, information or communication developed, prepared or assembled by Contractor hereunder shall be revealed or made available to any person or entity other than LAFCo without LAFCo's permission except as provided by law.

INDEPENDENT CONTRACTOR No employer/employee relationship is intended by the parties hereto, the relationship of Contractor to the LAFCo being that of independent contractor. LAFCo will not be required to make payroll deductions or provide worker's compensation insurance or health benefits.

INSURANCE During the term of this Agreement, Contractor shall maintain professional liability insurance which is reasonably satisfactory to LAFCo in an amount not less than \$500,000 per occurrence and \$1,000,000 umbrella coverage. Contractor shall also maintain worker's compensation insurance in an amount not less than \$1,000,000.

SURVIVAL Contractor shall remain obligated under all clauses of this Agreement which expressly or by their nature extend beyond the term hereof.

NOTICES All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with a United States Post Office for delivery by registered or certified mail and addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party:

LAFCo: Sacramento Local Agency Formation Commission
Attention: Peter Brundage
1112 I Street, #100
Sacramento CA 95814-1280

CONTRACTOR: MILLER, OWEN & TROST
Attention: Nancy C. Miller
A Professional Corporation
428 J Street, Suite 400
Sacramento CA 95814

ADDITIONAL PROVISIONS This Agreement shall be governed by the laws of the State of California. It constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral or written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

Executed by Contractor and by LAFCo in Sacramento, California on the date and year first above written.

SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

MILLER, OWEN & TROST
A Professional Corporation

By: _____
Peter Brundage
Executive Officer

By: _____
Nancy C. Miller

Exhibit A

RATE SCHEDULE FY 2009-10

Nancy C. Miller	\$265.00
William L. Owen	\$265.00
Kirk E. Trost	\$265.00
Christiane E. Layton	\$245.00
Paul J. Chrisman	\$245.00
Madeline E. Miller	\$210.00
Jennifer V. Gore	\$190.00
Daniel J. R. Calvert	\$150.00
Law Clerks	\$140.00
Paralegals	\$100.00

In addition, only the following costs will be billed as follows:

In-house photocopying will be billed at \$.05 a copy. Other photocopying, postage, long distance telephone charges, federal express, courier service, court and administrative fees, and all other "out of pocket" costs will be billed at actual costs. Travel to and from client is not billed.

Hourly rates may increase upon written amendment by the parties. The firm usually adjusts rates annually.

**AGREEMENT BETWEEN
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
AND
PLANNING PARTNERS
A Sole Proprietorship**

This Agreement is made and entered into this 1st day of July, 2010, by and between the SACRAMENTO LOCAL AGENCY FORMATION COMMISSION (hereinafter referred to as "LAFCo"), and PLANNING PARTNERS, A Sole Proprietorship (hereinafter referred to as "Contractor").

1. **CONTRACTORS OBLIGATION** Contractor shall provide environmental planning services, environmental document preparation, consultation, research, opinions, and advice. Contractor shall send LAFCo a detailed statement for fees and costs incurred every month.
2. **LAFCO'S RESPONSIBILITIES** For the purposes described in this Agreement, LAFCo shall pay Contractor for services rendered at the hourly rate outlined in Exhibit "A," attached hereto.

The total amount paid to Contractor under this Agreement shall not exceed \$20,000 for services that are not reimbursed by third parties and \$30,000 for services that are reimbursed by third parties for a total amount not to exceed \$50,000 unless the amount is amended in writing by the parties. The total amount does not include an amount for litigation. In the event of litigation, the contract may be amended.

3. **CONTRACTOR'S RESPONSIBILITIES** Contractor shall provide environmental planning services to LAFCo, as requested, in order to assist LAFCo in complying with the California Environmental Quality Act in LAFCo's consideration of projects and applications brought before LAFCo. Contractor's services may include, but are not necessarily limited to:
 - Preparing environmental documents compliant with the California Environmental Quality Act for LAFCo projects. Such documents under this contract include Notices of Exemption, Initial Studies, and Negative Declarations. If an expanded Initial Study with special technical studies or an Environmental Impact Report is initiated, the budgeted amount may increase upon written agreement of the parties.
 - Reviewing and commenting upon environmental documents prepared by local lead agencies to support applications submitted to LAFCo in LAFCo's role as a responsible agency under terms of the California Environmental Quality Act.
4. **TERM** The term of this Agreement shall be from the effective date of July 1, 2010 through June 30, 2011.

5. **TERMINATION** This Agreement may be terminated as follows:

By mutual consent of both parties; or

By LAFCo upon written notice thereof to Contractor.

ASSIGNMENT Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of LAFCo, except that claims for money due or to become due Contractor from LAFCo under this Agreement may be assigned by Contract to a bank, trust company, or other financial institution without such approval, written notice of any such transfer shall be furnished promptly to LAFCo. Any attempt at assignment of rights under this Contract except for those specifically consented to by both parties or as stated above shall be void.

MODIFICATION This Agreement may only be modified by a written amendment hereto, executed by both parties.

SEVERABILITY If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

CONFIDENTIAL RELATIONSHIP All dealings of the parties hereto are confidential, and no report, data, information or communication developed, prepared or assembled by Contractor hereunder shall be revealed or made available to any person or entity other than LAFCo without LAFCo's permission except as provided by law.

INDEPENDENT CONTRACTOR No employer/employee relationship is intended by the parties hereto, the relationship of Contractor to the LAFCo being that of independent contractor. LAFCo will not be required to make payroll deductions or provide worker's compensation insurance or health benefits.

INSURANCE During the term of this Agreement, Contractor shall maintain professional liability insurance that is reasonably satisfactory to LAFCo in an amount not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. Contractor shall also maintain worker's compensation insurance as required by statute.

SURVIVAL Contractor shall remain obligated under all clauses of this Agreement that expressly or by their nature extend beyond the term hereof.

NOTICES All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with a United States Post Office for delivery by registered or certified mail and addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party:

LAFCO: Sacramento Local Agency Formation Commission
Attention: Peter Brundage
1112 I Street, #100
Sacramento CA 95814-1280

CONTRACTOR: Planning Partners
Attention: Robert D. Klousner
PO Box 627
7281 Lone Pine Drive, Suite D-203
Sloughhouse, CA 95683

ADDITIONAL PROVISIONS This Agreement shall be governed by the laws of the State of California. It constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral or written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

In addition, only the following costs will be billed as follows:

In-house photocopying will be billed at \$.05 a copy. Other photocopying, postage, long distance telephone charges, federal express, courier service, court and administrative fees, and all other "out of pocket" costs will be billed at actual costs.

Hourly rates shown in Exhibit A attached

Executed by Contractor and by LAFCo in Sacramento, California on the date and year first above written.

***SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION***

PLANNING PARTNERS
A Sole Proprietorship

By: _____
Peter Brundage
Executive Officer

By: _____
Robert D. Klousner

Exhibit A

2010-2011 RATE SCHEDULE

Client: Sacramento Local Agency Formation Commission

Matter: Environmental Document Preparation and Consulting

Hourly rates for Planning Partners' personnel:

Principal	\$135.00
Principal Planner/Scientist	\$122.00
Prof. Planner/Scientist	\$115.00
Senior Planner	\$100.00
Assoc. Planner/Scientist	\$90.00
Assistant Planner	\$85.00
Planning Technician	\$80.00
Cartographer	\$75.00
Support	\$57.50

AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of July, 2010, by and between SACRAMENTO LOCAL AGENCY FORMATION COMMISSION, hereinafter referred to as "LAFCo," and Lynda G. Ives, an individual, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, LAFCo requires temporary clerical support services to assist the Commission Clerk as well as the Executive Officer and the Assistant Executive Officer with both routine work and special projects.

WHEREAS, LAFCo and CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, LAFCo and CONTRACTOR agree as follows:

I. SCOPE OF SERVICES

CONTRACTOR shall provide clerical support services for LAFCo. Such support shall include, but not be limited to the following functions and /or activities: responds to phone calls and referring them to a proper official or source, files documents, opens, screens and routes mail, makes meeting arrangements, and completes miscellaneous special projects.

II. TERM

This Agreement shall be effective and commence on July 1, 2010 and shall end on June 30, 2011.

III. NOTICE

Any notice, demand, request, consent, or approval that either party hereto made or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO LAFCo

Executive Officer
Sacramento LAFCo
1112 I Street, Ste. 100
Sacramento, CA 95814

TO CONTRACTOR

Lynda G. Ives
2425 Curtis Way
Sacramento, CA 95818

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

IV. **COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State and County laws, regulations and ordinances.

V. **GOVERNING LAWS AND JURISDICTIONS**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

VI. **STATUS OF CONTRACTOR**

- A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of LAFCo as an independent contractor. Contractor hereby indemnifies and holds LAFCo harmless from any and all claims that may be made against LAFCo based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that Contractor in the performance of its obligation hereunder is subject to the control or direction of LAFCo as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Contractor for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor, and LAFCo shall have no right or authority over such persons or the terms of such employment.
- D. Notwithstanding the Contractor's status as an independent contractor, LAFCo shall withhold from payments made to Contractor such sums as

are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding LAFCo's liability under said laws and does not abrogate Contractor's status as an independent contractor as described in this contract. Further, Contractor is not included in any group covered by County's present agreement with the federal Social Security Administration.

VII. **CONTRACTOR INDEMNIFICATION**

CONTRACTOR shall provide LAFCo with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR'S name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

VIII. **COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS**

- A. CONTRACTOR'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR'S failure to cure such default within 90 days of notice by LAFCo shall be grounds for termination of this agreement.

XIV. **BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from LAFCo: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between Sacramento County and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from Sacramento County, CONTRACTOR agrees to indemnify and hold harmless Sacramento County from any and all claims that may be made against Sacramento County for such benefits.

X. **CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income which would be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

XI. **NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures LAFCo that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of LAFCo, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and agents and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et. seq.) and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.
- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this agreement.

XII. **COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation for services rendered thereunder, including costs that may be incurred by CONTRACTOR, LAFCo shall except as hereinafter provided, pay to CONTRACTOR the sum of \$21.60 per hour of services rendered by CONTRACTOR. The number of hours worked by CONTRACTOR shall be as prescribed by the Commission Clerk. The maximum total compensation owing to CONTRACTOR under this Agreement shall not exceed \$25,000 for 1157 hours of services.

- B. CONTRACTOR shall file bi-weekly statements of charges rendered with the Commission Clerk. The statements shall identify the total number of hours of services, for which compensation is claimed, and the days the services were delivered and numbers of hours of service each day. LAFCo shall pay such charges not later than two weeks following the filing of the statement.
- C. CONTRACTOR shall maintain for four years following termination of this Agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- D. In the event CONTRACTOR fails to comply with any provisions of this Agreement, LAFCo may withhold payment until such non-compliance has been corrected.

XIII. **AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon LAFCo unless agreed in writing by the Executive Officer and counsel for LAFCo.

XIV. **TERMINATION**

- A. LAFCo may terminate this Agreement without cause upon five (5) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by LAFCo to the CONTRACTOR and it later determined the CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- B. LAFCo may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, LAFCo may proceed with the work in any manner deemed proper by LAFCo. If notice of termination for cause is given by LAFCo to the CONTRACTOR and it later determined the CONTRACTOR was not in default or the default was excusable, then the

notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

- C. LAFCo may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof; 2) if funds in LAFCo's yearly proposed and/or final budget are not appropriated by LAFCo for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by LAFCo as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of compensation previously made. In no event, however, shall LAFCo pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that CONTRACTOR can legally cancel.

XV. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed as of the day of the year first written above.

**SACRAMENTO LOCAL AGENCY FORMATION
COMMISSION**

CONTRACTOR

By _____
Peter Brundage, Executive Officer

By _____
Lynda G. Ives

Date _____

Date _____