

January 14, 2021 (Agenda)

Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara CA 93101

Consider Agreement for Professional Legal Services

Dear Members of the Commission

RECOMMENDATION

It is recommended that the Commission:

1. Find that the proposed contract is not a "project" under the California Environmental Quality Act (CEQA) Guidelines section 15378(b)(4) in that it does not involve a commitment to any specific project which may result in a potentially significant impact to the environment.
2. Approve and authorize the Chair to execute the attached Agreement for Professional Services between LAFCO and attorney William Dillon for legal services from February 28, 2021 through March 3, 2023, for a total not to exceed amount of \$150,000 per fiscal year.

DISCUSSION

The Commission contracted with Mr. William Dillon on February 7, 2019 for legal services for the period of February 7, 2019 through February 28, 2021, for a total not to exceed amount of \$50,000.00 per fiscal year.

On August 12, 2020 Mr. Dillon informed LAFCO that his total contract amount for the second year of the contract is estimated to reach its limit of \$50,000.00 by early September 2020. The Commission amended Exhibit B, Section A to reflect the following:

- A. Unless previously agreed in writing by LAFCO, William Dillon shall be the attorney personally responsible for providing all services hereunder. ~~For Attorney services to be rendered under this AGREEMENT, ATTORNEY shall be paid an annual total contract amount not to exceed \$50,000.00 per year for a total contract amount not to exceed \$100,000.~~ For ATTORNEY services to be rendered under this AGREEMENT, ATTORNEY shall be paid a total contract amount not to exceed \$150,000.00.

Legal Services Contract
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Doing this eliminates the annual amount and increases the not to exceed total contract amount to \$150,000.00 from \$100,000.00 in order to cover all necessary Interim Executive Officer costs.

The Commission is interested in contracting with Mr. Dillon to continue to provide legal services for at least the next two years.

Exhibits

Exhibit A Extended Agreement for Professional Services

Exhibit B September 3, 2020 Amendment

Please contact the LAFCO office if you have any questions.

Sincerely,



Mike Prater
Executive Officer

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS AGREEMENT (hereafter Agreement) is made by and between the Santa Barbara Local Agency Formation Commission, a political subdivision of the State of California (hereafter LAFCO), and William Dillon, having its principal place of business in the City of Santa Barbara, California (hereafter ATTORNEY) wherein ATTORNEY agrees to provide, and LAFCO agrees to accept the services specified herein.

RECITALS

WHEREAS, LAFCO requires advice and representation by legal counsel on all legal matters, including, but not limited to, any current, future, threatened or potential litigation, claims or assessments; and,

WHEREAS, LAFCO, under the provisions of Section 56384(b) of the California Government Code, is empowered to contract for legal services; and,

WHEREAS, ATTORNEY is specially trained, skilled, experienced, and competent to perform the above-described legal services required by LAFCO, and LAFCO desires to retain the services of ATTORNEY pursuant to the term's covenants, and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Executive Officer Mike Prater at phone number 805-568-3391 is the representative of LAFCO and will administer this Agreement for and on behalf of LAFCO. William M. Dillon at phone number (805) 563-2831 is the authorized representative for ATTORNEY. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as agreed upon by the parties, as follows:

To LAFCO: Mike Prater
 Executive Officer
 Santa Barbara Local Agency Formation Commission
 105 East Anapamu Street, Room 407
 Santa Barbara, California, 93101

To ATTORNEY: William Dillon
 (address to be provided to Executive Officer)
 Santa Barbara, California

or at such other address or to such other person that the parties may from time to time designate in writing. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** ATTORNEY agrees to provide services to LAFCO in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance upon execution of this Agreement by LAFCO and end performance upon completion of services, but no later than March 3, 2023 unless otherwise directed by LAFCO. This contract may be earlier terminated by either party as provided herein.

5. **COMPENSATION OF ATTORNEY.** ATTORNEY shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by LAFCO and which is delivered to the address given in Section 2 **NOTICES**, above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that ATTORNEY (including any and all of its officers, agents, and employees) shall perform all of its services under this Agreement as an independent contractor and not as an officer, agent, servant, employee, joint venturer, partner, or associate of LAFCO. ATTORNEY understands and acknowledges that it shall not be entitled to any of the benefits of a LAFCO employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and save LAFCO harmless from all matters relating to payment of ATTORNEY's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, ATTORNEY may be providing services to others unrelated to the LAFCO or to this Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY delivers to LAFCO pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in ATTORNEY's profession. ATTORNEY shall correct or revise any errors or omissions, at LAFCO'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY certifies to LAFCO that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or LAFCO government contracts. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** LAFCO shall not be responsible for paying any taxes on ATTORNEY's behalf, and should LAFCO be required to do so by state, federal, or local taxing agencies, ATTORNEY agrees to promptly reimburse LAFCO for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. **CONFLICT OF INTEREST.** ATTORNEY covenants that ATTORNEY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed

by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts, other than those disclosed to LAFCO prior to this Agreement. ATTORNEY shall inform LAFCO immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNEY's representation of the LAFCO in this matter or at any time in the future, as soon as such an issue or conflict becomes known.

11. **EXPERTS/CONSULTANTS.** ATTORNEY shall get LAFCO's approval prior to retaining any expert or consultant to assist with any matter covered by this Agreement.

12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** LAFCO shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNEY shall not release any materials under this section except after prior written approval of LAFCO.

Unless otherwise specified in Exhibit A, ATTORNEY hereby assigns to LAFCO all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by ATTORNEY pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). LAFCO shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. ATTORNEY agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. ATTORNEY warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. ATTORNEY at its own expense shall defend, indemnify, and hold harmless LAFCO against any claim that any Copyrightable Works or Inventions or other items provided by ATTORNEY hereunder infringe upon intellectual or other proprietary rights of a third party, and ATTORNEY shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by LAFCO in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

13. **NO PUBLICITY OR ENDORSEMENT.** ATTORNEY shall not use LAFCO's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. ATTORNEY shall not use LAFCO's name or logo in any manner that would give the appearance that the LAFCO is endorsing ATTORNEY. ATTORNEY shall not in any way contract on behalf of or in the name of LAFCO. ATTORNEY shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the LAFCO or its projects, without obtaining the prior written approval of LAFCO.

14. **LAFCO PROPERTY AND INFORMATION.** All of LAFCO's property, documents, and information provided for ATTORNEY's use in connection with the services shall remain LAFCO's property, and ATTORNEY shall return any such items whenever requested by LAFCO and whenever required according to the Termination section of this Agreement. ATTORNEY may use such items only in connection with providing the services. ATTORNEY shall not disseminate any LAFCO property, documents, or information without LAFCO's prior written consent.

15. **RECORDS, AUDIT, AND REVIEW.** ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. LAFCO shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), ATTORNEY shall be subject to the examination and audit of the California State Auditor, at the request of the LAFCO or as part of any audit of the LAFCO, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and reviews, whether by LAFCO or the State, at no charge to LAFCO.

16. **INDEMNIFICATION AND INSURANCE.** ATTORNEY shall agree to defend, indemnify and save harmless the LAFCO and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

17. **NONDISCRIMINATION.** ATTORNEY shall comply with all laws and regulations regarding unlawful discrimination in the performance of this Agreement.

18. **NONEXCLUSIVE AGREEMENT.** ATTORNEY understands that this is not an exclusive Agreement and that LAFCO shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by ATTORNEY as the LAFCO desires.

19. **NON-ASSIGNMENT.** ATTORNEY shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of LAFCO and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. **TERMINATION.**

A. **By LAFCO.** LAFCO may, by written notice to ATTORNEY, terminate this Agreement in whole or in part at any time, whether for LAFCO's convenience, for non-appropriation of funds, or because of the failure of ATTORNEY to fulfill the obligations herein.

1. **For Convenience.** LAFCO may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, ATTORNEY shall, as directed by LAFCO, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on LAFCO from such winding down and cessation of services.

2. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or LAFCO governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then LAFCO will notify ATTORNEY of such occurrence and LAFCO may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, LAFCO shall have no obligation to make payments with regard to the remainder of the term.

3. **For Cause.** Should ATTORNEY default in the performance of this Agreement or materially breach any of its provisions, LAFCO may, at LAFCO's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, ATTORNEY shall immediately discontinue all services affected (unless the notice directs otherwise) and notify LAFCO as to the status of its performance. The date of termination shall be the date the notice is received by ATTORNEY, unless the notice directs otherwise.

B. BY ATTORNEY.

1. Should LAFCO fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY's option terminate this Agreement if such failure is not remedied by LAFCO within thirty (30) days of written notice to LAFCO of such late payment.

2. **For Convenience.** ATTORNEY may terminate this Agreement for convenience upon sixty (60) days written notice to LAFCO.

C. Upon termination, ATTORNEY shall deliver to LAFCO all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by ATTORNEY in performing this Agreement, whether completed or in process, except such items as LAFCO may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, LAFCO shall pay ATTORNEY for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY shall furnish to LAFCO such financial information as in the judgment of LAFCO is necessary to determine the reasonable value of the services rendered by ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of LAFCO shall be final. The foregoing is cumulative and shall not affect any right or remedy which LAFCO may have in law or equity.

21. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to LAFCO is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

25. **NO WAIVER OF DEFAULT.** No delay or omission of LAFCO to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to LAFCO shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of LAFCO.

26. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

27. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. **COMPLIANCE WITH LAW.** ATTORNEY shall, at ATTORNEY's sole cost and expense, comply with all LAFCO, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of ATTORNEY in any action or proceeding against ATTORNEY, whether LAFCO is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY and LAFCO.

29. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

30. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, ATTORNEY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNEY is obligated, which breach would have a material effect hereon.

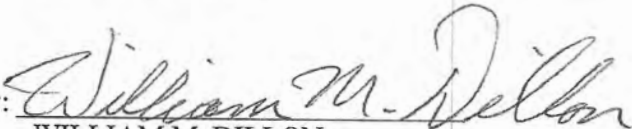
32. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

Agreement for Professional Legal Services between
the **LAFCO** and **William M. Dillon**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed
by LAFCO.

**ATTORNEY:
WILLIAM M. DILLON**

By: 
WILLIAM M. DILLON
Tax ID Number: [Provided to Executive Officer]

SANTA BARBARA LAFCO:

**ATTEST:
CLERK OF THE COMMISSION**

By: _____
JACQUELYNE ALEXANDER

By: _____
ETTA WATERFIELD
Chair

Date: _____

**APPROVED AS TO FORM:
RAY AROMATORIO,
RISK PROGRAM ADMINISTRATOR**

Ray Date:
Aromatorio, 2020.12.29
By: Risk Manager 17:01:57 -05'00'
Ray Aromatorio
RISK MANAGER

EXHIBIT A

STATEMENT OF WORK

ATTORNEY shall perform all legal services for LAFCO as authorized by the Commission, including, but not limited to, attending all LAFCO meetings, advising LAFCO Commission and Staff, representing LAFCO in litigation or defending LAFCO from any and all claims, litigation or assessments whether current, future, threatened or potential. In the event ATTORNEY cannot attend a LAFCO meeting, ATTORNEY is responsible for arranging backup legal counsel to sit with and advise the Commission. ATTORNEY shall report all progress to LAFCO's Designated Representative and, upon request, to the Commission. All services provided hereunder shall comply with the terms and conditions set forth in this Agreement and with the applicable provisions of California law. No litigation shall be initiated without prior consent of LAFCO's Commission. Nothing herein obligates the LAFCO to initiate any proceedings, or to exclusively use the services of ATTORNEY for any projects, or to incur charges for any minimum number of hours.

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. Unless previously agreed in writing by LAFCO, William Dillon shall be the attorney personally responsible for providing all services hereunder. For ATTORNEY services to be rendered under this AGREEMENT, ATTORNEY shall be paid a total contract amount not to exceed \$150,000.00.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the services set forth in **EXHIBIT A** as determined by LAFCO. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and provide supporting documentation.
- C. Monthly, ATTORNEY shall submit to the LAFCO DESIGNATED REPRESENTATIVE an invoice or certified claim on the Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned LAFCO Contract Number. The LAFCO DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** shall initiate payment processing. LAFCO shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. LAFCO's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of LAFCO's right to require ATTORNEY to correct such work or billings or seek any other legal remedy.

**ATTACHMENT B-1
SCHEDULE OF FEES**

HOURLY RATES

ATTORNEY's hourly rate is \$150.

COSTS AND EXPENSES

LAFCO shall reimburse ATTORNEY for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which LAFCO has engaged ATTORNEY. Cost and expenses shall not exceed the amount established in Exhibit B, section A, unless further approved by the Commission. LAFCO shall reimburse ATTORNEY in accordance with the guidelines below. ATTORNEY shall monthly submit all bills to the Executive Officer for review and approval.

- *Billable costs and expenses:* LAFCO shall reimburse ATTORNEY at LAFCO's reimbursement rates for reasonable costs and expenses incurred by it in performing services for LAFCO, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees.
- *Nonbillable overhead and administration:* LAFCO does not expect to be charged for and will not pay for any of the following: conflicts checks, local phone service, local travel costs within City of Santa Barbara, secretarial services, word processing services, or librarian services.
- *Photocopying:* LAFCO will reimburse ATTORNEY at a maximum of \$.10 per page for normal photocopying and will not be responsible for time spent by photocopying personnel, including ATTORNEY. ATTORNEY shall give LAFCO an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by LAFCO or by the vendor.
- *Computerized research:* ATTORNEY shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to LAFCO shall be billed at ATTORNEY's cost and shall be accompanied by a copy of the invoice received by ATTORNEY.
- *Document delivery:* For document delivery costs that are billed to LAFCO, ATTORNEY shall use the most economical delivery method or service available. To help minimize such costs, ATTORNEY shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.
- *Multiple billing:* If an attorney works simultaneously on LAFCO's matter and a matter for another client of ATTORNEY's firm, LAFCO shall be billed only for the proportionate amount of time spent on the LAFCO's matter.
- *Travel:* LAFCO shall pay for ATTORNEY'S time and mileage traveling outside of the City of Santa Barbara, including Commission meetings in Santa Maria and Commission committee meetings in the County where ATTORNEY'S attendance has been requested by the Executive Officer or Commission. Attendance at CALAFCO Staff Conferences, CALAFCO Annual Conferences, and other CALAFCO events as authorized by the Executive Officer, LAFCO will reimburse ATTORNEY

at the same rate as the County of Santa Barbara, for other reasonable travel expenses directly related to ATTORNEY's work for LAFCO when ATTORNEY has obtained LAFCO's prior approval from the Executive Officer. This includes meals, mileage, registration, and accommodations. These expenses shall be reimbursed separately through the claim process and paid out of the Commission's Training and Travel budget line item. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. Travel time outside of customary business hours (8 a.m. – 5:30 p.m.) should be billed only when productive work actually is being performed for LAFCO.

BILLING PROCEDURE

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each attorney or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made by LAFCO and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and should be broken down by category.

RESPONSE TO AUDIT INQUIRIES

If LAFCO asks ATTORNEY to assist in connection with the issuance of an auditor's report on LAFCO's financial statements, ATTORNEY may be requested to respond to an inquiry from LAFCO's auditors based upon accounting standards that require LAFCO's auditors to make inquiry of LAFCO's lawyers as to their knowledge of certain "loss contingencies." Upon receipt of an audit inquiry ATTORNEY will, among other things, search ATTORNEY's databases to identify lawyers devoting time to LAFCO's matters, make inquiry of those lawyers as to their knowledge of any reportable matters and prepare a written response to LAFCO's auditors and to LAFCO. Absent special circumstances, ATTORNEY's fee structure for the preparation of these letters is a minimum of \$200 and a maximum of \$500, depending on the extent and number of any matters reported. However, under limited circumstances, the fee may exceed \$500 if the letter requires extensive substantive attention to disclosure or other related issues. This charge will appear on ATTORNEY's invoice as a line item for "Services rendered in connection with preparation of response to audit inquiry." Charges for audit inquiry letters may be changed periodically without prior notice, typically after the end of each calendar year.

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

ATTORNEY agrees to indemnify, defend (with counsel reasonably approved by LAFCO) and hold harmless LAFCO and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of negligent performance of this Agreement, by ATTORNEY, from any cause, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by LAFCO on account of any claim except where such indemnification is prohibited by law.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

ATTORNEY shall notify LAFCO immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

ATTORNEY shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the ATTORNEY, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ATTORNEY has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If ATTORNEY has no employees, ATTORNEY may certify or warrant in writing to LAFCO that ATTORNEY does not have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for workers compensation insurance will be waived by the Executive Officer or Risk Management.

4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the ATTORNEY'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains higher limits than the minimums shown above, the LAFCO requires and shall be entitled to coverage for the higher limits maintained by the ATTORNEY. Any

available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the LAFCO.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – LAFCO, its officers, officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ATTORNEY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ATTORNEY's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the ATTORNEY's insurance coverage shall be primary insurance as respects the LAFCO, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the LAFCO, its officers, officials, employees, agents or volunteers shall be excess of the ATTORNEY's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the LAFCO.
4. **Waiver of Subrogation Rights** – ATTORNEY hereby grants to LAFCO a waiver of any right to subrogation which any insurer of said ATTORNEY may acquire against the LAFCO by virtue of the payment of any loss under such insurance. ATTORNEY agrees to obtain any endorsement that may be necessary to affect 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.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the LAFCO. The LAFCO may require the ATTORNEY to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – ATTORNEY shall furnish the LAFCO with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the LAFCO before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ATTORNEY's obligation to provide them. The ATTORNEY shall furnish evidence of renewal of coverage throughout the term of the Agreement. The LAFCO reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, LAFCO has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by LAFCO as a material breach of contract.

9. **Subcontractors** – ATTORNEY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ATTORNEY shall ensure that LAFCO is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained, and evidence of insurance must be provided for at least one (1) year after completion of contract work.

Any failure, actual or alleged, on the part of LAFCO to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of LAFCO.

September 3, 2020 (Agenda)

Consider Amendment to the Agreement for Professional Legal Services

Dear Members of the Commission:

RECOMMENDATION

It is recommended that the Commission consider recommendations regarding an Agreement for Professional Services; as follows:

- a) Approve and authorize the Chair to execute an amendment to Exhibit B, Section A of the Agreement for Professional Services between LAFCO and attorney William Dillon for legal services, for a total contract amount not to exceed \$150,000.00; and
- b) Find that the proposed contract is not a "project" under the California Environmental Quality Act (CEQA) Guidelines section 15378(b)(4) in that it does not involve a commitment to any specific project which may result in a potentially significant impact to the environment.

DISCUSSION:

The Commission contracted with Mr. William Dillon on February 7, 2019 for legal services for the period of February 7, 2019 through February 28, 2021, for a total not to exceed amount of \$50,000.00 per fiscal year (**Attachment 1**).

On June 4, 2020, due to Santa Barbara LAFCO's unforeseen Executive Officer vacancy, the Commission appointed Mr. Dillon as interim Executive Officer. Mr. Dillon receives hourly compensation for his time pursuant to the compensation terms of his Agreement for Professional Legal Services dated February 15, 2019, which is \$150.00 per hour, plus allowable expenses, with a not to exceed amount of \$50,000.00 per year for a total contract amount not to exceed \$100,000.00.

On August 12, 2020 Mr. Dillon informed LAFCO that his total contract amount for the second year of the contract is estimated to reach its limit of \$50,000.00 by early September 2020.

Chair Geyer recommends that the Commission amend Exhibit B, Section A (**Attachment 2**) to reflect the following:

- A. Unless previously agreed in writing by LAFCO, William Dillon shall be the attorney personally responsible for providing all services hereunder. ~~For Attorney services to be rendered under this AGREEMENT, ATTORNEY shall be paid an annual total contract amount not to exceed \$50,000.00 per year for a total contact amount not to exceed \$100,000. For ATTORNEY services to be rendered under this AGREEMENT, ATTORNEY shall be paid a total contract amount not to exceed~~ \$150,000.00.

Doing this eliminates the annual amount and increases the not to exceed total contract amount to \$150,000.00 from \$100,000.00 in order to cover all necessary Interim Executive Officer costs.

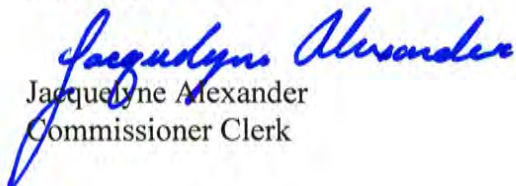
ATTACHMENTS:

Attachment 1: Agreement for Professional Legal Services Executed on February 15, 2019

Attachment 2: Revised Exhibit B, Section A to the Agreement for Professional Legal Services

Please contact the LAFCO office if you have any questions.

Sincerely,


Jacquelyne Alexander
Commissioner Clerk

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS AGREEMENT (hereafter Agreement) is made by and between the Santa Barbara Local Agency Formation Commission, a political subdivision of the State of California (hereafter LAFCO), and William Dillon, having its principal place of business in the City of Santa Barbara, California (hereafter ATTORNEY) wherein ATTORNEY agrees to provide, and LAFCO agrees to accept the services specified herein.

RECITALS

WHEREAS, LAFCO requires advice and representation by legal counsel on all legal matters, including, but not limited to, any current, future, threatened or potential litigation, claims or assessments; and,

WHEREAS, LAFCO, under the provisions of Section 56384(b) of the California Government Code, is empowered to contract for legal services; and,

WHEREAS, ATTORNEY is specially trained, skilled, experienced, and competent to perform the above-described legal services required by LAFCO, and LAFCO desires to retain the services of ATTORNEY pursuant to the term's covenants, and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Executive Officer Paul Hood at phone number 805-568-3391 is the representative of LAFCO and will administer this Agreement for and on behalf of LAFCO. William M. Dillon at phone number (805) 563-2831 is the authorized representative for ATTORNEY. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as agreed upon by the parties, as follows:

To LAFCO: Paul Hood
 Executive Officer
 Santa Barbara Local Agency Formation Commission
 105 East Anapamu Street, Room 407
 Santa Barbara, California, 93101

To ATTORNEY: William Dillon
 (address to be provided to Executive Officer)
 Santa Barbara, California

or at such other address or to such other person that the parties may from time to time designate in writing. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** ATTORNEY agrees to provide services to LAFCO in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance upon execution of this Agreement by LAFCO and end performance upon completion of services, but no later than February 28, 2021 unless otherwise directed by LAFCO. This contract may be earlier terminated by either party as provided herein.

5. **COMPENSATION OF ATTORNEY.** ATTORNEY shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by LAFCO and which is delivered to the address given in Section 2 **NOTICES,** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that ATTORNEY (including any and all of its officers, agents, and employees) shall perform all of its services under this Agreement as an independent contractor and not as an officer, agent, servant, employee, joint venturer, partner, or associate of LAFCO. ATTORNEY understands and acknowledges that it shall not be entitled to any of the benefits of a LAFCO employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and save LAFCO harmless from all matters relating to payment of ATTORNEY's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, ATTORNEY may be providing services to others unrelated to the LAFCO or to this Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY delivers to LAFCO pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in ATTORNEY's profession. ATTORNEY shall correct or revise any errors or omissions, at LAFCO'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY certifies to LAFCO that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or LAFCO government contracts. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** LAFCO shall not be responsible for paying any taxes on ATTORNEY's behalf, and should LAFCO be required to do so by state, federal, or local taxing agencies, ATTORNEY agrees to promptly reimburse LAFCO for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. **CONFLICT OF INTEREST.** ATTORNEY covenants that ATTORNEY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed

by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts, other than those disclosed to LAFCO prior to this Agreement. ATTORNEY shall inform LAFCO immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNEY's representation of the LAFCO in this matter or at any time in the future, as soon as such an issue or conflict becomes known.

11. **EXPERTS/CONSULTANTS.** ATTORNEY shall get LAFCO's approval prior to retaining any expert or consultant to assist with any matter covered by this Agreement.

12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** LAFCO shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNEY shall not release any materials under this section except after prior written approval of LAFCO.

Unless otherwise specified in Exhibit A, ATTORNEY hereby assigns to LAFCO all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by ATTORNEY pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). LAFCO shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. ATTORNEY agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. ATTORNEY warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. ATTORNEY at its own expense shall defend, indemnify, and hold harmless LAFCO against any claim that any Copyrightable Works or Inventions or other items provided by ATTORNEY hereunder infringe upon intellectual or other proprietary rights of a third party, and ATTORNEY shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by LAFCO in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

13. **NO PUBLICITY OR ENDORSEMENT.** ATTORNEY shall not use LAFCO's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. ATTORNEY shall not use LAFCO's name or logo in any manner that would give the appearance that the LAFCO is endorsing ATTORNEY. ATTORNEY shall not in any way contract on behalf of or in the name of LAFCO. ATTORNEY shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the LAFCO or its projects, without obtaining the prior written approval of LAFCO.

14. **LAFCO PROPERTY AND INFORMATION.** All of LAFCO's property, documents, and information provided for ATTORNEY's use in connection with the services shall remain LAFCO's property, and ATTORNEY shall return any such items whenever requested by LAFCO and whenever required according to the Termination section of this Agreement. ATTORNEY may use such items only in connection with providing the services. ATTORNEY shall not disseminate any LAFCO property, documents, or information without LAFCO's prior written consent.

15. **RECORDS, AUDIT, AND REVIEW.** ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY's profession and

shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. LAFCO shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), ATTORNEY shall be subject to the examination and audit of the California State Auditor, at the request of the LAFCO or as part of any audit of the LAFCO, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and reviews, whether by LAFCO or the State, at no charge to LAFCO.

16. **INDEMNIFICATION AND INSURANCE.** ATTORNEY shall agree to defend, indemnify and save harmless the LAFCO and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

17. **NONDISCRIMINATION.** ATTORNEY shall comply with all laws and regulations regarding unlawful discrimination in the performance of this Agreement.

18. **NONEXCLUSIVE AGREEMENT.** ATTORNEY understands that this is not an exclusive Agreement and that LAFCO shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by ATTORNEY as the LAFCO desires.

19. **NON-ASSIGNMENT.** ATTORNEY shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of LAFCO and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. **TERMINATION.**

A. **By LAFCO.** LAFCO may, by written notice to ATTORNEY, terminate this Agreement in whole or in part at any time, whether for LAFCO's convenience, for nonappropriation of funds, or because of the failure of ATTORNEY to fulfill the obligations herein.

1. **For Convenience.** LAFCO may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, ATTORNEY shall, as directed by LAFCO, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on LAFCO from such winding down and cessation of services.

2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or LAFCO governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then LAFCO will notify ATTORNEY of such occurrence and LAFCO may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, LAFCO shall have no obligation to make payments with regard to the remainder of the term.

3. **For Cause.** Should ATTORNEY default in the performance of this Agreement or materially breach any of its provisions, LAFCO may, at LAFCO's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice,

ATTORNEY shall immediately discontinue all services affected (unless the notice directs otherwise) and notify LAFCO as to the status of its performance. The date of termination shall be the date the notice is received by ATTORNEY, unless the notice directs otherwise.

B. BY ATTORNEY.

1. Should LAFCO fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY's option terminate this Agreement if such failure is not remedied by LAFCO within thirty (30) days of written notice to LAFCO of such late payment.

2. **For Convenience.** ATTORNEY may terminate this Agreement for convenience upon sixty (60) days written notice to LAFCO.

C. Upon termination, ATTORNEY shall deliver to LAFCO all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by ATTORNEY in performing this Agreement, whether completed or in process, except such items as LAFCO may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, LAFCO shall pay ATTORNEY for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY shall furnish to LAFCO such financial information as in the judgment of LAFCO is necessary to determine the reasonable value of the services rendered by ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of LAFCO shall be final. The foregoing is cumulative and shall not affect any right or remedy which LAFCO may have in law or equity.

21. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to LAFCO is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

25. **NO WAIVER OF DEFAULT.** No delay or omission of LAFCO to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this

Agreement to LAFCO shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of LAFCO.

26. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

27. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. **COMPLIANCE WITH LAW.** ATTORNEY shall, at ATTORNEY's sole cost and expense, comply with all LAFCO, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of ATTORNEY in any action or proceeding against ATTORNEY, whether LAFCO is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY and LAFCO.

29. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

30. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, ATTORNEY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNEY is obligated, which breach would have a material effect hereon.

32. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

33. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

Agreement for Professional Legal Services between
the LAFCO and William M. Dillon.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by LAFCO.

ATTORNEY:
WILLIAM M. DILLON

By: William M. Dillon
WILLIAM M. DILLON
Tax ID Number: [Provided to Executive Officer]

SANTA BARBARA LAFCO:

ATTEST:
CLERK OF THE COMMISSION

By: _____
STEVE LAVAGNINO
Chair

By: _____
JACQUELYNE ALEXANDER

Date: _____

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
RAY AROMATORIO,
RISK PROGRAM ADMINISTRATOR

By: Michael C. Ghizzoni
Deputy County Counsel

By: Ray Aromatorio
Deputy

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by LAFCO.

**ATTORNEY:
WILLIAM M. DILLON**

By: _____
WILLIAM M. DILLON
Tax ID Number: [Provided to Executive Officer]

SANTA BARBARA LAFCO:

ATTEST:
CLERK OF THE COMMISSION

By: Jacquelyne Alexander
JACQUELYNE ALEXANDER

By: Steve Lavagnino
STEVE LAVAGNINO
Chair

Date: 2-15-19

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
RAY AROMATORIO,
RISK PROGRAM ADMINISTRATOR

By: _____
Deputy County Counsel

By: _____
Deputy

EXHIBIT A

STATEMENT OF WORK

ATTORNEY shall perform all legal services for LAFCO as authorized by the Commission, including, but not limited to, attending all LAFCO meetings, advising LAFCO Commission and Staff, representing LAFCO in litigation or defending LAFCO from any and all claims, litigation or assessments whether current, future, threatened or potential. In the event ATTORNEY cannot attend a LAFCO meeting, ATTORNEY is responsible for arranging backup legal counsel to sit with and advise the Commission. ATTORNEY shall report all progress to LAFCO's Designated Representative and, upon request, to the Commission. All services provided hereunder shall comply with the terms and conditions set forth in this Agreement and with the applicable provisions of California law. No litigation shall be initiated without prior consent of LAFCO's Commission. Nothing herein obligates the LAFCO to initiate any proceedings, or to exclusively use the services of ATTORNEY for any projects, or to incur charges for any minimum number of hours.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation

- A. Unless previously agreed in writing by LAFCO, William Dillon shall be the attorney personally responsible for providing all services hereunder. For ATTORNEY services to be rendered under this AGREEMENT, ATTORNEY shall be paid an annual total contract amount not to exceed \$50,000.00 per year for a total contract amount not to exceed \$100,000.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the services set forth in **EXHIBIT A** as determined by LAFCO. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and provide supporting documentation.
- C. C. Monthly, ATTORNEY shall submit to the LAFCO DESIGNATED REPRESENTATIVE an invoice or certified claim on the Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned LAFCO Contract Number. The LAFCO DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** shall initiate payment processing. LAFCO shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. LAFCO's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of LAFCO's right to require ATTORNEY to correct such work or billings or seek any other legal remedy.

**ATTACHMENT B-1
SCHEDULE OF FEES**

HOURLY RATES

ATTORNEY's hourly rate is \$150.

COSTS AND EXPENSES

LAFCO shall reimburse ATTORNEY for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which LAFCO has engaged ATTORNEY. Cost and expenses shall not exceed the amount established in Exhibit B, section A, unless further approved by the Commission. LAFCO shall reimburse ATTORNEY in accordance with the guidelines below. ATTORNEY shall monthly submit all bills to the Executive Officer for review and approval.

- *Billable costs and expenses:* LAFCO shall reimburse ATTORNEY at LAFCO's reimbursement rates for reasonable costs and expenses incurred by it in performing services for LAFCO, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees.
- *Nonbillable overhead and administration:* LAFCO does not expect to be charged for and will not pay for any of the following: conflicts checks, local phone service, local travel costs within City of Santa Barbara, secretarial services, word processing services, or librarian services.
- *Photocopying:* LAFCO will reimburse ATTORNEY at a maximum of \$.10 per page for normal photocopying and will not be responsible for time spent by photocopying personnel, including ATTORNEY. ATTORNEY shall give LAFCO an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by LAFCO or by the vendor.
- *Computerized research:* ATTORNEY shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to LAFCO shall be billed at ATTORNEY's cost and shall be accompanied by a copy of the invoice received by ATTORNEY.
- *Document delivery:* For document delivery costs that are billed to LAFCO, ATTORNEY shall use the most economical delivery method or service available. To help minimize such costs, ATTORNEY shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.
- *Multiple billing:* If an attorney works simultaneously on LAFCO's matter and a matter for another client of ATTORNEY's firm, LAFCO shall be billed only for the proportionate amount of time spent on the LAFCO's matter.
- *Travel:* LAFCO shall pay for ATTORNEY'S time and mileage traveling outside of the City of Santa Barbara, including Commission meetings in Santa Maria and Commission committee meetings in the County where ATTORNEY'S attendance has been requested by the Executive Officer or Commission. Attendance at CALAFCO Staff Conferences, CALAFCO Annual Conferences, and other CALAFCO events as authorized by the Executive Officer, LAFCO will reimburse ATTORNEY

at the same rate as the County of Santa Barbara, for other reasonable travel expenses directly related to ATTORNEY's work for LAFCO when ATTORNEY has obtained LAFCO's prior approval from the Executive Officer. This includes meals, mileage, registration, and accommodations. These expenses shall be reimbursed separately through the claim process and paid out of the Commission's Training and Travel budget line item. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. Travel time outside of customary business hours (8 a.m. – 5:30 p.m.) should be billed only when productive work actually is being performed for LAFCO.

BILLING PROCEDURE

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each attorney or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made by LAFCO and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and should be broken down by category.

RESPONSE TO AUDIT INQUIRIES

If LAFCO asks ATTORNEY to assist in connection with the issuance of an auditor's report on LAFCO's financial statements, ATTORNEY may be requested to respond to an inquiry from LAFCO's auditors based upon accounting standards that require LAFCO's auditors to make inquiry of LAFCO's lawyers as to their knowledge of certain "loss contingencies." Upon receipt of an audit inquiry ATTORNEY will, among other things, search ATTORNEY's databases to identify lawyers devoting time to LAFCO's matters, make inquiry of those lawyers as to their knowledge of any reportable matters and prepare a written response to LAFCO's auditors and to LAFCO. Absent special circumstances, ATTORNEY's fee structure for the preparation of these letters is a minimum of \$200 and a maximum of \$500, depending on the extent and number of any matters reported. However, under limited circumstances, the fee may exceed \$500 if the letter requires extensive substantive attention to disclosure or other related issues. This charge will appear on ATTORNEY's invoice as a line item for "Services rendered in connection with preparation of response to audit inquiry." Charges for audit inquiry letters may be changed periodically without prior notice, typically after the end of each calendar year.

EXHIBIT C

Indemnification and Insurance Requirements (For Professional Contracts)

INDEMNIFICATION

ATTORNEY agrees to indemnify, defend (with counsel reasonably approved by LAFCO) and hold harmless LAFCO and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of negligent performance of this Agreement, by ATTORNEY, from any cause, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by LAFCO on account of any claim except where such indemnification is prohibited by law.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

ATTORNEY shall notify LAFCO immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

ATTORNEY shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the ATTORNEY, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ATTORNEY has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If ATTORNEY has no employees, ATTORNEY may certify or warrant in writing to LAFCO that ATTORNEY does not have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for workers compensation insurance will be waived by the Executive Officer or Risk Management.

4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the ATTORNEY'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains higher limits than the minimums shown above, the LAFCO requires and shall be entitled to coverage for the higher limits maintained by the ATTORNEY. Any

available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the LAFCO.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – LAFCO, its officers, officials, employees, and agents are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ATTORNEY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ATTORNEY’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the ATTORNEY’s insurance coverage shall be primary insurance as respects the LAFCO, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the LAFCO, its officers, officials, employees, agents or volunteers shall be excess of the ATTORNEY’s insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the LAFCO.
4. **Waiver of Subrogation Rights** – ATTORNEY hereby grants to LAFCO a waiver of any right to subrogation which any insurer of said ATTORNEY may acquire against the LAFCO by virtue of the payment of any loss under such insurance. ATTORNEY agrees to obtain any endorsement that may be necessary to affect 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.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the LAFCO. The LAFCO may require the ATTORNEY to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
7. **Verification of Coverage** – ATTORNEY shall furnish the LAFCO with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the LAFCO before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ATTORNEY’s obligation to provide them. The ATTORNEY shall furnish evidence of renewal of coverage throughout the term of the Agreement. The LAFCO reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, LAFCO has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by LAFCO as a material breach of contract.

9. **Subcontractors** – ATTORNEY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ATTORNEY shall ensure that LAFCO is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained, and evidence of insurance must be provided for at least one (1) year after completion of contract work.

Any failure, actual or alleged, on the part of LAFCO to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of LAFCO.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation

- A. Unless previously agreed in writing by LAFCO, William Dillon shall be the attorney personally responsible for providing all services hereunder. For ATTORNEY services to be rendered under this AGREEMENT, ATTORNEY shall be paid a total contract amount not to exceed \$150,000.00.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the services set forth in **EXHIBIT A** as determined by LAFCO. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and provide supporting documentation.
- C. Monthly, ATTORNEY shall submit to the LAFCO DESIGNATED REPRESENTATIVE an invoice or certified claim on the Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned LAFCO Contract Number. The LAFCO DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** shall initiate payment processing. LAFCO shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. LAFCO's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of LAFCO's right to require ATTORNEY to correct such work or billings or seek any other legal remedy.

IN WITNESS WHEREOF, the parties have amended this Agreement to be effective on the date executed by LAFCO.

ATTORNEY:
WILLIAM M. DILLON

By: _____
WILLIAM M. DILLON
Tax ID Number: [Provided to Executive Officer]

SANTA BARBARA LAFCO:

ATTEST:

By: _____
CRAIG GEYER
Chair

By: _____
JACQUELYNE ALEXANDER
Clerk to the Commission

Date: _____