

PROFESSIONAL SERVICES AGREEMENT FOR CONSULTANT SERVICES
(San Diego County Local Agency Formation Commission / William Fulton Group)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of the last date indicated below by and between the San Diego County Local Agency Formation Commission, a California public agency, corporate and politic (“Commission”), and Ventura Publishing & Research, LLC, doing business as “William Fulton Group,” a California limited liability company (“Consultant”) (collectively, “parties”).

2. RECITALS

- 2.1 Commission has determined that it requires the following professional services from a consultant: consulting expertise for a municipal service review of the San Diego Association of Governments.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

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

3. DEFINITIONS

- 3.1 “Scope of Services” means such professional services as are set forth in Consultant’s “Proposed Scope of Work (Updated)” to Commission attached hereto as “Exhibit A” and fully incorporated herein by this reference.
- 3.2 “Approved Fee Schedule” means such compensation rates as are set forth in “Exhibit B” and fully incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.3 “Commencement Date” means July 15, 2024.
- 3.4 “Termination Date” means August 15, 2025.
- 3.5 “Commission Agreement Administrator” means Keene Simonds, Executive Officer.
- 3.6 “Consultant Project Administrator” means Bill Fulton, Principal.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

5. CONSULTANT’S SERVICES

- 5.1 Time is of the essence in Consultant’s performance of services under this Agreement.
- 5.2 Consultant shall perform the services identified in the Scope of Services. Commission shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Seventy-Two Thousand Dollars (\$72,000.00) unless specifically approved in advance and in writing by Commission. Consultant shall notify the Commission Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount payable above. Consultant shall concurrently inform the Commission Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the maximum amount payable above.
- 5.3 Consultant shall perform all work to the highest standards of Consultant’s profession and in a manner reasonably satisfactory to Commission. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 Consultant represents that it has advised Commission in writing prior to the date of signing this Agreement of any known relationships with third parties, Commissioners, or employees of Commission which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 5.5 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain

from a decision under this Agreement pursuant to a conflict of interest statute and (ii) Commission has not consented in writing to Consultant's performance of such work.

- 5.6 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. The Consultant Project Administrator shall have direct responsibility for management of Consultant's performance under this Agreement. No other person shall serve as Consultant Project Administrator without Commission's prior written consent.
- 5.7 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.8 Consultant shall be responsible to Commission for all services to be performed under this Agreement. All subconsultants shall be approved by the Commission Agreement Administrator and their billing rates identified in the Approved Fee Schedule. Commission shall pay Consultant for work performed by its subconsultants (including labor) only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. Commission shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.
- 5.9 Consultant shall notify the Commission Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to the Agreement.
- 5.10 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.

6. COMPENSATION

- 6.1 Commission agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.

- 6.2 Consultant shall submit to Commission an invoice on the dates specified in the Scope of Services for services performed pursuant to this Agreement. Each invoice shall identify the maximum amount payable above, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges. Commission shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall include a copy of each subconsultant invoice for which reimbursement is sought in the invoice.
- 6.3 The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 6.4 Payments for any services requested by Commission and not included in the Scope of Services may be made to Consultant by Commission on a time-and-materials basis pursuant to the Approved Fee Schedule and without amendment of this Agreement, so long as such payment does not cause the maximum amount payable above to be exceeded.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of Commission without restriction or limitation upon its use or dissemination by Commission except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to Commission, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Commission or otherwise to act on behalf of Commission as an agent. Neither Commission nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of Commission.

Under no circumstances shall Consultant look to the Commission as its employer. Consultant shall not be entitled to any benefits. Commission makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned San Diego County Employees Retirement Association (“SDCERA”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant

shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation, and other applicable federal and state taxes.

9. AGREEMENT ADMINISTRATOR

In performing services under this Agreement, Consultant shall coordinate all contact with Commission through its Commission Agreement Administrator. Commission reserves the right to change this designation upon written notice to Consultant. All services under this Agreement shall be performed at the request of the Commission Agreement Administrator, who will establish the timetable for completion of services and any interim milestones.

10. INDEMNIFICATION

- 10.1 The parties agree that Commission, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the Commission with the fullest protection possible under the law. Consultant acknowledges that Commission would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect Commission as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the Commission requests with respect to a claim provide a deposit for the defense of, and defend Commission, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the Commission. Such costs and expenses shall include reasonable attorneys' fees due to counsel of Commission's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 10.3 Commission shall have the right to offset against any compensation due Consultant under this Agreement any amount due Commission from Consultant as a result of Consultant's failure to pay Commission promptly any indemnification arising

Professional Services Agreement
(San Diego County Local Agency Formation Commission / William Fulton Group)

under this Section 10 of this Agreement and any amount due Commission from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 10.4 The obligations of Consultant under this Section 10 of this Agreement are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to Commission, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in Section 10 of this Agreement from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend Commission, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of Commission's choice.
- 10.6 Commission does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by Commission, or the deposit with Commission, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.
- 10.7 In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or SDCERA to be eligible for enrollment in SDCERA as an employee of the Commission, Consultant shall indemnify, defend, and hold harmless Commission for the payment of any employee and/or employer contributions for SDCERA benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Commission.
- 10.8 Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Commission, including but not limited

to eligibility to enroll in SDCERA as an employee of Commission and entitlement to any contribution to be paid by Commission for employer contribution and/or employee contributions for SDCERA benefits.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to Commission as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
 - 11.3.1. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.3.2. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.3.3. Worker's Compensation insurance if and as required by the laws of the State of California.
 - 11.3.4. Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.4 Consultant shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the Commission Agreement Administrator may waive the provision of Errors and Omissions Insurance by subconsultants in his or her sole discretion.

Professional Services Agreement
(San Diego County Local Agency Formation Commission / William Fulton Group)

- 11.5 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.6 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, Commission may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.7 At all times during the term of this Agreement, Consultant shall maintain on file with Commission's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming Commission and its officers, employees, agents and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with Commission's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing Commission as an Additional Insured.
- 11.8 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.9 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming Commission and its officers, employees, agents and volunteers as Additional Insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to Commission. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10 The insurance provided by Consultant shall be primary to any other coverage available to Commission. Any insurance or self-insurance maintained by Commission and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.11 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the Commission.
- 11.12 Any deductibles or self-insured retentions must be declared to and approved by the Commission. At the option of Commission, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to Commission, or

Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.

11.13 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

11.14 Consultant may be self-insured under the terms of this Agreement only with express written approval from the Commission.

11.14.1. All self-insured retentions (SIR) must be disclosed to the Commission for approval and shall not reduce the limits of liability.

11.14.2. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the Commission.

11.15 Commission reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

12. MUTUAL COOPERATION

12.1 Commission shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim, action, or proceeding is brought against Commission relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Commission may require in the defense of that claim, action, or proceeding.

13. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by Commission. Commission shall grant such consent if disclosure is legally required. Upon request, all Commission data shall be returned to Commission upon the termination or expiration of this Agreement.

14. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Commission under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to

Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of Commission. Commission shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Commission or as part of any audit of Commission, for a period of three (3) years after final payment under the Agreement.

15. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on the date they are sent via email to the email addresses listed below.

If to Commission:

Keene Simonds
Executive Officer
San Diego Local Agency Formation
Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123
858-614-7755
Email: Keene.Simonds@sdcounty.ca.gov
With courtesy copy to:

Holly O. Whatley
General Counsel
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd, Suite 8500
Pasadena, California 91101
213-542-5700
Email: HWhatley@chwlaw.us

If to Consultant:

William Fulton
William Fulton Group
805-701-6978
Email: bill@williamfultongroup.com

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Sections 10, 12, 13, and 14 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

18.1 This Agreement will terminate on the Termination Date, unless Commission may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on twenty-one calendar days' written notice to Commission. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All Commission data, documents, objects, materials or other tangible things shall be promptly returned to Commission upon the termination or expiration of this Agreement.

18.2 If Commission terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.2 above and as otherwise provided in this Agreement.

19. CONFLICT OF INTEREST DISCLOSURE

Pursuant to Government Code Section 1097.6, subdivision (c)(1), "[The] [C]onsultant's duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. [C]onsultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. [C]onsultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by [Consultant] pursuant to this agreement."

20. CAMPAIGN CONTRIBUTIONS

This Agreement is subject to Government Code Section 84308. Consultant shall disclose any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the Consultant or the Consultant's agent to a Commissioner or his or her committee. In the case of a contribution, Consultant shall request and provide a signed copy of the Campaign Contribution Disclosure Form to the Commission prior to, or concurrent with, the Consultant's execution of this Agreement.

21. GENERAL PROVISIONS

- 21.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Commission's prior written consent, and any attempt to do so shall be void and of no effect. Commission shall not be obligated or liable under this Agreement to any party other than Consultant.
- 21.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 21.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 21.4 The waiver by Commission or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Commission or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 21.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in Commission's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 21.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los

Professional Services Agreement
(San Diego County Local Agency Formation Commission / William Fulton Group)

Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 21.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 21.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 21.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Commission and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the Commission and Consultant.
- 21.10 Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action 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; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

Professional Services Agreement
(San Diego County Local Agency Formation Commission / William Fulton Group)

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“COMMISSION”
San Diego County Local Agency Formation
Commission

“CONSULTANT”
William Fulton Group

Authorized Signatories:

Signature: _____

By: _____
Keene Simonds
Executive Officer

Printed: _____

Title: _____

Date: _____

Date: _____

Attest:

Signature: _____

Printed: _____

Title: _____

Date: _____

Approved as to Form:

By : _____

Holly O. Whatley
Title: General Counsel

Date: _____

CONFLICT OF INTEREST CODE EXEMPTION

Paragraph D (Consultants) of Exhibit A (Designated Positions) of Article VII (Conflict of Interest Code) of the San Diego County Local Agency Formation Commission's Rules states:

"D. Consultants

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitations:

The Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code."

The Commission's Executive Officer determines that the Consultant, although a "designated position" for purposes of the Commission's Conflict of Interest Code, performs work, as summarized in the attached Scope of Work (Exhibit A), that is limited in scope and thus is not required to comply with the disclosure requirements described in the Conflict of Interest Code.

By: _____

Keene Simonds
Executive Officer

Date: _____