



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 5e (Consent/Action)

TO: Local Agency Formation Commission
PREPARED BY: Brendon Freeman, Executive Officer
MEETING DATE: August 7, 2017
SUBJECT: Proposed Amendment to Legal Services Contract

RECOMMENDATION

It is recommended the Commission approve the proposed amended and restated contract with Renne Sloan Holtzman Sakai for on-call legal services, effective August 1, 2017. The proposed amendment would extend the term of the existing contract through June 30, 2018, with an automatic one-year extension through June 30, 2019, unless terminated. The proposed amended and restated contract is included as Attachment One.

BACKGROUND AND SUMMARY

Following the distribution of a Request for Proposals for private on-call legal services, the Commission approved a contract with Miller & Owen on March 16, 2015. Miller & Owen subsequently merged with Renne Sloan Holtzman Sakai (RSHS) on October 1, 2015.

Under the contract, RSHS provides the Commission with all aspects of legal representation and legal services, including but not limited to legal advice, document drafting, and representation of the Commission. The contract specifies a maximum payment amount of \$26,500 per fiscal year. Actual annual expenditures over the term of the contract totaled \$26,093 in 2015-2016 and \$25,867 in 2016-2017. The term of the initial contract was through June 30, 2016, with an automatic renewal for up to one additional year, unless the agreement was otherwise terminated by the parties. To avoid having the contract expire prior to the Commission's August 7, 2017, meeting, the Executive Officer executed a one-month contract extension, but did not increase the *total* not to exceed amount under the contract of \$26,500.

Staff has been very satisfied with the services provided by Renne Sloan Holtzman Sakai under the current contract. Staff recommends the Commission approve an amendment that would extend the term of the contract through June 30, 2018, with an automatic one-year extension through June 30, 2019, unless terminated.

ATTACHMENT

- 1) Proposed Amended and Restated Legal Services Contract
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Juliana Inman, Commissioner
Councilmember, City of Napa

Margie Mohler, Commissioner
Councilmember, Town of Yountville

Kenneth Leary, Alternate Commissioner
Councilmember, City of American Canyon

Brad Wagenknecht, Chair
County of Napa Supervisor, 1st District

Diane Dillon, Commissioner
County of Napa Supervisor, 3rd District

Ryan Gregory, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Vice Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Brendon Freeman
Executive Officer

LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

**AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT NO. 2015-05**

THIS AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT (“Amended and Restated Agreement”) is made and entered into as of August 1, 2017, by and between the Local Agency Formation Commission of Napa County, a political subdivision of the State of California, hereinafter referred to as “LAFCO”, and Renne Sloan Holtzman Sakai LLP (“Contractor”), whose mailing address is 555 Capitol Mall, Sacramento, CA 95814.

RECITALS

WHEREAS, LAFCO wishes to receive reliable and effective legal services; and

WHEREAS, LAFCO entered into an agreement for legal services to be provided by Miller & Owen, effective March 16, 2015 (“Agreement”); and

WHEREAS, LAFCO approved the assignment of the Agreement to RSHS, which was effective October 1, 2015; and

WHEREAS, LAFCO’s Executive Officer approved a brief extension of the Agreement to extend the time for performance through LAFCO’s August 2017 meeting, but not increasing the total not-to-exceed amount under the Agreement;

WHEREAS, CONTRACTOR represents that it remains qualified and willing to provide such specialized services to LAFCO; and

WHEREAS, LAFCO and CONTRACTOR now wish to enter into this Amended and Restated Agreement to further extend the time for performance for up to two additional years, and to reflect CONTRACTOR’s updated billing rates.

TERMS

NOW, THEREFORE, LAFCO hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve LAFCO in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2018, unless terminated earlier in accordance with Paragraph 9 (Termination) or 23(a) (Covenant of No Undisclosed Conflict), except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to LAFCO shall also continue after said expiration date or early termination in

relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

The term of this Agreement shall be automatically renewed for one additional year at the end of the fiscal year, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. Such notice of nonrenewal may be given on behalf of LAFCO by the Napa LAFCO Executive Officer or designee thereof. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide LAFCO those services set forth in Exhibit "A", attached hereto and incorporated by reference herein. All work performed by CONTRACTOR under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONTRACTOR's field of expertise.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, LAFCO shall pay CONTRACTOR at the rates set forth in Exhibit "B-1", attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by LAFCO upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B-1."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall not exceed twenty-six thousand, five hundred dollars (\$26,500) per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and expenses actually incurred. In no instance shall LAFCO be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs. CONTRACTOR shall be paid at the times and in the manner set forth in this Agreement. The consideration to be paid CONTRACTOR, as provided in this Agreement, shall be in compensation for all of CONTRACTOR's expenses incurred in the performance of work under this Agreement, including travel and expenses, unless otherwise expressly so provided.

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to LAFCO of an itemized billing invoice in a form acceptable to the LAFCO Executive Director which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Invoices shall also indicate the number of hours worked by each of CONTRACTOR's personnel and reimbursable costs incurred to the date of such billing since the date of the preceding billing, if any. The invoices shall include documentation of reimbursable expenses and other invoiced items

sufficient for LAFCO, in its opinion, to substantiate billings.

(b) CONTRACTOR shall submit invoices not more often than monthly to the Executive Officer. Approved invoices shall be submitted to the Napa County Auditor for payment no later than fifteen (15) calendar days following receipt. CONTRACTOR shall be notified within fifteen (15) calendar days following receipt of its invoice by LAFCO of any circumstances or data identified by LAFCO in CONTRACTOR's written billing which would cause withholding of approval and subsequent payment. LAFCO reserves the right to withhold payment of disputed amounts.

(c) Legal status. So that LAFCO may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the LAFCO Executive Director upon request in a form satisfactory to the LAFCO Executive Director. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, LAFCO employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that LAFCO may monitor the work performed by CONTRACTOR. LAFCO shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **[Reserved]**

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide LAFCO with certification of all such coverages as set forth in subsection (c), below.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage

(personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(a) and (b), above, shall be evidenced by one or more certificates of coverage or, with the consent of LAFCO's Risk Manager, demonstrated by other evidence of coverage acceptable to LAFCO's Risk Manager, which shall be filed by CONTRACTOR with LAFCO's Executive Officer prior to commencement of performance of any of CONTRACTOR's duties. Such certificate(s) shall (1) reference this Agreement by its LAFCO number or title;(2) shall provide that LAFCO shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and (3) shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(d) For the commercial general liability insurance coverage referenced in 7(b)(1) and the comprehensive automobile liability insurance coverage referenced in 7(b)(3), CONTRACTOR shall also file with the evidence of coverage, an endorsement from the insurance provider naming LAFCO, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. The certificate or other evidence of coverage shall also provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of LAFCO shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to LAFCO with respect to any insurance or self-insurance programs maintained by LAFCO. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by LAFCO's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(e) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, LAFCO's Risk Manager, which approval shall not be denied unless the LAFCO's Risk Manager determines that the deductibles or self-insured

retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by LAFCO's Risk Manager, if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects LAFCO, its officers, employees, agents and volunteers, or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify LAFCO and the officers, agents, employees and volunteers of LAFCO from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, including any patent or copyright infringements, but excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of LAFCO or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and periodic rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold LAFCO and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination.**

(a) LAFCO shall have the right to terminate this Agreement for any reason, with or without cause, at any time, by giving CONTRACTOR fifteen (15) days written notice. The notice shall be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to CONTRACTOR at the address indicated in Section 13.

(b) If LAFCO issues a notice of termination:

- (1) Contractor shall immediately cease rendering services pursuant to this Agreement.
- (2) Contractor shall deliver to LAFCO copies of all Writings, whether or not completed, which were prepared by Contractor, its employees or its subcontractors, if any,

pursuant to this Agreement. The term "Writings" shall include, but not be limited to, handwriting, typesetting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including, letters, works, pictures, sounds, symbols computer data, or combinations thereof. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only LAFCO shall be entitled to claim or apply for the copyright or patent thereof.

(3) LAFCO shall pay Contractor for work actually performed up to the effective date of the notice of termination, subject to the limitations in Section 3, less any compensation to LAFCO for damages suffered as a result of Contractor's failure to comply with the terms of this Agreement. Such payment shall be in accordance with Section 4. However, if this Agreement is terminated because the work of Contractor does not meet the terms or standards specified in this Agreement, then LAFCO shall be obligated to compensate Contractor only for that portion of Contractor's services which is of benefit to LAFCO. LAFCO may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to LAFCO from CONTRACTOR is determined.

10. **Time.** Time is of the essence in this Agreement.

11. **Campaign Contribution Disclosure.** Contractor has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit "C."

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

LAFCO

Brendon Freeman
Executive Officer
LAFCO of Napa County
1030 Seminary Street, Suite B
Napa, CA 94559-2814

CONTRACTOR

Nancy C. Miller
Renne Sloan Holtzman Sakai LLP
555 Capitol Mall, Suite 600
Sacramento, CA 95814

14. **National Labor Relations Board Certification.** CONTRACTOR, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONTRACTOR within the immediately preceding two-year period because of CONTRACTOR's failure to comply with an order of a federal court which orders CONTRACTOR to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

15. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to LAFCO's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of LAFCO, expressed through its Executive Officer. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to LAFCO all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by LAFCO.

16. **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of LAFCO, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for LAFCO to withhold its consent to assignment. For purposes of this subparagraph, the consent of LAFCO may be given by the Executive Officer.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only LAFCO, through its Executive Officer, in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "A". Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place

any interpretation upon any of the provisions of this Agreement. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of LAFCO by the State of California pursuant to agreement between LAFCO and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation

available upon request to LAFCO for inspection.

(c) Americans with Disabilities Act (ADA) of 1990. By signing this Agreement, CONTRACTOR assures LAFCO that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, including but not limited to those found within the Code of Federal Regulations, title 49, parts 27, 37, and 38.

(d) Drug-Free Certification. By signing this Agreement, CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

(1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.

(2) Establish a Drug-Free Awareness Program to inform employees about:

- i. The dangers of drug abuse in the workplace;
- ii. The person's or the organization's policy of maintaining a drug-free workplace;
- iii. Any available counseling, rehabilitation, and employee assistance programs; and
- iv. Penalties that may be imposed upon employees for drug abuse violations.

(3) Every employee of CONTRACTOR who works under this Agreement shall:

- i. Receive a copy of CONTRACTOR's Drug-Free Workplace Policy Statement; and
- ii. Agree to abide by the terms of Contractor's Statement as a condition of employment on this Agreement.

(e) Union Organizing: By signing this Agreement, CONTRACTOR hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

(1) CONTRACTOR will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

(2) CONTRACTOR will not meet with employees or supervisors on LAFCO or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

(3) No funds received from LAFCO under this Agreement shall be used to assist, promote, or deter union organizing.

(f) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on

amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold LAFCO harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that LAFCO is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish LAFCO with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** LAFCO, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after LAFCO makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and LAFCO each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to LAFCO and shall not, during the term of this Agreement, acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as LAFCO may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of LAFCO relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, LAFCO may terminate this Agreement immediately upon giving written notice without further obligation by LAFCO to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that LAFCO has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By authorizing its Chair to execute this Agreement on its behalf, LAFCO's Commission hereby determines in writing on behalf of LAFCO that CONTRACTOR has been hired to perform a

range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

25. **Ownership; Permission.**

- a. CONTRACTOR agrees that all work products, including but not limited to, notes, designs, drawings, reports, memoranda, and all other tangible personal property produced in the performance of this Agreement, shall be the sole property of LAFCO, provided that CONTRACTOR may retain file copies of said work products. CONTRACTOR shall provide said work products to LAFCO upon request.
- b. CONTRACTOR represents and warrants that: (i) all materials used or work products produced in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either owned by or produced by CONTRACTOR or that all required permissions and license agreements have been obtained and paid for by CONTRACTOR; and (ii) LAFCO is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in Exhibit "A." CONTRACTOR shall defend, indemnify and hold harmless LAFCO and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

26. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

27. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

28. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. **Entirety of Contract.** This Agreement, including any documents expressly incorporated

by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

30. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Amended and Restated Agreement was executed by the parties hereto as of the date first above written.

**LOCAL AGENCY FORMATION COMMISSION
OF NAPA COUNTY, A POLITICAL SUBDIVISION
OF THE STATE OF CALIFORNIA**

By _____
Brad Wagenknecht, Commission Chair

ATTEST:

By: _____
Clerk of LAFCO

RENNE SLOAN HOLTZMAN SAKAI LLP

By _____
Nancy C. Miller, Partner

EXHIBIT “A”

Scope of Work

I. CONTRACTOR shall provide LAFCO with the following services:

CONTRACTOR shall provide all aspects of legal representation and legal services to LAFCO, including but not limited to legal advice and document drafting and representation of LAFCO in its operations, as requested by LAFCO.

II. Compliance with Government Code Section 7550: As required by Government Code 7550, each document or report prepared by CONTRACTOR for or under the direction of LAFCO pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT “B-1”**Rates of Compensation and Expense Reimbursement**

[Effective August 1, 2017]

A. Hourly Rates

Renne Sloan Holtzman Sakai takes pride in providing the most cost-effective services possible to its clients. Our commitment to serve public agencies is reflected in lower hourly rates for public agencies, rates below those charged by attorneys with comparable experience and backgrounds. Rates are subject to change no more than once annually. The following is a list of the hourly rates charged:

Nancy C. Miller	\$295
Paul J. Chrisman	\$280
Christiane E. Layton	\$280
Jennifer V. Gore	\$260
Madeline E. Miller	\$260
Other Partners	\$275 – 350
Other Associates	\$185 – 250
Paralegals	\$120

B. Reimbursable Expenses

The firm will not charge Napa LAFCO for travel time. The firm charges actual costs for any travel related expenses.

In addition to paying legal fees, the firm requests reimbursement for all costs and expenses incurred by the firm (at actual cost, no markup) including, but not limited to, fees fixed by law or assessed by courts or other agencies, courier service, computerized legal research, postage, facsimile charges, parking, mileage (at the current IRS rate), out of town travel expenses, investigation expenses, consultants’ fees, court reporter’s fees, registered copy service fees, and other similar items. All costs and expense are fully itemized, along with a description of services rendered and the time devoted to described tasks. The firm does not charge an administrative fee.

EXHIBIT "C"
LEVINE ACT DISCLOSURE STATEMENT

(To be completed by all proposers on LAFCO consultant contracts)

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current members of the Napa County LAFCO are:

Juliana Inman	Diane Dillon
Brian Kelly	Brad Wagenknecht
Margie Mohler	Ryan Gregory, Alternate
Kenneth Leary, Alternate	Gregory Rodeno, Alternate

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any LAFCO Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications? YES NO

If yes, please identify the Commissioner(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any LAFCO Commissioner(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Commissioner(s): _____

Answering yes to either of the two questions above does not preclude LAFCO from awarding a contract to your firm. It does, however, preclude the identified Commissioners from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)