

**Local Agency Formation Commission  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, California 94102-4689**

Agreement between the San Francisco Local Agency Formation Commission and

\_\_\_\_\_.

This Agreement is made this \_\_\_\_\_, in the City and County of San Francisco, State of California, by and between: \_\_\_\_\_, hereinafter referred to as “Contractor,” and the San Francisco Local Agency Formation Commission, hereinafter referred to as “LAFCO.”

**Recitals**

WHEREAS, LAFCO seeks an independent consultant to perform services related to INSERT; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by LAFCO as set forth under this Contract; and;

Now, THEREFORE, the parties agree as follows:

**1. Term of the Agreement**

The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_.

**2. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, “Description of Services,” attached hereto and incorporated by reference as though fully set forth herein.

**3. Compensation**

Compensation shall be made in monthly payments on or before the 10<sup>th</sup> day of each month for work, as set forth in Section 2 of this Agreement, that the Executive Officer, in his or her sole discretion, concludes has been performed and accepted as of the 10<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this Agreement exceed \_\_\_\_\_. The break down of costs associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Executive Officer as being in accordance with this Agreement. LAFCO may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement or in the event work is not accepted.

In no event shall LAFCO be liable for interest or late charges for any late payments.

**4. Guaranteed Maximum Costs**

(a) LAFCO’s obligation hereunder shall not at any time exceed the amount set forth in Section 3.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of LAFCO are not authorized to request, and LAFCO is not required to reimburse the Contractor for services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of LAFCO are not authorized to offer or promise, nor is LAFCO required to honor, any offered or promised additional funding in excess of the maximum amount of funding set forth in Section 3.

## **5. Payments; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to LAFCO and must include the Contract Progress Payment Authorization number if applicable. All amounts paid by LAFCO to Contractor shall be subject to audit by Controller.

Payment shall be made by LAFCO to Contractor at the address specified in the section entitled "Notices to the Parties."

## **6. Submitting False Claims; Monetary Penalties**

Any contractor, subcontractor or consultant who submits a false claim shall be liable to LAFCO for the amount of damages, which LAFCO sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to LAFCO for the costs, including attorneys' fees, of a civil action brought to recover any of those damages. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to LAFCO if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of LAFCO a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by LAFCO; (c) conspires to defraud LAFCO by getting a false claim allowed or paid by LAFCO; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to LAFCO; or (e) is a beneficiary of an inadvertent submission of a false claim to LAFCO, subsequently discovers the falsity of the claim, and fails to disclose the false claim to LAFCO within a reasonable time after discovery of the false claim.

## **7. Independent Analysis**

In performing services under this Agreement, Contractor shall provide its independent analysis and shall develop issues and conclusions based on its own determinations. In the event Contractor utilizes documents, data, or other information prepared by third parties, or relies on work Contractor has developed previously, such use shall be disclosed and the use of any such text shall be set off by quotations and reference shall be made to the quoted document, including title, date of publication and author.

## **10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of LAFCO property for private gain. If such a possessory interest is created, then the following shall apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of LAFCO to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (See, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by LAFCO to enable LAFCO to comply with any reporting requirements for possessory interests that are imposed by applicable law.

#### **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by LAFCO, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by LAFCO and in such case must be replaced by Contractor without delay.

#### **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with LAFCO’s reasonable requests regarding assignment of personnel, but Contractor must supervise all personnel, including those assigned at LAFCO’s request. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

#### **13. Responsibility for Equipment**

LAFCO shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by LAFCO.

#### **14. Independent Contractor; Payment of Taxes and Other Expenses**

a. Independent Contractor: Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by LAFCO under this Agreement. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between LAFCO and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from LAFCO shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses: Should LAFCO, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this

Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). LAFCO shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for LAFCO, upon notification of such fact by LAFCO, Contractor shall promptly remit such amount due or arrange with LAFCO to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of LAFCO. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in LAFCO's financial liability so that LAFCO's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## **15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the LAFCO and the City and County of San Francisco, its Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty days' advance written notice to LAFCO of cancellation mailed to the following address:

**Local Agency Formation Commission**  
1 Dr. Carlton B. Goodlett Place Room 244  
San Francisco, CA 94102-4689

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until LAFCO receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, LAFCO may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to LAFCO certificates of insurance, in form and with insurers satisfactory to LAFCO, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon LAFCO request.

h. Approval of the insurance by LAFCO shall not relieve or decrease the liability of Contractor hereunder.

## **16. Indemnification**

Contractor shall indemnify and save harmless LAFCO and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by LAFCO or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on LAFCO, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of LAFCO and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify LAFCO, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend LAFCO from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by LAFCO and continues at all times thereafter.

Contractor shall indemnify and hold LAFCO harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by LAFCO, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

## **17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that LAFCO may have under applicable law.

## **18. Liability of LAFCO**

LAFCO'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL LAFCO BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED

TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**19. Liquidated Damages.**

**20. Default; Remedies**

a. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 50.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from LAFCO to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, LAFCO shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, LAFCO shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to LAFCO on demand all costs and expenses incurred by LAFCO in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. LAFCO shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between LAFCO and Contractor all damages, losses, costs or expenses incurred by LAFCO as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**21. Termination for Convenience**

a. LAFCO shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. LAFCO shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by LAFCO and to minimize the liability of Contractor and LAFCO to third parties as a result of termination. All such actions shall be subject to the prior approval of LAFCO. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by LAFCO.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At LAFCO's direction, assigning to LAFCO any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, LAFCO shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to LAFCO's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that LAFCO designates to be completed prior to the date of termination specified by LAFCO.
- (7) Taking such action as may be necessary, or as the LAFCO may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which LAFCO has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to LAFCO an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work LAFCO directed Contractor to perform prior to the specified termination date, for which services or work LAFCO has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of LAFCO, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the LAFCO or otherwise disposed of as directed by the LAFCO.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to LAFCO, and any other appropriate credits to LAFCO against the cost of the services or other work.

d. In no event shall LAFCO be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by LAFCO, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, LAFCO may deduct: (1) all payments previously made by LAFCO for work or other services covered by Contractor's final invoice; (2) any claim which LAFCO may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the

LAFCO, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and LAFCO's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. LAFCO's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties Upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 44, 46 through 49, and 51.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to LAFCO, and deliver in the manner, at the times, and to the extent, if any, directed by LAFCO, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to LAFCO. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City and County of San Francisco's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts, which constitute a violation of said provisions.

## **24. Proprietary or Confidential Information of LAFCO**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by LAFCO and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to LAFCO. Contractor agrees that all information disclosed by LAFCO to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To LAFCO: Alisa Miller

To Contractor:

Commission Clerk

SF LAFCO

1 Dr. Carlton B. Goodlett Place Room 244

San Francisco, CA 94102

Email: [alisa.miller@sfgov.org](mailto:alisa.miller@sfgov.org)

Phone: 415-554-5184

Fax: 415-554-5163

## **26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to LAFCO. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

## **27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the LAFCO. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the LAFCO, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the LAFCO, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **28. Audits and Inspection of Records**

Contractor agrees to maintain and make available to the LAFCO, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit LAFCO to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon LAFCO by this Section.

## **29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by LAFCO in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by LAFCO by written instrument executed and approved in the same manner as this Agreement.

## **31. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

## **32. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on LAFCO

premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

### **33. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

### **34. Sunshine Ordinance**

In accordance with LAFCO policy, the provisions of S.F. Administrative Code §67.24(e) shall apply and, contracts, contractors' bids, responses to solicitations and all other records of communications between LAFCO and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Studies, documents and reports produced by Contractor at the direction of the Board of Supervisors shall be owned by the Board of Supervisors as specified in Section 26 of this agreement. Contractor agrees to assist the Board of Supervisors and the Clerk of the Board in responding to any public request for access to such documents and reports or related material.

### **45. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

### **46. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

### **47. Agreement Made in California; Venue**

The laws of the State of California shall govern the formation, interpretation and performance of this Agreement. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

### **48. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

### **49. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

**50. Compliance with Laws**

Contractor shall keep itself fully informed of the LAFCO's Charter, codes, ordinances and regulations of the LAFCO and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**51. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

LAFCO

CONTRACTOR

\_\_\_\_\_  
For LAFCO

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Approved as to Form:

LAFCO Attorney

\_\_\_\_\_  
Title

By \_\_\_\_\_  
LAFCO Attorney

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
State, ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Federal Employer ID Number

## **APPENDICES**

- A: Services to be Provided by Contractor
- B: Calculation of Charges

# Appendix A

## Services to be Provided by Contractor

### 1. Description of Services

**Services shall be provided by** \_\_\_\_\_  
**Services and Tasks shall be as follow:** \_\_\_\_\_

LAFCO agrees to furnish the Contractor, at no charge, records, data and other information which in the opinion of the Executive Officer are necessary for the performance of this Agreement; provided, however, that LAFCO shall not provide clerical or reproduction services or any other materials and supplies.

Contractor agrees not to remove any official documents from the office of LAFCO. All documents prepared by the Contractor in furtherance of this Agreement shall be delivered to the Executive Officer.

**In performing the services provided for in this Agreement, Contractor's liaison with LAFCO will be:**

Ms. Alisa Miller  
Commission Clerk  
SF LAFCO  
1 Dr. Carlton B. Goodlett Place Room 244  
San Francisco, CA 94102  
Email: alias.miller@sfgov.org  
Phone: 415-554-5184

# **Appendix B**

To be inserted

**Calculation of Charges**

**Rates and Personnel**

**Costs of Tasks**

**Not to Exceed Amount per Task**

