



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

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AGENDA REPORT
 Consent | Action

November 4, 2019

TO: Commissioners

FROM: Keene Simonds, Executive Officer

SUBJECT: **Commission Counsel Services | Proposed New Agreement with Colantuono, Highsmith & Whatley**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a proposed new agreement for legal services with Colantuono, Highsmith & Whatley. The new agreement resets and extends the term through June 30, 2022 and makes related updates involving billing rates and designating firm employees to file annual conflict of interest statements. The Executive Officer recommends approval of the new agreement.

BACKGROUND

Appointment of Commission Counsel

San Diego LAFCO appointed Michael Colantuono with Colantuono, Highsmith & Whatley as Commission Counsel in March 2015. The appointment satisfies Government Code Section 56384 and direction to independently appoint Commission Counsel to advise LAFCO on all matters. The Executive Officer proceeded to enter into a professional services agreement with Colantuono, Highsmith & Whatley memorializing the appointment and it specifies all legal services shall be performed by the firm at fixed hourly rates and at the request and direction of the Executive Officer. The original term expired on June 30, 2019 and as allowed the Executive Officer extended the agreement for an additional year as a

<p>Administration Keene Simonds, Executive Officer County Operations Center 9335 Hazard Way, Suite 200 San Diego, California 92123 T 858.614.7755 F 858.614.7766 www.sdlafco.org</p>	<p>Jim Desmond County of San Diego</p> <p>Dianne Jacob, Vice Chair County of San Diego</p> <p>Greg Cox, Alternate County of San Diego</p>	<p>Mary Casillas Salas City of Chula Vista</p> <p>Bill Wells City of El Cajon</p> <p>Paul McNamara, Alternate City of Escondido</p>	<p>Mark Kersey City of San Diego</p> <p>Chris Cate, Alternate City of San Diego</p>	<p>Jo MacKenzie, Chair Vista Irrigation</p> <p>Barry Willis Alpine Fire Protection</p> <p>Erin Lump, Alternate Rincon del Diablo MWD</p>	<p>Andy Vanderlaan General Public</p> <p>Harry Mathis, Alternate General Public</p>
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placeholder and ahead of bringing a new agreement to the Commission for its review and approval. A copy of the current agreement is provided as Attachment One.

DISCUSSION

This item is for San Diego LAFCO to consider a proposed new agreement for legal services with Colantuono, Highsmith & Whatley. The proposed new agreement has been developed between the Executive Officer and Partner Holly Whatley and would become effective November 1st. A copy of the proposed new agreement is provided as Attachment Two with pertinent details provided in the succeeding section.

ANALYSIS

The proposed new agreement for legal services with Colantuono, Highsmith & Whatley renews the current arrangement with three distinct and merited changes. The first and primary change is to reset the agreement term for three additional fiscal years through June 30, 2022 and in doing so replace the current year-to-year arrangement. The extension of the term provides for the continuation of an advantageous arrangement in which the Commission regularly draws on the extensive expertise and resources of the firm in fulfilling LAFCO's regulatory and planning duties. The second change incorporates annual 3.1% increases in all hourly billing categories (i.e., partner, associate, paralegal, etc.) and equals the projected inflation rate for the San Diego region during the period. This change would mark the first increase in hourly rates since 2014 and provides cost-certainty to the Commission by avoiding an interim request by the firm to adjust billing levels. The third change involves expanding the list of firm employees required to file annual statements of conflict of interest from Michael Colantuono to also include Partner Holly Whatley. This expansion reflects Ms. Whatley assuming a more prominent and regular role in representing the Commission since the last agreement was signed. The proposed new agreement – separately – satisfies a procurement requirement for the Executive Officer to receive Commission approval for any professional services arrangement in which costs exceed \$125,000 with additional details footnoted.¹

RECOMMENDATION

It is recommended San Diego LAFCO approve the proposed new agreement for legal services with Colantuono, Highsmith & Whatley consistent with Alternative Action One as outlined in the proceeding section.

(over)

¹ San Diego LAFCO's legal costs have steadily increased in recent years and are now approaching the referenced procurement threshold as shown by 2018-2019 billed expenses with Colantuono, Highsmith & Whatley totaling approximately \$120,000. Accordingly, it is appropriate for the Commission to directly approve a new agreement.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

Alternative One (recommended):

Approve the proposed new agreement with Colantuono, Highsmith & Whatley provided as Attachment Two with any desired revisions and authorize the Executive Officer to sign on behalf of LAFCO.

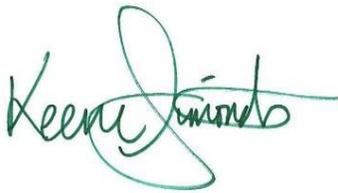
Alternative Two:

Continue item to a future meeting.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified.

Respectfully,



Keene Simonds
Executive Officer

Attachments:

- 1) Existing Agreement for Legal Services with Colantuono, Highsmith & Whatley
- 2) Proposed New Agreement for Legal Services with Colantuono, Highsmith & Whatley

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**AGREEMENT BETWEEN
SAN DIEGO COUNTY
LOCAL AGENCY FORMATION COMMISSION
AND Colantuono, Highsmith & Whatley, PC
FOR LEGAL COUNSEL SERVICES**

THIS AGREEMENT is effective on the first day of July 2017 between Colantuono Highsmith & Whatley, PC (hereinafter called "Legal Counsel"), and the San Diego Local Agency Formation Commission (hereinafter called "LAFCO").

WITNESSETH:

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56380 et seq.) authorizes LAFCO to employ or contract for professional or consulting services to carry out the functions of the Commission; and

WHEREAS, LAFCO desires the services of a law firm to provide legal representation / legal advice.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between parties as follows:

I. EMPLOYMENT OF LEGAL COUNSEL

LAFCO agrees to engage Legal Counsel and Legal Counsel hereby agrees to perform the services hereinafter set forth.

II. INTENT OF PARTIES

It is understood between parties that Legal Counsel will perform services as determined necessary by the Executive Officer.

III. SCOPE OF LEGAL COUNSEL SERVICES

Legal Counsel shall undertake the following services on a retainer basis at the request and direction of the Executive Officer.

1. Legal Counsel will be on call to answer questions from the Executive Officer or to perform legal representation / legal advice services as requested by the Executive Officer on an "as-needed" basis.
2. Legal Counsel will provide regular updates to the Executive Officer regarding legal representation / legal advice services when requested by the Executive Officer.

IV. ADMINISTRATOR OF AGREEMENT

The Executive Officer is LAFCO's representative (contract officer) for purposes of administering this Agreement. Michael G. Colantuono (Colantuono, Highsmith and Whatley, PC), is Legal Counsel's representative for purposes of administering this Agreement, and is Legal Counsel's LAFCO representative and contact person.

V. LEGAL COUNSEL'S EMPLOYEES AND EQUIPMENT

Legal Counsel agrees that it has secured or will secure at its own expense all persons, employees and equipment required to perform the services required under this Agreement and that all such services will be performed by Legal Counsel, or under Legal Counsel's supervision, by persons authorized by law to perform such services.

VI. TERM

This agreement shall become effective upon execution by both parties and shall continue until terminated or the date of expiration. The agreement shall remain in effect through June 30, 2019, and shall be subject to renewal on July 1, 2019. This agreement may be extended by the Executive Officer for annual periods, unless otherwise specified by the Commission.

VII. COMPENSATION AND MANNER OF PAYMENT

Legal Counsel will be compensated only for legal representation / legal advice services described in Section III above performed at the express direction of the Executive Officer of LAFCO. Compensation shall include only labor and expenses, to be paid as follows:

1. Labor

Compensation for labor of personnel shall be billed at the firm's standard hourly rates capped at \$325.00/hour. The firm's standard rates are attached hereto as Exhibit A and shall not be amended during the term of this agreement without the written approval of LAFCO.

Compensation during travel to and from the San Diego LAFCO shall be billed at one-half the time actually incurred, limited to a maximum of 4 hours one-way.

2. Expenses

Legal Counsel will also be compensated for its actual expenses incurred for

materials, mileage at current County of San Diego rates, long-distance telephone calls, and other expenses authorized by the Executive Officer. Outgoing faxes will be reimbursed at \$1 per page and in-house photocopies will be reimbursed at ten cents per page. Legal Counsel shall charge no administrative or other markup on expenses for which reimbursement is sought from LAFCO.

3. Manner of and Maximum Payment

Payment shall be made in arrears pursuant to written invoices submitted to the Executive Officer on a monthly basis. Payment shall be made within 30 days of receipt of invoices. Such payment shall constitute full and complete payment for the period covered by the invoice. The total amount paid to Legal Counsel for work within any fiscal year shall be subject to the approval of the Executive Officer and may not exceed the amount budgeted for this purpose by LAFCO for that fiscal year.

VIII. AUDIT AND INSPECTION OF RECORDS

At a time that is agreed upon by LAFCO and Legal Counsel and as often as LAFCO may deem necessary, Legal Counsel shall make available to LAFCO or its designated agents for examination all of Legal Counsel's data and records with respect to all matters covered by this Agreement, and Legal Counsel will permit LAFCO, or its designated agents, to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Agreement. Unless otherwise specified by LAFCO in writing, said data and records should be made available for examination within San Diego County for a period of two (2) years following completion of this Agreement.

IX. INTEREST OF LEGAL COUNSEL

- a. Legal Counsel covenants that he/she 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. Legal Counsel further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained under this Agreement.
- b. Except as provided in paragraph c. below, Legal Counsel agrees to not act as Legal Counsel or perform services of any kind for any LAFCO applicant without the prior written consent of LAFCO. When consent has been given, Legal Counsel shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Legal Counsel or convey, utilize, or permit to be utilized, confidential information gained through its association with LAFCO for the

benefit of any other client.

- c. Legal Counsel has informed LAFCO that it provides advisory and litigation services to The San Diego Tourism Marketing District, the San Diego County Water Authority, the San Diego Unified Port district and the Cities of Chula Vista, National City and San Diego. Legal Counsel also represents seven cities in the County in a lawsuit against San Diego County disputing the distribution of tax increment revenues that formerly flowed to Redevelopment Agencies. These are Chula Vista, El Cajon, Escondido, Poway, San Diego San Marcos and Vista. Legal Counsel is generally in the business of providing general and special counsel services to local governments in San Diego County and elsewhere in California. Provided that Legal Counsel does not provide services in San Diego County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, Legal Counsel may continue its practice of providing legal services to local governments in San Diego County without further consent of LAFCO. Legal Counsel shall not provide services in San Diego County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, without the informed, written consent of LAFCO.
- d. Legal Counsel agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreement with said client, which would enable Legal Counsel to comply fully with its terms.
- e. Legal Counsel shall recuse himself/herself from discussions or actions that may result in a financial benefit to him/her or to any governmental agency that he represents. Notwithstanding this recusal provision, the following positions, by name or job title, are hereby classified "designated employees," as defined by LAFCO's Conflict of Interest Code adopted July 31, 1995. Such "designated employees" will be required to complete and submit any Conflict of Interest Statements that may become due during the effective period of this Agreement.

Michael G. Colantuono

X. TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, Legal Counsel shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if Legal Counsel shall violate any of the covenants, agreements, or stipulations of this Agreement, LAFCO shall thereupon have the right to terminate this Agreement by giving written notice to Legal Counsel of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In the event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports, and other materials prepared by Legal Counsel shall, at the option

of LAFCO, become its property, and Legal Counsel shall be entitled to received just and equitable compensation for any satisfactory work completed on such documents and other materials, not to exceed the amounts payable under Section VII above.

Notwithstanding the above, Legal Counsel shall not be relieved of liability to LAFCO for damages sustained by LAFCO by virtue of any breach of the Agreement by Legal Counsel, and LAFCO may withhold any payments to Legal Counsel for the purpose of offset until such time as the exact amount of damages due LAFCO from Legal Counsel is determined. Legal Counsel hereby expressly waives any and all claims for damages for compensation arising under this Agreement except as set forth in this section in event of such termination.

XI. TERMINATION FOR CONVENIENCE OF LAFCO

LAFCO reserves the right to terminate this Agreement at any time by written notice to Legal Counsel sixty (60) days prior to date of termination thereof. LAFCO shall thereafter pay Legal Counsel for work performed to the date of termination. Such notice shall terminate this Agreement and release LAFCO from any further fee, cost or claim hereunder by Legal Counsel other than for work performed to date of termination. In the event of termination, all finished and unfinished documents and other material shall, at the option of LAFCO, become its property.

XII. INSURANCE AND HOLD HARMLESS AGREEMENT

Legal Counsel agrees to maintain such insurance as will fully protect Legal Counsel, LAFCO, and County from any and all claims under any workers' compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations carried on under this Agreement, either by Legal Counsel, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. Legal Counsel shall exonerate, indemnify, defend, and hold harmless LAFCO and County from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to Legal Counsel and Legal Counsel's employees engaged in performance of this Agreement. LAFCO and County, and their agents, officers, and employees shall not be, nor be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of Legal Counsel or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of Legal Counsel or Legal Counsel's agents, employees, or representatives. Legal Counsel further agrees to indemnify, defend, and hold harmless LAFCO and County, and their agents, officers, and employees, against and from any and all of the foregoing

liabilities, and any and all costs or expenses incurred by LAFCO and County on account of any claim therefor. In the event that a court of competent jurisdiction should determine that LAFCO has not the authority to provide by agreement for the provision of the hereinabove-set-forth professional service, Legal Counsel nevertheless agrees to assume the foregoing obligations and liabilities, by which it is intended by both parties that Legal Counsel shall indemnify and save LAFCO and County free and harmless from all claims arising by reason of any negligent act or omission of Legal Counsel.

XIII. INTEREST OF LAFCO OFFICERS AND OTHERS

No officer, member, or employee of LAFCO and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest, or the interest of any corporation, partnership, or association in which he/she is directly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XIV. ASSIGNABILITY

Legal Counsel shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of LAFCO thereto. Provided, however, that claims for money due or to become due to Legal Counsel from LAFCO under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to LAFCO. Any assignment requiring approval may not be further sub-assigned without LAFCO approval.

XV. FINDINGS CONFIDENTIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVI. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

LAFCO: Michael D. Ott, Executive Officer
San Diego LAFCO
9335 Hazard Way, Suite 200
San Diego CA 92123
(858) 614-7755
FAX (858) 614-7766
E-mail: mike.ott@sdcounty.ca.gov

Legal Counsel: Michael G. Colantuono
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Voice (530) 432-7357
Fax (530) 432-7356
E-mail: mcolantuono@chwlaw.us
Web: www.chwlaw.us

Payments shall be directed to Legal Counsel as follows:

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

Either party may alter its address for notice under this Agreement by written notice to the other party at any time.

XVIII. INDEPENDENT CONTRACTOR

Legal Counsel and any agent, subcontractor, or employee of Legal Counsel shall act in an independent capacity and not as an officer or employee of LAFCO. LAFCO assumes no liability for Legal Counsel's action in performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Legal Counsel. Legal Counsel shall not have authority to act as an agent on behalf of LAFCO unless specifically authorized to do so in writing by LAFCO's Executive Officer. Legal Counsel acknowledges that it is aware that, because it is an independent contractor, LAFCO is making no deductions from its fee and is not contributing to any fund on its behalf. Legal Counsel disclaims the right to fee or benefits except as expressly provided for in this Agreement.

Legal Counsel shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of LAFCO, other than normal contract monitoring; provided, however, Legal Counsel shall possess no authority with respect to any LAFCO decision beyond rendition of such information, advice or recommendations unless authorized by the Executive Officer.

XIX. EQUAL OPPORTUNITY

Legal Counsel will not discriminate against any employee, or against any applicant for such employment because of age, race, color, creed, religion, sex, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

XX. SUBCONTRACTS

None of the services covered by this Agreement shall be subcontracted or assigned without the prior written consent of LAFCO, provided however, that this provision shall not apply to secretarial, clerical, routine mechanical, and similar incidental services needed by Legal Counsel to assist in the performance of this Agreement. Legal Counsel shall not hire LAFCO's employees to perform any portion of the work or services provided for herein including secretarial, clerical, and similar incidental services except upon the written approval of LAFCO. Performance of services under this Agreement by associates or employees of Legal Counsel shall not relieve Legal Counsel from any responsibility under this Agreement.

XXI. CHANGES

LAFCO may, from time-to-time require changes in the scope of the services of Legal Counsel to be performed hereunder. Such changes, including any increase or decrease in the amount of Legal Counsel's compensation, which is mutually agreed upon by and between LAFCO, the Legal Counsel, and the Applicant shall be effective when incorporated in written amendments to this Agreement.

XXII. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of the possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

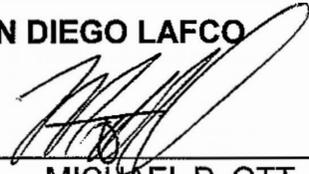
XXIII. APPLICABLE LAW

This Agreement shall be construed and interpreted according to the laws of the State of California.

IN WITNESS WHEREOF, LAFCO and Legal Counsel have executed this Agreement as of the date first above written.

SAN DIEGO LAFCO

BY



MICHAEL D. OTT
Executive Officer

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

BY



MICHAEL G. COLANTUONO
President

DATE

5/1/17

DATE

5/1/17

Exhibit A

Non-Retainer Hourly Billing Rates As of July 1, 2017 and July 1, 2019

Shareholders and Senior Contract Attorneys	\$325
8 th Year and more Senior Associates	\$320
7 th Year Associates	\$300
6 th Year Associates	\$295
5 th Year Associates	\$270
4 th Year Associates	\$260
3 rd Year Associates	\$245
2 nd Year Associates	\$225
1 st Year Associates	\$195
Paralegals	\$145
Legal Assistants	\$125

**AGREEMENT BETWEEN
SAN DIEGO COUNTY
LOCAL AGENCY FORMATION COMMISSION
AND Colantuono, Highsmith & Whatley, PC
FOR LEGAL COUNSEL SERVICES**

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WITNESSETH:

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56380 et seq.) authorizes LAFCO to employ or contract for professional or consulting services to carry out the functions of the Commission; and

WHEREAS, LAFCO desires the services of a law firm to provide legal representation / legal advice.

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1. Legal Counsel will be on call to answer questions from the Executive Officer or to perform legal representation / legal advice services as requested by the Executive Officer on an "as-needed" basis.
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V. LEGAL COUNSEL'S EMPLOYEES AND EQUIPMENT

Legal Counsel agrees that it has secured or will secure at its own expense all persons, employees and equipment required to perform the services required under this Agreement and that all such services will be performed by Legal Counsel, or under Legal Counsel's supervision, by persons authorized by law to perform such services.

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1. Labor

Compensation for labor of personnel shall be billed in accordance with the rates attached hereto as Exhibit A and shall not be amended during the term of this agreement without the written approval of LAFCO.

Compensation during travel to and from the San Diego LAFCO shall be billed at one-half the time actually incurred, limited to a maximum of 4 hours one-way.

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Legal Counsel will also be compensated for its actual expenses incurred for materials, mileage at current County of San Diego rates, long-distance

telephone calls, and other expenses authorized by the Executive Officer. Outgoing faxes will be reimbursed at \$1 per page and in-house photocopies will be reimbursed at fifteen cents per page. Legal Counsel shall charge no administrative or other markup on expenses for which reimbursement is sought from LAFCO.

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- c. Legal Counsel has informed LAFCO that it provides advisory and litigation services to The San Diego Tourism Marketing District, the San Diego Unified Port district and the Cities of Chula Vista, National City and San Diego. Legal Counsel also represents seven cities in the County in a lawsuit against San Diego County disputing the distribution of tax increment revenues that formerly flowed to Redevelopment Agencies. These are Chula Vista, El Cajon, Escondido, Poway, San Diego San Marcos and Vista. Legal Counsel also represents eleven cities and three special districts in a lawsuit filed by the San Diego County Office of Education and eight school districts against the County of San Diego and several cities and special districts in a dispute about how the County of San Diego allocates tax increment revenues that formerly flowed to Redevelopment Agencies. These are the cities of Chula Vista, El Cajon, Imperial Beach, Lemon Grove, National City, Oceanside, San Diego, San Marcos, Santee, Solana Beach, and Vista, and the special districts Padre Dam Muni. Water Dist., San Marcos Fire Protection District, and San Fe Irrigation District. Legal Counsel is generally in the business of providing general and special counsel services to local governments in San Diego County and elsewhere in California. Provided that Legal Counsel does not provide services in San Diego County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, Legal Counsel may continue its practice of providing legal services to local governments in San Diego County without further consent of LAFCO. Legal Counsel shall not provide services in San Diego County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, without the informed, written consent of LAFCO.
- d. Legal Counsel agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreement with said client, which would enable Legal Counsel to comply fully with its terms.
- e. Legal Counsel shall recuse himself/herself from discussions or actions that may result in a financial benefit to him/her or to any governmental agency that he represents. Notwithstanding this recusal provision, the following positions, by name or job title, are hereby classified "designated employees," as defined by LAFCO's Conflict of Interest Code adopted July 31, 1995. Such "designated employees" will be required to complete and submit any Conflict of Interest Statements that may become due during the effective period of this Agreement.

Michael G. Colantuono and Holly O. Whatley

X. TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, Legal Counsel shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if Legal Counsel shall violate any of the covenants, agreements, or stipulations of this Agreement, LAFCO shall thereupon have the right to terminate this Agreement by giving written notice to Legal Counsel of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In the event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports, and other materials prepared by Legal Counsel shall, at the option of LAFCO, become its property, and Legal Counsel shall be entitled to received just and equitable compensation for any satisfactory work completed on such documents and other materials, not to exceed the amounts payable under Section VII above.

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LAFCO reserves the right to terminate this Agreement at any time by written notice to Legal Counsel sixty (60) days prior to date of termination thereof. LAFCO shall thereafter pay Legal Counsel for work performed to the date of termination. Such notice shall terminate this Agreement and release LAFCO from any further fee, cost or claim hereunder by Legal Counsel other than for work performed to date of termination. In the event of termination, all finished and unfinished documents and other material shall, at the option of LAFCO, become its property.

XII. INSURANCE AND HOLD HARMLESS AGREEMENT

Legal Counsel agrees to maintain such insurance as will fully protect Legal Counsel, LAFCO, and County from any and all claims under any workers' compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations carried on under this Agreement, either by Legal Counsel, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. Legal Counsel shall exonerate, indemnify, defend, and hold harmless LAFCO and County from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under

unemployment insurance, social security and income tax laws, with respect to Legal Counsel and Legal Counsel's employees engaged in performance of this Agreement. LAFCO and County, and their agents, officers, and employees shall not be, nor be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of Legal Counsel or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of Legal Counsel or Legal Counsel's agents, employees, or representatives. Legal Counsel further agrees to indemnify, defend, and hold harmless LAFCO and County, and their agents, officers, and employees, against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by LAFCO and County on account of any claim therefor. In the event that a court of competent jurisdiction should determine that LAFCO has not the authority to provide by agreement for the provision of the hereinabove-set-forth professional service, Legal Counsel nevertheless agrees to assume the foregoing obligations and liabilities, by which it is intended by both parties that Legal Counsel shall indemnify and save LAFCO and County free and harmless from all claims arising by reason of any negligent act or omission of Legal Counsel.

XIII. INTEREST OF LAFCO OFFICERS AND OTHERS

No officer, member, or employee of LAFCO and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest, or the interest of any corporation, partnership, or association in which he/she is directly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XIV. ASSIGNABILITY

Legal Counsel shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of LAFCO thereto. Provided, however, that claims for money due or to become due to Legal Counsel from LAFCO under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to LAFCO. Any assignment requiring approval may not be further sub-assigned without LAFCO approval.

XV. FINDINGS CONFIDENTIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVI. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

LAFCO: Keene Simonds, Executive Officer
San Diego LAFCO
9335 Hazard Way, Suite 200
San Diego CA 92123
(858) 614-7755
FAX (858) 614-7766
E-mail: keene.simonds@sdcounty.ca.gov

Legal Counsel: Holly O. Whatley
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Ste. 850
Pasadena, CA 91101
Voice (213)-542-5704
Fax (213)-542-5710
E-mail: hwhatley@chwlaw.us
Web: www.chwlaw.us

Payments shall be directed to Legal Counsel as follows:

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

Either party may alter its address for notice under this Agreement by written notice to the other party at any time.

XVIII. INDEPENDENT CONTRACTOR

Legal Counsel and any agent, subcontractor, or employee of Legal Counsel shall

act in an independent capacity and not as an officer or employee of LAFCO. LAFCO assumes no liability for Legal Counsel's action in performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Legal Counsel. Legal Counsel shall not have authority to act as an agent on behalf of LAFCO unless specifically authorized to do so in writing by LAFCO's Executive Officer. Legal Counsel acknowledges that it is aware that, because it is an independent contractor, LAFCO is making no deductions from its fee and is not contributing to any fund on its behalf. Legal Counsel disclaims the right to fee or benefits except as expressly provided for in this Agreement.

Legal Counsel shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of LAFCO, other than normal contract monitoring; provided, however, Legal Counsel shall possess no authority with respect to any LAFCO decision beyond rendition of such information, advice or recommendations unless authorized by the Executive Officer.

XIX. EQUAL OPPORTUNITY

Legal Counsel will not discriminate against any employee, or against any applicant for such employment because of age, race, color, creed, religion, sex, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

XX. SUBCONTRACTS

None of the services covered by this Agreement shall be subcontracted or assigned without the prior written consent of LAFCO, provided however, that this provision shall not apply to secretarial, clerical, routine mechanical, and similar incidental services needed by Legal Counsel to assist in the performance of this Agreement. Legal Counsel shall not hire LAFCO's employees to perform any portion of the work or services provided for herein including secretarial, clerical, and similar incidental services except upon the written approval of LAFCO. Performance of services under this Agreement by associates or employees of Legal Counsel shall not relieve Legal Counsel from any responsibility under this Agreement.

XXI. CHANGES

LAFCO may, from time-to-time require changes in the scope of the services of Legal Counsel to be performed hereunder. Such changes, including any increase or decrease in the amount of Legal Counsel's compensation, which is mutually

agreed upon by and between LAFCO, the Legal Counsel, and the Applicant shall be effective when incorporated in written amendments to this Agreement.

XXII. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of the possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

XXIII. APPLICABLE LAW

This Agreement shall be construed and interpreted according to the laws of the State of California.

IN WITNESS WHEREOF, LAFCO and Legal Counsel have executed this Agreement as of the date first above written.

SAN DIEGO LAFCO

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

BY _____
KEENE SIMONDS
Executive Officer

BY _____
HOLLY O. WHATLEY
Vice-President

DATE _____

DATE _____

Exhibit A

Hourly Billing Rates As of Nov. 1, 2019 through June 30, 2020

Shareholders and Senior Contract Attorneys	\$335
8 th Year and more Senior Associates	\$330
7 th Year Associates	\$305
6 th Year Associates	\$300
5 th Year Associates	\$275
4 th Year Associates	\$270
3 rd Year Associates	\$250
2 nd Year Associates	\$230
1 st Year Associates	\$200
Paralegals	\$150
Legal Assistants	\$130

Hourly Billing Rates As of July 1, 2020 through June 30, 2021

Shareholders and Senior Contract Attorneys	\$345
8 th Year and more Senior Associates	\$340
7 th Year Associates	\$310
6 th Year Associates	\$305
5 th Year Associates	\$280
4 th Year Associates	\$275
3 rd Year Associates	\$255
2 nd Year Associates	\$235
1 st Year Associates	\$205
Paralegals	\$155
Legal Assistants	\$135

Hourly Billing Rates As of July 1, 2021 through June 30, 2022

Shareholders and Senior Contract Attorneys	\$355
8 th Year and more Senior Associates	\$350
7 th Year Associates	\$320
6 th Year Associates	\$310
5 th Year Associates	\$285
4 th Year Associates	\$280
3 rd Year Associates	\$260
2 nd Year Associates	\$240
1 st Year Associates	\$210
Paralegals	\$160
Legal Assistants	\$140