

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

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

May 2, 2007

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer
RE: Contract for legal services with Miller, Owen & Trost
FY 2007-08

RECOMMENDATION

Authorize your Executive Officer to sign the attached FY 2007-2008 Contract for legal services with the law firm of Miller, Owen & Trost in an amount not to exceed \$60,000 for non-reimbursed services and \$60,000 for third party reimbursed services.

DISCUSSION

Miller Owen and Trost have served as LAFCo Commission Counsel since July 1, 1993. Previously, LAFCo has contracted with Miller Owen and Trost as Special Counsel to LAFCo for approximately three years with assignments related to development of LAFCo policies and Citrus Heights Incorporation litigation.

Ms. Miller is familiar with Sacramento LAFCo and local jurisdictions within Sacramento County. Current billing rates appear to be very competitive to similar firms with offices in Sacramento. In fact, these rates are lower than most other firms.

Briefly, the firm practices in the areas of public agency law, LAFCo law, eminent domain, contracts, environmental and land use law, public financing, redevelopment, real estate, as well as litigation. The firm represents varied governmental entities (e.g. joint powers agencies, redevelopment authorities, LAFCo's, cities and counties) as well as private businesses and individuals.

The contract for legal services is not to exceed \$60,000 for LAFCo non-reimbursable costs and not to exceed \$60,000 for reimbursable costs. Any increase would have to be approved by the Commission.

The legal budget is comprised of two components: reimbursable and non-reimbursable costs. The base budget amount or non-reimbursable costs are included in the proposed budget in the amount of \$60,000. This amount has been included as the base budget for several years and has not increased. In addition, the contract includes an additional \$60,000 for reimbursable project costs. These costs are reimbursed by third party applicants.

Non-reimbursable (not to exceed)	\$60,000
Reimbursable Charges (not to exceed)	<u>\$60,000</u>
Total Contract (not to exceed)	\$120,000

Future Contract Amendments will be required if actual costs exceed the budgeted amounts.

The draft contract and rate schedule are attached.

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION



Peter Brundage
Executive Officer

PB
Attachment
(Miller Owen & Trost Contract 07-08)

**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 2007, 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 not reimbursed by a third party and an amount not to exceed \$60,000 for services reimbursed by a third party. The budgeted amount does not include an amount for litigation. In the event of litigation we shall notify LAFCo and the parties will determine if the contract amount will 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 from the effective date of July 1, 2007, through June 30, 2008. 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 to 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, 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

Nancy C. Miller	\$260.00
William L. Owen	\$260.00
Kirk E. Trost	\$260.00
Christiane E. Layton	\$235.00
Paul J. Chrisman	\$235.00
Madeline E. Miller	\$205.00
Law Clerks	\$130.00
Paralegals	\$90.00

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.

NANCY C. MILLER

EDUCATION:

Undergraduate: Bachelor of Arts - April 1974
Stanford University
Major in History and Political Science

Activities: NCAA Women's Swim Team (1972-1974)

Law School: **University of California (Hastings)**
Juris Doctor - 1978

Recipient of Pomeroy Law Scholarship - 1978

Admitted to California Bar in December 1978.

PROFESSIONAL EXPERIENCE:

MILLER, OWEN & TROST: (1982 – current)

A Professional Corporation, President - 1983 to present. Major shareholder in private law firm. Ms. Miller provides legal services to a number of public agency and private clients including but not limited to Sacramento County, Santa Clara County, Stanislaus County (Redevelopment Counsel), Placer County (Redevelopment/LAFCo Counsel), Solano County (Redevelopment Counsel), Placer County Transportation Commission, Sutter County LAFCo, Sacramento County LAFCo, San Francisco LAFCo, Paratransit, Orange County LAFCo, and San Joaquin County (Redevelopment/LAFCo Counsel).

RICHARD H. HYDE, INC.: (1978 - 1982)

Associate in predecessor firm to Hyde, Miller, Owen & Trost.

VISTA/PEACE CORPS: (1974 - 1975)

Vista Volunteer in Sacramento County Area; Migrant Health Programs

BOARDS AND CIVIC ACTIVITIES:

Member - Judicial Selection Committee, Eastern District 2000 – Present. Committee appointed by the President that considers and recommends federal judiciary and U.S. Attorney appointments.

Chairperson - Judicial Selection Committee, Eastern District	1992 – 2000. Committee appointed by Senator Feinstein and Senator Boxer that considers and recommends federal judicial appointments and appointments for U.S. Attorney.
President, California Commission on Autism Foundation	2005 – Present. Foundation which assists Bi-Partisan State Legislative staff and Blue Ribbon Commission on Autism issues and legislation.
Sacramento County Bar Association	1979 – Present.
Public Lawyers Association	1986 – Present.
Voluntary Legal Services	1984 – Present. Member of lawyer panel which provides pro bono legal services to indigent families.
Women Lawyers of Sacramento	1984 – Present.
St. Francis Preparatory High School	2002 - Present. Member, Board of Directors.

POSITIONS; PUBLIC PRESENTATIONS; AWARDS:

Adjunct Professor, McGeorge School of Law	1999 – Present. Local Government Law.
Lecturer, U.C. Davis School of Law	1996 – 1998. Local Government Law.

SUMMARY OF EXPERIENCE

1. PUBLIC AGENCY REPRESENTATION. The firm has a strong public agency client base, including many transportation agency clients.

Local Agency Formation Commission (LAFCo) Clients

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Sacramento LAFCo has retained the firm to act as General Counsel since 1993. Sacramento LAFCo consists of members from the Sacramento County Board of Supervisors, the City of Sacramento, the City of Folsom, the City of Galt, City of Elk Grove, City of Citrus Heights, City of Rancho Cordova, and area Special Districts. Representation has included numerous annexation and incorporation proceedings. Ms. Miller was lead counsel in the California Supreme Court and the U.S. Supreme Court on behalf of LAFCo. The League of California Cities joined as amicus in the suit.

CITY AND COUNTY OF SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION

The firm was retained as General Counsel by the San Francisco Local Agency Formation Commission to provide services related to creating a Municipal Utility District or alternatively a Community Choice Aggregation Program. We have provided services to the Commission since 2000 on these issues and have been involved with the CCA process since that time.

SAN BENITO COUNTY LOCAL AGENCY FORMATION COMMISSION

The firm has been retained as Special Counsel to advise the Commission on changes in organization involving annexations and is representing the LAFCo in litigation, and other legal services as directed. The firm also provides legal representation on CEQA, annexation, and sphere of influence issues.

PLACER COUNTY LOCAL AGENCY FORMATION COMMISSION

The firm acted as special counsel to the Commission when the County Council or General Counsel had a conflict of interest. We have advised the Commission on matters involving annexation, incorporation and special districts.

SANTA CRUZ COUNTY LOCAL AGENCY FORMATION COMMISSION

The Commission retained the firm to act as special counsel on a proposed incorporation of the City of Aptos. Litigation ensued in which LAFCo was the prevailing party, with all of its actions upheld.

COUNTY OF SUTTER - REDEVELOPMENT/LOCAL AGENCY FORMATION COMMISSION

The County of Sutter retained the firm as special counsel for redevelopment and LAFCo matters. Services include proposed new city incorporation and formation of a new community services district.

FRESNO COUNTY LOCAL AGENCY FORMATION COMMISSION

The firm was retained as Special Counsel when the County Counsel recused himself in the matter of the incorporation of Malaga. Ms. Miller advised the Commission during the entirety of the proceedings. The incorporation was denied by the Commission and no litigation was filed.

Transportation Clients

PLACER COUNTY TRANSPORTATION PLANNING AGENCY (PCTPA)

The firm has acted as General Counsel to Placer County Transportation Planning Agency since July 1, 1992. Firm services include all aspects of legal services to an independent county transportation commission including personnel, contracts, the Brown Act and all related services. This includes preparing all contracts, environmental documents, and review of transportation projects. The firm is experienced in issues involving LTF (local transportation funding projects), STIP, master agreements involving all aspects of transportation planning, and transportation demand management (TDM). Further, the firm is experienced with the receipt and approval of TDA funds, Regional Transportation Plan (RTP) updates, and the contents of the Regional Transportation Improvement Programs (RTIP).

SOUTH PLACER REGIONAL TRANSPORTATION AUTHORITY (SPRTA)

This joint powers authority was formed to implement a county-wide transportation plan. The firm acts as general counsel to the Authority and implemented a new fee under Proposition 218 for a Regional Transportation and Air Quality Mitigation Fee. This fee is imposed by the County and four of the cities within the county for the construction of certain transportation improvements as specified. The firm provides all aspects of legal representation to the Authority.

EL DORADO COUNTY TRANSPORTATION COMMISSION

The firm acts as general counsel to the El Dorado County Transportation Commission. Firm services include advising the Commission on all transportation issues, including state transportation improvements projects, federal projects, compliance issues, CalTrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and the California Environmental Quality Act (CEQA).

The firm works closely with the commission and staff to develop policies and procedures to guide transportation improvement projects in El Dorado County. The firm also works closely with the California Department of Transportation (CalTrans) in developing contracts. The commission has been successful in receiving numerous grants.

NEVADA COUNTY TRANSPORTATION COMMISSION (NCTC)

The firm acts as general counsel to the Nevada County Transportation Commission. Among the services offered by the firm to the Commission are advising the Commission on transportation issues, including state transportation improvements projects, federal projects, compliance issues, CalTrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and the California Environmental Quality Act.

MODOC COUNTY TRANSPORTATION COMMISSION

The firm acts as general counsel to the Modoc County Transportation Commission. Among the services offered by the firm to the Commission are advising the Commission on transportation issues, including state transportation improvements projects, federal projects, compliance issues, CalTrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and the California Environmental Quality Act (CEQA) Act.

SACRAMENTO REGIONAL TRANSIT DISTRICT (RT)

The firm acts as special counsel to the District. We negotiated the purchase of land from Union Pacific Railroad to construct the light rail system (southern extension). The firm's current representation includes preparation of all legal documents for the acquisition and construction of the light rail extension. In addition we are currently negotiating for a multi modal transit station at the downtown Sacramento Union Pacific yard.

PARATRANSIT, INC.

The firm acts as special counsel to Paratransit, Inc., a provider of transportation services to disabled and elderly residents of the City and County of Sacramento. Paratransit, Inc. is the designated Consolidated Transportation Services Agency for the greater Sacramento Area.

SACRAMENTO AREA COUNCIL OF GOVERNMENTS (SACOG)

The firm acts as general counsel to this regional planning agency. Representation includes all aspects of public agency law including CEQA, public meeting laws, and employment matters.

SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY (SPTC-JPA).

The firm was selected to act as General Counsel for this joint powers authority soon after its formation. The Authority's members are the Sacramento Regional Transit District, the City of Folsom, the County of El Dorado, and the County of Sacramento. The Authority was created with the stated purpose of acquiring the Placerville Branch of the Southern Pacific Railroad for future expansion of passenger rail service in the Sacramento region. Together with the Authority's staff, the firm negotiated the real property acquisition from Southern Pacific and was responsible for documenting the acquisition, as well as the ongoing shared use of the Placerville Branch Corridor by the member agencies.

THE "BIZZ JOHNSON" HIGHWAY INTERCHANGE JOINT POWERS AUTHORITY

The firm acts as general counsel to this joint powers authority was created in 1990, by the City of Rocklin, the City of Roseville, and the County of Placer to finance and construct highway interchanges on Highway 65. The Authority is working to finance the interchanges with benefit assessments, developer fees, and state and federal highway funds. Bonds may also be issued. The firm's representation includes preparation of all legal documents necessary for the construction and financing of the interchanges, advice on CEQA compliance, public works law, the Brown Act, conflict of interest laws, personnel rules, and insurance.

SACRAMENTO TRANSIT DEVELOPMENT AGENCY

From 1981 to 1985, the firm represented the Sacramento Transit Development Agency (STDA), a joint powers authority composed of the City of Sacramento, the County of Sacramento, the State of California and Sacramento Regional Transit District. STDA was responsible for the acquisition of the Sacramento light rail starter line. Our representation of STDA included a wide spectrum of matters including legislation, public agency

