



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

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Napa, California 94559  
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*We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture*

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**Agenda Item 7a**

**TO:** Local Agency Formation Commission

**PREPARED BY:** Peter Banning, Interim Executive Officer

**MEETING DATE:** February 2, 2015

**SUBJECT:** Alternatives for Legal Counsel

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**SUMMARY & RECOMMENDATION**

Legal services currently provided by the Office of Napa County Counsel are conveniently available at reasonable cost and perfectly adequate for matters pertaining to general municipal law and public administration. However, the Commission and its staff need convenient access to legal services from an alternative source for technical issues relating to the Cortese-Knox-Hertzberg Act and to address perceived conflicts of interest. Staff recommends that the Commission renew and extend its client relationship with the Office of Napa County Counsel and retain outside counsel where circumstances require specialized expertise or legal representation by non-local representatives. Staff further recommends that the Commission reduce its budget and expenditures for legal services by discontinuing the use of its legal services staff for matters that do not require legal advice.

**EXISTING POLICY**

The Commission's adopted policy on appointment of legal counsel addresses its responsibility to appoint its counsel under Government Code Section 56384(b), its ability to use alternate legal counsel when conflicts arise and to recover legal costs from applicants. The adopted policy does not assume any particular source of legal services for its appointment. The use of outside counsel requires action by the Commission. Staff cannot make use of outside legal service without Commission authorization. See Attachment A.

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Joan Bennett, Chair  
Councilmember, City of American Canyon

Greg Pitts, Commissioner  
Councilmember, City of St. Helena

Juliana Inman, Alternate Commissioner  
Councilmember, City of Napa

Diane Dillon, Vice Chair  
County of Napa Supervisor, 3rd District

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

Keith Caldwell, Alternate Commissioner  
County of Napa Supervisor, 5th District

Brian J. Kelly, Commissioner  
Representative of the General Public

Gregory Rodeno, Alternate Commissioner  
Representative of the General Public

Peter Banning  
Interim Executive Officer

## **EXISTING SERVICE**

The Commission receives legal services from the Office of the Napa County Counsel through Attachment C of the Commission's agreement with Napa County for provision of various administrative support services, last approved in March 2004 (see Attachment B). The agreement states that the County will provide "... legal services to LAFCO including, but not necessarily limited to, legal advice, document drafting, and representation of LAFCO in its operations pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act."

The Agreement designates Jacqueline Gong to serve as the Commission's Counsel for FY 2003-04 and lays out two areas of conflict of interest where legal services will not be provided: contracts in which both LAFCO and the County are both parties to the contract and where LAFCO determines there is a conflict of interest. That is, the agreement allows the Commission to retain outside legal counsel when necessary, as provided in its Policy on Appointment of Legal Counsel described above.

The Commission's appointed Counsel reviews agenda materials and contracts, attends regular and special meetings of the Commission, and provides other legal advice to the Commission and its staff on request. During periods in which the Commission's Executive Officer position has been vacant, the Commission's Counsel has provided additional ad hoc management and supervisory services. In calendar year 2013, the Commission's Counsel billed for 144 hours at the rate of \$159 per hour (total \$22,896). The Commission's Budget for FY 2014-15 allocates \$32,000 for legal services.

## **REQUEST FOR PROPOSALS**

At its meeting December 1, 2014, the Commission heard requests from city officials that it retain outside legal counsel. Without committing itself to doing so, the Commission instructed staff to circulate a request for proposals (RFP) to qualified law firms and attorneys that might provide such service. The RFP was circulated to all law firms and attorneys presently providing service to LAFCOs across the State of California. The RFP's proposal period closed on January 21, 2015.

Three proposals have been received meeting the requirements of the RFP. Each of the three firms is comparable in depth of experience in general municipal law and in direct experience with the Cortese-Knox-Hertzberg Act. Those proposals are summarized in the following table:

<b>Proposing Firm</b>	<b>Office Location</b>	<b>Local Clients</b>	<b>Primary Rate</b>
Colantuono Highsmith Whatley	Penn Valley (Auburn)	City of Napa	\$200/hr
Best Best & Krieger	Walnut Creek	City of Napa, proposal to Town of Younville	\$250/hr
Miller & Owen	Sacramento	City of Napa	\$250/hr
<b>(Existing Service)</b>			
Napa County Counsel	City of Napa	Napa County	\$159/hr

As shown above, each of the three proposing law firms has a past or present relationship with the City of Napa. In addition, the Town of Younville has circulated an RFP for legal services (due February 19<sup>th</sup>) to which Best Best & Krieger and Colantuono Highsmith Whatley will respond with proposals. Although none of these relationships constitutes a legal conflict of interest, their presence does tend to diminish the perceived advantage in clarity that the use of outside counsel would otherwise present to the Commission. For example, if LAFCO counsel is asked to draft terms and conditions for the annexation of the Napa Pipe site to the City of Napa, the three proposing firms, and the Office of the County Counsel as well, all carry the potential perception of bias from their affiliation on other projects with either the City or the County.

The Commission and its staff will need to avail itself of the specific expertise in matters relating to the Cortese-Knox-Hertzberg Act for Napa Pipe and other complex proposals. Finding a solution to the perception of client conflict needs to be considered as part of the Commission's decision on selecting its counsel.

**ALTERNATIVES**

The Commission could choose a course of action from among the following alternatives:

**No Change:** Renew its agreement with the County and continue to receive legal services from the Office of the County Counsel as usual;

**Replacement:** Retain one of the three proposing law firms to provide services similar to those now provided by County Counsel;

**Hybrid:** 1.) Renew its agreement with the County and continue to receive legal services from the Office of the County Counsel for matters of standard municipal

law; 2.) Amend the Commission's Policy for Appointment of Counsel to permit the Executive Officer to utilize outside counsel for specific circumstances; 3.) Retain one of the three proposing law firms to provide specialized services pertaining to the Cortese-Knox-Hertzberg Act or to address potential or perceived conflict of interest when necessary;

**Extend the Search:** If the Commission is not satisfied that any of the proposing law firms can provide the required legal services, it can direct staff to extend the search for other law firms or attorneys.

## **COST**

Members of the Commission are rightly concerned that replacing legal services provided by the Office of the County Counsel with service from a private law firm will increase its costs. The rates quoted by the proposing firms are 25% to 57% higher than the hourly rate charged by County Counsel. However, the Commission currently budgets and spends more than is required to provide itself with legal counsel. Costs for legal services would be reduced if the role of the Commission's Legal Counsel does not include attendance at routine meetings or the review of documents where no legal questions are at issue. That is, the Commission or its Executive Officer would call upon its Counsel only when necessary for legal guidance. If this becomes the Commission's practice, its legal costs can (and should) be reduced whether outside counsel is retained or not.

## **DISCUSSION & RECOMMENDATION**

There are two reasons for the Commission to consider retaining outside counsel: To address the perception or reality of conflict of interest and to gain specialized legal expertise in matters relating to the Cortese-Knox-Hertzberg Act. All of the proposing firms have excellent qualifications, having been involved in research, legislation or litigation concerning LAFCO's enabling statute and wide experience in providing service to other LAFCOs. All three firms are well-established in municipal law practice. All three firms offer reasonable rates to public agencies. All three firms are located within two hours driving time. However, all of the proposing law firms have a client relationship with the City of Napa and one of the three may soon have a client relationship with the Town of Yountville (as City Attorney).

The Commission's current attorney designated by the Office of the County Counsel has provided service to LAFCO without direction from County Counsel or the County Executive Officer under standard ethical practices for internally segregating confidential information. The Commission's Counsel has a confidential client relationship with its attorney designated from the County Counsel's staff. The use of any of the three proposing law firms would require that they operate in the same way: that client files pertaining to Napa LAFCO be inaccessible to other attorneys within the firm and that

members of the firm providing service to Napa LAFCO take care to refrain from discussion with other members providing service to any other client in Napa County.

In some circumstances, a written waiver might be useful. For example, if the Commission's staff was drafting terms and conditions of approval for the annexation of Napa Pipe to the City of Napa and working with any of the proposing firms to draft those conditions, the Commission might seek a written acknowledgment or waiver from Napa County agreeing to the participation of LAFCO's legal counsel from a firm that also provided unrelated legal services to the City of Napa.

In staff's view, the legal services provided by the Office of the County Counsel are perfectly adequate for matters of municipal law and public administration. The Commission should make provisions for the use of outside counsel when circumstances warrant, for matters specific to the Cortese-Knox-Hertzberg Act or to address perceived conflicts of interest. Staff recommends that the Commission approve the "hybrid" alternative described above, including the following actions, by motion:

1. Renew the Commission's agreement with the County for provision of legal services from the Office of the County Counsel for matters of standard municipal law;
2. Amend the Commission's Policy for Appointment of Counsel to permit the Executive Officer to utilize outside counsel when necessary;
3. Retain one of the three proposing law firms to provide specialized services pertaining to the Cortese-Knox-Hertzberg Act or to address potential or perceived conflicts of interest when necessary.

Further, staff recommends that the Commission reduce its budget and expenditures for legal services by discontinuing the use of its legal services staff for matters that do not require legal advice. Any additional legal costs from the use of a private law firm would be more than compensated by this change in practice and expectation.

Respectfully submitted,

Peter Banning  
Interim Executive Officer

Attachments:

1. Policy for the Appointment of Counsel
2. Provision of Legal Services to LAFCO by the Napa County Counsel
3. Proposal of Colantuono Highsmith Whatley
4. Proposal of Miller & Owen
5. Proposal of Best Best & Krieger

**Local Agency Formation Commission of Napa County**

**Policy for the Appointment of Counsel**

(Adopted: April 11, 2001)

Pursuant to Government Code §56384(b):

The commission shall appoint legal counsel to advise it. If the commission's counsel is subject to a conflict of interest on a matter before the commission, the commission shall appoint alternate legal counsel to advise it. The commission may recover its costs by charging fees pursuant to Section 56383.

The Commission shall appoint a Commission Counsel for a term specified as part of the appointment. Further, the policy of the Commission is:

1. If the Commission determines that a conflict of interest exists for its counsel in the processing and review of a proposal, the Commission will appoint alternate legal counsel for that proposal. If the Commission determines that an applicant should bear the costs of alternate counsel, it shall require that the applicant put on deposit with the County Auditor funds sufficient to cover associated costs.
2. The Commission will consider written requests that alternate legal counsel advise the Commission and its staff on matters pertaining to a particular proposal. This request may be made by any applicant, affected agency, or affected individual. Requests will be considered at the next regular meeting of the Commission for which the matter may be noticed properly. Approval of any such request is contingent upon the placement on deposit with the County Auditor of funds sufficient to cover associated costs.
3. In all instances, appointment of alternate legal counsel is solely at the discretion of the Commission.
4. When alternate legal counsel is used, the Commission reserves the right to make final approval of a proposal contingent upon payment of any outstanding legal costs in excess of the deposit on hand with the County Auditor.
5. When alternate legal counsel is used, upon written confirmation from the Executive Officer that all billing matters have been resolved, the County Auditor will return any unexpended portion of funds on deposit.

## ATTACHMENT C

### PROVISION OF LEGAL SERVICES TO LAFCO BY THE NAPA COUNTY COUNSEL

#### 1. SERVICES TO BE PROVIDED BY COUNTY COUNSEL

County, through the Napa County Counsel ("County Counsel"), shall provide legal services to LAFCO including, but not necessarily limited to, legal advice, document drafting, and representation of LAFCO in its operations pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et. seq.). County Counsel hereby designates Jacqueline M. Gong to serve as LAFCO Counsel for fiscal year 2003-2004. Upon written notification to and assent by the governing board of LAFCO, County Counsel may designate other attorney members of his office to serve as LAFCO Counsel.

#### 2. LEGAL SERVICES COUNTY COUNSEL SHALL NOT PROVIDE

County Counsel shall not provide legal services to LAFCO in the following situations, County and LAFCO understanding that in such situations LAFCO will obtain the necessary legal assistance at LAFCO's own expense from other legal counsel retained directly by LAFCO:

- Legal services to LAFCO regarding contracts to which LAFCO and County are both parties unless LAFCO's Executive Officer and Chair have given express written consent to dual representation of County and LAFCO by County Counsel.
- Legal services determined by LAFCO to present a conflict of interest for its LAFCO Counsel (in accordance with LAFCO Policy for the Appointment of Counsel).

#### 3. COUNTY COUNSEL CONTACT:

Mail: Napa County Counsel  
Suite 301, Co. Admin. Bldg.  
1195 Third Street  
Napa, California 94559

Fax: (707) 259-8245

Email: [rwestmey@co.napa.ca.us](mailto:rwestmey@co.napa.ca.us)

11364 Pleasant Valley Road  
Penn Valley, CA 95946  
Voice (530) 432-7357  
Fax (530) 432-7356

**COLANTUONO**  
**HIGHSMITH**  
**WHATLEY, PC**

Michael G. Colantuono  
(530) 432-7359  
MColantuono@chwlaw.us

Our File No. 99904.1003

January 20, 2015

**VIA E-MAIL (pbann@aol.com) AND FEDEX**

Peter Banning, Interim Executive Officer  
Napa County LAFCO  
1030 Seminary Street, Suite B  
Napa, California 94559

**Re: Proposal to Provide Legal Counsel Services**

Dear Mr. Banning:

**Introduction.** Thank you for the opportunity to propose our services as Legal Counsel to the Local Agency Formation Commission of Napa County. I and everyone at Colantuono, Highsmith & Whatley would be most pleased to represent your Commission.

This cover letter addresses the issues identified in your Request for Proposal. I enclose a separate proposal that addresses the remaining issues you requested. Also enclosed are my resume, David J. Ruderman's resume, a two-page profile of our firm, and a copy of our quarterly newsletter. Additional information about our firm is available at [www.chwlaw.us](http://www.chwlaw.us), including papers and presentations on LAFCO issues. If I can provide any additional information to assist your review of this proposal, please let me know.

**Proposal Overview.** Our firm proposes to provide the full range of services which a general counsel for any local public agency might be called on to provide, as you have outlined in Section V of your Request for Proposal. We propose my services as your Legal Counsel and those of David J. Ruderman as your Assistant Legal Counsel. Our proposal is firm and irrevocable for 90 days following the submission deadline. We have reviewed Napa LAFCO's sample professional services agreement and are willing to accept it with these exceptions:



- A waiver of subrogation on our workers compensation coverage will be expensive and burdensome to us and provide very little benefit to LAFCO. We would like opportunity to discuss this point and to seek to persuade you to omit it from the contract.
- We cannot provide automobile insurance for "owned" autos, as our firm owns no autos and therefore cannot obtain such insurance. For this same reason, "non-owned" auto insurance fully protects LAFCO.
- We wish to limit our indemnity promise to claims arising from our negligent, reckless or wrongful conduct. We cannot insure for conduct that involves no fault and cannot bear an uninsurable risk.

**Conflicts of Interest.** The firm formerly represented the City of American Canyon on non-LAFCO matters. Our firm also represents the City of Napa on non-LAFCO matters. We have not represented any other Napa County local governments or private parties. If local governments in Napa County seek services from our firm in the future, we would not agree to represent them on any matter adverse to Napa LAFCO without your Commission's informed written consent. Accordingly, we see no actual or potential conflicts of interest if you were to select us to serve as your Legal Counsel.

**Conclusion.** Again, we would be most pleased to have opportunity to represent your Commission. If I can provide any further information to assist your review of this proposal, please let me know. Thank you for the opportunity to propose our services as legal counsel to the Napa LAFCO.

Very truly yours,



Michael G. Colantuono

MGC:djr

Enclosures: (1) Proposal for Legal Services; (2) Colantuono Resume; (3) Ruderman Resume; (4) Firm Profile; and (5) CH&W Newsletter

**PROPOSAL**  
**TO THE LOCAL AGENCY FORMATION COMMISSION OF**  
**NAPA COUNTY**

**FOR**  
**LEGAL SERVICES**

**January 20, 2015**

**SUBMITTED BY:**

Michael G. Colantuono, Esq.  
David J. Ruderman, Esq.  
Colantuono, Highsmith & Whatley, PC  
11364 Pleasant Valley Road  
Penn Valley, CA 95946-9001

Telephone: (530) 432-7357  
Facsimile: (530) 432-7356  
E-mail: MColantuono@chwlaw.us  
DRuderman@chwlaw.us

## **A. Qualifications to Provide Legal Services**

Our attorneys are among a small number of attorneys in private practice with deep expertise in the Cortese-Knox-Hertzberg Act. Michael G. Colantuono was appointed by the Assembly Rules Committee to the Commission on Local Governance in the 21st Century which produced a report entitled "Growth Within Bounds" that led to the adoption of A.B. 2838 in 2000 to comprehensively revise the Cortese-Knox-Hertzberg Act (CKH). In addition to being an active participant in the work of the Commission, as one of two lawyers in private practice on the Commission, Michael played an active role in drafting and negotiating the language of A.B. 2838.

Beyond his service on that Commission, Michael has been an active public lawyer representing local governments in LAFCO and other matters since 1989. He serves as General Counsel to the Calaveras, San Diego, and Yuba LAFCOs and as alternate counsel to the Monterey, Nevada, Orange, and Yolo LAFCOs on matters as to which their general counsels have conflicts of interest. Holly O. Whatley has provided special counsel services to the San Bernardino and San Diego LAFCOs and David Ruderman is Assistant General Counsel of the Yuba and Calaveras LAFCOs.

We have handled a number of lawsuits for LAFCOs as well, including a disputed island annexation involving a Home Depot site surrounded by El Cajon in which we represented San Diego LAFCO. We have handled a number of annexation and related disputes for Yuba LAFCO, and a disputed annexation to the City of Huntington Beach involving the question whether Proposition 218 applies to inhabited island annexations that led to the published decision in *Citizens Association of Sunset Beach v. Orange County LAFCO*, an important victory for all LAFCOs and cities in our State. Michael and David are currently defending a developer's challenge to San Luis Obispo LAFCO's denial of an annexation to the City of Pismo Beach. We prevailed on the California Environmental Quality Act (CEQA) and CKH issues and expect to prevail on the civil rights claim shortly.

Although we propose that Michael serve as your Legal Counsel, David Ruderman will add depth to our team. He is a Senior Counsel in our firm and presently serves as Assistant General Counsel of the Yuba and Calaveras LAFCOs and as City Attorney of Lakeport. He grew up in Santa Rosa and is familiar with the North Bay region. He is familiar with CKH, CEQA, spheres of influence, municipal service reviews, public agency law, administration, contracts and agreements, land use planning and zoning law, litigation and other legal issues routinely faced by LAFCOs and other public agencies such as the Brown Act, Public Records Act, ethics, conflicts of interest, etc. He is our resident expert on CKH's provisions regarding disadvantaged unincorporated communities (DUCs). He also has broad litigation experience on behalf

of public agencies and LAFCOs in particular. In addition to the San Luis Obispo case mentioned above, David recently successfully settled a lawsuit against Shasta LAFCO claiming damages for the failure to prepare timely MSRs and SOI updates.

Holly Whatley, a senior litigator on our team, is also available to assist should any matter proceed to litigation. Michael and David's resumes are enclosed and biographical statements for Holly and the other lawyers on our team may be found at [www.chwlaw.us](http://www.chwlaw.us) under the "attorneys" link.

With offices in Los Angeles and outside Grass Valley in the Sierra Foothills, our firm also represents public agencies generally, serving as City Attorney to seven cities and as general and special counsel in advisory and litigation matters for counties, cities, and special districts of various kinds around California, though not frequently in Napa County, leaving us with no conflicts for service to Napa LAFCO. We pride ourselves on our extensive public law experience, our commitment to problem-solving, and a focus on ethical, affirmative and intelligent advice and representation. Our core commitment is to provide advice our clients find helpful, understandable and fairly priced. More information on our firm is provided in the enclosed Firm Profile.

#### **B. Related Work Experience and References**

Our firm's previous work experience with legal issues and practices your Request for Proposal describes are discussed above. As to references, while our firm is well known in local government, LAFCO and public law circles, the following are especially familiar with our work on these issues:

- John Benoit, Executive Officer  
Yuba County LAFCO  
(707) 592-7528;
- Michael D. Ott, Executive Officer  
San Diego LAFCO  
(858) 614-7755
- David Church, Executive Officer  
San Luis Obispo LAFCO  
(805) 781-5795

If you or your Commissioners would like to speak to LAFCO Commissioners or other elected officials with whom Michael or David have worked, let us know and we can provide names and contact information for that purpose.

### **C. Approach to Legal Services**

Our philosophy is to anticipate and find solutions for our clients' problems and to help our clients achieve their goals. We are adept at devising creative solutions to complex issues. We focus on prevention — addressing legal problems before the parties find that they must resort to time-consuming and expensive litigation. If litigation is required, however, we are well equipped to vigorously represent our clients in court. Likewise, we are alert for opportunities to settle litigation when appropriate and to reduce our clients' costs.

We see our relationship with the Commission, Executive Officer and other decision-makers to be that of a counselor. In working with the Executive Officer and other LAFCO staff, we define our role as a member of the management team, working to help the Commission achieve its goals.

We propose to provide the full range of services which a general counsel for any local public agency might be called on to provide, as your proposed Scope of Services outlines, recognizing your budget constraints. This includes attending meetings on request either in person or remotely via telephone; providing advice to your Commissioners and Executive Officer on request; defending any litigation in which you might be involved; reviewing agenda packets, contracts, staff reports and resolutions; and drafting contracts and resolutions on request. We will also update you on significant legal developments affecting LAFCO. We believe this proposal fits with your proposed Scope of Services in your Request for Proposal.

We propose my services as your Legal Counsel and those of David J. Ruderman as your Assistant Legal Counsel. Our mailing address and phone are listed in the attached cover letter. Michael's email is shown there as well and David's is DRuderman@chwlaw.us.

Michael and David are available on the first Monday of the month, when your Commission meets and can attend special meetings as desired.

### **D. Project Cost**

Although our rates range from \$195 to \$475 per hour depending on the experience and reputation of our attorneys, we would be pleased to discount our rates to \$200 per hour for general counsel services and to cap our standard rates at \$300 per hour for litigation and other special counsel services, should they be necessary. Paralegal and legal assistants' time is charged at rates between \$125 and \$160 per hour.

We would also charge only one-half this discounted rate for travel to and from Napa County from our Nevada County office. While we ask for mileage reimbursement at the IRS rate, no other travel expenses will be charged unless the Commission should require an overnight stay. We estimate travel time from our offices to yours at 2 hours.

We charge \$0.20 per page for in-house copies and \$1 per page of outgoing faxes (which have become quite rare given the utility of email). All other costs we incur in representing you are charged at our actual cost, without markup. We find that out-of-pocket expenses for our general counsel clients in non-litigation measures, other than mileage, are very small.

## MICHAEL G. COLANTUONO, ESQ.

### EMPLOYMENT

#### **Managing Shareholder, Colantuono, Highsmith & Whatley, PC**

11364 Pleasant Valley Road  
Penn Valley, CA 95946-9000  
Telephone: (530) 432-7359; Facsimile: (530) 432-7356  
E-mail: [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us)

Certified Appellate Specialist, State Bar of California, Board of Legal Specialization. Advice and litigation for local governments, with special expertise in appellate advocacy, municipal finance (including post-redevelopment issues), land use, the Cortese-Knox-Hertzberg Act, and environmental regulation. City Attorney of Auburn and Grass Valley; Special Counsel to cities, counties, and special districts throughout California. General Counsel to Calaveras, San Diego and Yuba LAFCOs, First Five Yuba County, North Yuba Water District and Garden Valley, Ophir Hill and Rough & Ready Fire Districts; Special Counsel to the Nevada, Orange and Yolo LAFCOs. Previously City Attorney of six other cities, General Counsel of redevelopment agencies and special districts.

**Shareholder and Associate (1989–2001), Richards, Watson & Gershon, PC**  
Los Angeles, California

**Adjunct Professor of Law (Spring 1995), Boalt Hall School of Law at the University of California at Berkeley, Administrative Law**

**Law Clerk (1988–1989), Honorable James R. Browning**  
United States Court of Appeals for the Ninth Circuit

### EDUCATION

**Boalt Hall School of Law, University of California at Berkeley, J.D., May 1988.** Member, Order of the Coif. Articles Editor, *California Law Review*. Thelen Marrin Award Recipient (Highest Ranked Graduate). Moot Court Board Award. Recipient, American Jurisprudence and Prosser Awards for Excellence in Property, Land Use, Contracts, Constitutional Law, Evidence, Federal Courts, Corporations and International Law.

**Harvard University, Cambridge, Massachusetts, B.A. magna cum laude in Government, June 1983.**

### PROFESSIONAL ACTIVITIES AND HONORS

**Treasurer, State Bar of California (Trustee, 2012 –); Chair, Audit Committee (2014).** The Speaker of the California Assembly appointed Mr. Colantuono to the governing board of the agency which regulates the practice of law in California. His fellow Trustees elected him Treasurer for the 2014–2015 year.

**MICHAEL G. COLANTUONO, ESQ.**

Resume

Page Two

**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Member, California Academy of Appellate Lawyers (2014 –).** Mr. Colantuono was elected to membership in this prestigious association of fewer than 100 of California's most distinguished appellate advocates.

**Member, Review Committee, Commission on Judicial Nominees Evaluation (October 2013 –).** Appointee of State Bar President to committee which hears appeals from negative evaluations of the Governor's potential judicial nominees.

**Public Lawyer of the Year (2010).** California's Chief Justice Ronald M. George presented Mr. Colantuono with the 2010 Ronald M. George Public Lawyer of the Year Award, which recognizes an exceptional lawyer who has dedicated a significant portion of his or her career to public service. Award recipients represent the highest professional and ethical standards and are inspirational advocates for the public interest in the view of the Executive Committee of the Public Law Section of the California State Bar Association.

**Fellow, American Bar Association (2013 –).** Invited to membership in honorary association of lawyers, judges and legal scholars which provides leadership to the legal profession.

**President of the City Attorneys Department of the League of California Cities (2003–04).** Elected by his peers to lead the professional association of city attorneys, Mr. Colantuono's service included ex officio service on the Legal Advocacy Committee of the League and as the Department's 1st Vice President (2002–03) and 2nd Vice President (2001–02).

**Member, Commission on Local Governance for the 21st Century (1998–2000).** Appointee of the Rules Committee of the California State Assembly. This Commission's report led to 2000's A.B. 2838, which comprehensively revised the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, regarding the establishment, dissolution, expansion and merger of local governments in California.

**Chairman, Prop. 218 / Prop. 26 Task Forces of the League of California Cities (1996–present).** Presidents of the City Attorneys Department appointed Mr. Colantuono to these working groups which drafted the League's Proposition 218 Implementation Guide (2007 ed.), its Proposition 26 Implementation Guide (April 2011) and the Proposition 218 Omnibus Implementation Act, Chapter 38 of the Statutes of 1997.



**MICHAEL G. COLANTUONO, ESQ.**

Resume

Page Three

**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Attorney of the Year (2010–11)**, Santa Barbara County Chapter of the California Special District Association for assistance to the Goleta Water District in setting water rates.

**Top 25 Municipal Lawyers in California (2011—)**. The San Francisco and Los Angeles **Daily Journal** named 25 leading California Municipal Lawyers and has recognized Mr. Colantuono for his leading role in appellate litigation involving municipal revenues in all three annual issues to date.

**Award of Recognition**, ChangeLab Solutions (2008) for Contributions to its Technical Assistance Legal Center in its first decade of work advising California local governments on their authority to regulate tobacco.

**Award of Excellence — Planning Implementation (2002)** presented by the Northern Section of the California Chapter of the American Planning Association for the City of Belmont's Lot Merger Program.

**AV Rating, Martindale-Hubbell Peer Review Ratings**. This rating reflects a Very High General Ethical Standards rating and a Preeminent Legal Ability numerical rating in a survey of lawyers who know Mr. Colantuono's work.

**Recognition — Super Lawyers of Northern California (2006–present) – Super Lawyers of Southern California (2004–2005)**. Super Lawyers rates outstanding lawyers who have attained high peer recognition and professional achievement.

**Recognition — Best Lawyers in America: Municipal Law (2013—)**.

**OTHER PUBLIC SERVICE**

**Director, Northern California Lawyer Access, Inc.** (Director, 2007–12; President 2008–09, Secretary 2011–12). This nonprofit operates a lawyer referral service in 21 northern California Counties.

**President, Board of Trustees of the Nevada County Law Library** (Trustee, 2005–09; President, 2008–09); **President, Nevada County Bar Association** (2006). Vice President (2005). Member Fee Arbitration panel (2005 –).

**MICHAEL G. COLANTUONO, ESQ.**

Resume

Page Four

**PUBLICATIONS**

**California Civil Appellate Practice** (Continuing Education of the Bar, California, May 2014, Consultant).

**Proposition 26 Implementation Guide** (League of California Cities, April 2011, Contributor).

*"10 Things You Need to Know About City Finance,"* **Western City** (November 2010) (co-authored with Michael Coleman).

*"Finance and Economic Development,"* **The California Municipal Law Handbook**, Chapter V (California Continuing Education of the Bar, Contributor, 2004; Reviewer, 2005–present).

**Providing Conflict of Interest Advice.** (League of California Cities, 2004 edition, Reviewer).

**Proposition 218 Implementation Guide.** (League of California Cities, January 1997 edition, Contributor); (1998, 1998-A, 2000 and 2007 editions, Contributor and Editor).

*"Metered Utility Rates are Subject to Proposition 218,"* **Western City** (October 2006).

**Special Financing Districts: An Introduction to Special Assessments and Special Taxes.** (NBS, 2006, Contributor).

*"Forward,"* **Practicing Ethics: A Handbook for Municipal Lawyers** (League of California Cities, 2004).

*"Local Fiscal Authority and Stability: Control and Risk and California City Revenues,"* **Western City** (August 2003) (co-authored with Michael Coleman).

*"The Origins and Devolution of Local Revenue Authority,"* **Western City** (June 2003) (co-authored with Michael Coleman).

**Securing Voter Approval of Local Revenue Measures.** (League of California Cities, 1999, Contributor).

**Practice Under the California Environmental Quality Act.** (Continuing Education of the Bar, California, 1993, Consultant).

## Michael G. Colantuono

### Significant Appellate Representations

(as of January 2015)

#### California Supreme Court

*Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 (class action challenge to local taxes, assessments and fees permitted by California Government Claims Act but may be barred by claiming ordinance)

*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 (Prop. 218 applies to metered water rates; initiative to reduce domestic water rates prohibited to extent it would require voter approval of subsequent rate increases) (counsel for amici)

*Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646 (general validation procedure for public agency action does not apply to actions to contest assessments under Municipal Improvement Act of 1915) (counsel for amici)

*City of Alhambra, et al. v. County of Los Angeles, et al.* (2012) 55 Cal.4th 707 (counties misapplied property tax administration fees to taxes received in lieu of Vehicle License Fees and sales taxes under the VLF Swap and Triple Flip)

*City of Hayward v. Board of Trustees of the California State University* (pending under grant and hold review order), Case No. S203939 (duty of CSU to seek funding to make feasible mitigation of impacts of expansion of CSU East Bay on fire services of City) (author of amicus letter in support of review)

*City of Pasadena v. Superior Court (Mercury Casualty Co.)* (2014) 228 Cal.App.4th 1228 (unsuccessful petition for review) (inverse condemnation liability for fallen tree)

*Concerned Citizens for Responsible Government v. West Point Fire Protection District* (Case No.195152) (dismissed as moot after briefing regarding application of Prop. 218's requirements of special benefit and proportionality to fire suppression benefit assessment) (counsel for amici; request for depublication, amicus brief on the merits, opposition to post-dismissal request for publication)

*Greene v. Marin County Flood Control & Water Conservation District* (2010) 49

Cal.4th 277 (property owner ballots on property related fees under Prop. 218 not subject to ballot secrecy)

*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017 (County counsel's unilateral selection of temporary administrative hearing officers on an ad hoc basis violates due process) (counsel for amici)

*Homebuilders Ass'n of Tulare / Kings Counties v. City of Lemoore* (2010) 185 Cal.App.4th 544 (upholding development impact fees) (author of pro per opposition to request for depublication)

*Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (continued imposition and collection of a utility user's tax without voter approval was an ongoing or continuous violation of Proposition 62, with statute of limitations beginning anew with each collection) (counsel for amici)

*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613 (Government Claims Act preempts local tax and fee claiming ordinances and allows class claims)

*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707 (tobacco company's distribution of free cigarettes violated statute regulating non-sale distribution of cigarettes) (counsel for amici)

*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409 (increased capacity charge and fee for fire suppression imposed on applicants for new service connections was not an "assessment" subject to Proposition 218)

### **Court of Appeal for the First Appellate District**

*Brooktrails Township CSD v. Board of Supervisors* (2013) 218 Cal.App.4th 195 (successfully requested publication on behalf of League of California Cities)

*City of Scotts Valley v. County of Santa Cruz* (2011) 200 Cal.App.4th 97 (calculation of no- and low-property tax city subvention) (counsel for amici)

*Green Valley Landowners Association v. City of Vallejo* (pending), Case No. A142808 (appeal of successful trial court defense of challenge to sale of part of City water utility)

*Paland v. Brooktrails Township CSD Bd. of Directors* (2009) 179 Cal.App.4th 1358 (monthly minimum water service fee for account inactivated for non-payment not subject to assessment provisions of Prop. 218) (counsel for amici)

**Court of Appeal for the Second Appellate District**

*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747 (City's decision to implement federal law to expand cell tax to cover all airtime was a tax "increase" requiring voter approval under Proposition 218 but earlier instructions to carriers enforceable to require payment of tax)

*Arcadia Redevelopment Agency v. Ikemoto* (1991) 16 Cal.App.4th 444 (agency challenge to application of property tax administration fees to tax increment) (counsel for amici)

*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540 (pervasive outdoor secondhand smoke may form the basis for private nuisance claim) (counsel for amicus California Chapter of the American Lung Association) (filed amicus brief and argued)

*Chen v. City of South Pasadena* (1991) (unpublished), Case No. C753004 (city lacks power to reconsider approval of tentative tract map)

*City of San Buenaventura v. United Water Conservation District* (pending), Case No. B251810 (appellate defense of successful trial court challenge on behalf of City to groundwater augmentation charges as violating proportion cost requirement of Prop. 218)

*Colyear v. City of Rolling Hills* (1994) (unpublished), Case No. B078820 (city setback requirement for future sewer lines constituted regulatory taking)

*DML Properties v. City of Rancho Palos Verdes* (1994) (unpublished) Case No. B78817 (successful defense of takings claim to open-space zoning applied to remainder parcel in hillside subdivision)

*Harrhill v. City of Monrovia* (2002) 104 Cal.App.4th 761 (day-time curfew ordinance not preempted by truancy statutes)

*Jacks v. City of Santa Barbara* (pending) Case No. B253474 (amicus support for City's defense of trial court victory in Props. 218 and 26 challenge to franchise fee)

*Newhall County Water District v. Castaic Lake Water Agency* (pending) Case No. B257964 (appellate defense of successful Prop. 26 challenge to wholesale water rates)

*Re-Open Rambla, Inc. v. Board of Supervisors (City of Malibu)* (1995) 39 Cal.App.4th 1499 (county's title to closed road vested in city upon incorporation despite city's effort to avoid accepting the street)

*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310 (plastic bag ban ordinance provision for \$0.10 fee on paper bags was not a tax under Prop. 26 because proceeds did not fund government) (counsel for local government amici)

*Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349 (standing and claiming defenses to quasi-class refund claim for allegedly overpaid telephone taxes) (petition for review denied)

### **Court of Appeal for the Third Appellate District**

*City of Auburn v. Sierra Patient & Caregiver Exchange, Inc.* (unpublished), Case No. C069622 (upholding preliminary injunction against medical marijuana dispensary opened in violation of zoning and business license ordinances)

*Auburn Police Officers Association v. City of Auburn* (unpublished), Case No. C067972 (stipulated reversal regarding availability under Meyers-Milias-Brown Act of writ review of City Council's denial of grievance from exercise of escape clause from salary increases pursuant to MOU)

*City of Bellflower, et al. v. Cohen, et al.* (pending), Case No. C075832 (Prop. 22 challenge to A.B. 1484, post-redevelopment legislation)

*Citizens for Fair REU Rates, Feefighter, LLC v. City of Redding* (pending), Case No. C071906 (Prop. 26 challenge to PILOT transfer from Redding Electric Utility to City's general fund)

*County of Nevada v. Superior Court* (unpublished) Case No. C076851 (interlocutory writ review of trial court writ of mandamus overturning use permit conditions for ridge-top residence)

*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637 (in-lieu franchise fee charged to water and sewer utilities for benefit of general fund violated Prop. 218) (counsel for amici on request for rehearing)

*Lockyer et al. v. County of Nevada et al.* (unpublished), Case No. C075249 (successful appellate defense of land use permits for cell tower)

#### **Court of Appeal for the Fourth Appellate District, Division 1 (San Diego)**

*Howard Jarvis Taxpayers Ass'n v. City of San Diego* (1999) 72 Cal.App.4th 230 (BID assessment on businesses collected as surcharge on business license tax neither levy on real property nor special tax within meaning of Proposition 218) (counsel for amici)

*Jentz v. City of Chula Vista*, Case No. D055401 (unpublished) (consistency of specific plan with slow-growth initiative)

*San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District)* Case Nos. D064817, D065171 (writ review of denial of demurrer to reverse validation challenge to renewal of tourism marketing district alleging Prop. 26 violation and re discovery of plaintiff association's members)

*San Diegans for Open Government v. City of San Diego (Downtown San Diego Partnership)* (settled) Case No. D065940 (defense of trial court victory in taxpayer challenge to expenditures of PBID assessment on homeless programs)

#### **Court of Appeal for the Fourth Appellate District, Division 2 (Riverside)**

*Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516 (Landscaping and Lighting Assessment engineer's report insufficient to satisfy standards of Prop. 218)

*Crystaplex Plastics, Ltd. v. Redevelopment Agency* (2000) 77 Cal.App.4th 990 (supplier may recover against agency for amount of check where subcontractor received and negotiated check without knowledge, consent, or endorsement of

supplier even though Agency made check to both subcontractor and supplier)

*Inland Oversight Committee v. City of Ontario* (pending), Case No. E060022 (amicus in support of City's defense of trial court dismissal of Prop. 26 challenge to Tourism Marketing District Assessment because plaintiff organization lacked standing)

*Mission Springs Water District v. Verjil* (2013) 218 Cal.App.4th 892 (suit to bar initiative repeal of water rates from ballot subject to SLAPP, but SLAPP motion properly denied because evidence showed initiative would violate District's statutory duty to fund adequate water supply) (counsel for amici)

### **Court of Appeal for the Fourth Appellate District, Division 3 (Santa Ana)**

*Citizens Ass'n of Sunset Beach v. City of Huntington Beach* (2012) 209 Cal.App.4th 1182 (Prop. 218 does not apply to extension of City taxes into annexation area)

*City of El Cajon v. San Diego County LAFCO*, Case No. S186452, DCA Case No. G041793 (DCA upheld challenge to denial of island annexation) (unpublished 2010)

*City of San Juan Capistrano v. Capistrano Taxpayers Association* (pending) Case No. G048969 (defense of Prop. 218 challenge to inclining block conservation rates and recovery of recycled water program costs as supply cost to all customers)

*Wetlands Restoration v. City of Seal Beach, et al.* (1991) (unpublished) Case No. G010231 (defense of City's housing element)

### **Court of Appeal for the Fifth Appellate District**

*City of Clovis et al. v. County of Fresno* (2014) 222 Cal.App.4th 1469 (interest rate applicable to repayment of PTAF following *Alhambra v. Los Angeles County*) (argued for amicus League of California Cities)

*Foster Poultry Farms, Inc. v. City of Livingston*, Case No. F059871 (appeal dismissed by City following recall of Council majority) (procedures for increase in water rates under Proposition 218) (co-author of amicus brief)



*Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914 (transfer from utility enterprise to general fund pursuant to voter-approved charter provision as payment in lieu of property taxes violated Proposition 218's restrictions on use of property related fees)

*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296 (flat-rate parcel tax not an unconstitutional general tax, but rather a special tax dedicated to specific purposes; equal protection does not entitle absentee landowners to vote) (counsel for amici)

*Vagim v. City of Fresno* Case Nos. F068541, F068569, F069963 (2014) (defense of writ seeking to compel provision of title and summary of initiative to lower water rates, defense contends resulting rates would be illegally low, appeal and writ petition from denial of declaratory relief in same dispute, writ regarding stay on appeal)

#### **Court of Appeal for the Sixth Appellate District**

*Citizens for Responsible Open Space v. San Mateo County LAFCO* (2008) 159 Cal.App.4th 717 (rejecting procedural challenges to annexation to open space district) (ghost-writer of amicus brief)

*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 856 (successful defense of Proposition 218 challenge to groundwater augmentation charges)

## DAVID J. RUDERMAN

(530) 798-2417

DRuderman@chwlaw.us

David Ruderman is Senior Counsel in Colantuono, Highsmith & Whatley's litigation practice group, City Attorney of Lakeport and Assistant General Counsel of the Yuba and Calaveras LAFCos. His litigation and advisory practice covers a range of public law issues, including municipal finance and public revenues, public utilities, LAFCo matters, land use, medical marijuana, election law, employment law and general contract disputes.

David has broad litigation experience in both state and federal courts, handling all phases of litigation: analyzing potential claims, drafting complaints and other pleadings, preparing dispositive motions, handling all phases of discovery, oral argument, and motions practice. David's litigation expertise also includes pre-trial and trial work as well as writ actions. He has experience with alternative dispute resolution from mediation to arbitration and his appellate experience includes matters before both the California Courts of Appeal and the Ninth Circuit.

David is currently defending a developer's lawsuit challenging San Luis Obispo LAFCo's denial of an annexation application, where he helped obtain denial of the developer's writ petition. Recently, he successfully defended a California Public Records Act case for a coastal city, averting an award of attorneys' fees, and succeeded in having a local initiative that would have led to litigation with its bargaining units and CalPERS taken off the ballot after the trial court found it clearly invalid. David is also defending appeals of two separate trial court wins regarding water rates: one of a trial court win on a Proposition 218 challenge to groundwater extraction charges imposed on the City of San Buenaventura by the United Water Conservation District and another trial court win under Proposition 26 on a wholesaler's water rates imposed on public agency retailer. David recently obtained a preliminary injunction against a County Sheriff to restore access to law enforcement data bases for a City Police Department and prevailed on appeal from a preliminary injunction he obtained closing a medical marijuana dispensary that violated the City's business license and zoning ordinances.

David's articles on the SB 244, which requires local governments to plan for disadvantaged unincorporated communities, have appeared in recent editions of **The Sphere**, the journal of the California Association of Local Agency Formation Commissions (CALAFCO).

Prior to joining Colantuono, Highsmith & Whatley, David was an associate in the San Francisco office of Quinn Emanuel Urquhart & Sullivan LLP, where he represented private clients in a wide range of litigation matters.

David received his J.D. from UCLA School of Law in 2006 where he was a managing editor of the **UCLA Law Review**. While at UCLA, David worked as a judicial extern for the Honorable Harry Pregerson of the Ninth Circuit Court of Appeals. Prior to attending law school, David served as a Peace Corps volunteer in the Russian Far East and provided immigration legal services to émigrés from the former Soviet Union to the San Francisco Bay Area. He graduated with honors from Lewis & Clark College with a major in History in 1997.

David is proficient in Russian.

Practice Areas:

- Public Law
- Complex Litigation
- LAFCo Law
- Alternative Dispute Resolution
- Land Use / CEQA
- Public Finance Law
- Medical Marijuana Regulation and Litigation
- Election Law
- Intellectual Property (Copyright, Trademark)

## COLANTUONO, HIGHSMITH & WHATLEY, PC

### Firm Profile

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Colantuono, Highsmith & Whatley is a municipal law firm with offices in Los Angeles and outside Grass Valley in the Sierra Foothills that represents public and private clients throughout California in municipal law, including public revenues, land use, elections, labor and employment, post-redevelopment, housing, the California Environmental Quality Act (CEQA), the Cortese-Knox-Hertzberg Act regarding Local Agency Formation Commissions, sex offender and marijuana regulation and associated public safety topics, and associated litigation. Our core commitment is to provide advice our clients find helpful, understandable, and fairly priced.

The firm was recognized as one of California's Top Ranked Law Firms by Martindale-Hubbell in 2014 and Michael Colantuono, Terri Highsmith, Jenni Pancake, Michael Allderdice and Scott Howard have each achieved the highest AV rating from Martindale-Hubbell. Michael (2011-present) and Holly Whatley (2013) have been listed as among the Top Municipal Lawyers in California by the Daily Journal newspaper. Michael was awarded the 2010 Public Lawyer of the Year Award by the California State Bar, is a former President of the City Attorneys Department of the League of California Cities, Treasurer of the State Bar, and a member of the California Academy of Appellate Lawyers—a prestigious organization of fewer than 100 of the most respected appellate advocates in our State. Michael is also a Certified Appellate Specialist by the California State Bar's Board of Legal Specialization.

Our firm includes California's leading experts on local government revenues, including Propositions 13, 62, 218 and 26 and our attorneys have argued six government revenue cases to the California Supreme Court in the past decade: *Richmond v. Shasta CSD* (2004), *Bonander v. Town of Tiburon* (2009), *Greene v. Marin County Flood Control & Water Conservation District* (2010), *Ardon v. City of Los Angeles* (2011), *Alhambra & 46 Other Cities v. County of Los Angeles* (2012) and *McWilliams v. City of Long Beach* (2013). Our litigators have broad experience in public-sector litigation and such private-sector topics as general commercial litigation, employment law, and unfair competition. We have especially deep experience in

telephone tax litigation, including a current matter in which we are lead counsel in a case involving all 135 California local governments which tax telephony, and in class action challenges to local government revenue measures of all types.

The firm serves as general counsel or city attorney of the cities of Auburn, Barstow, Calabasas, Grass Valley, Lakeport, Sierra Madre, and South Pasadena, the Successor Agencies to the Auburn, Barstow, Sierra Madre and South Pasadena Redevelopment Agencies, to Oversight Boards for Successor Agencies in Pomona, Rialto, San Gabriel and Temple City, the Garden Valley, Ophir Hill and Rough & Ready Fire Districts, the Orangeline Development Authority, the SELACO Workforce Investment Board, the Calaveras & Yuba County LAFCOs, the North Yuba Water District, the Oak Tree Park and Recreation District and the First Five Yuba Commission.

The firm serves as special counsel to local governments throughout California. Present and recent clients include the cities of Anaheim, Belmont, Berkeley, Brentwood, Burbank, Cerritos, Chula Vista, Concord, Culver City, Cupertino, Fremont, Fresno, Glendale, Huntington Beach, Lakewood, Lathrop, Livermore, Lodi, Long Beach, Los Angeles, Monterey, Morgan Hill, Mountain View, Newport Beach, Oakland, Oxnard, Pacific Grove, Palo Alto, Paramount, Pasadena, Pico Rivera, Redding, Redondo Beach, Rialto, Richmond, Riverside, Salinas, San Juan Capistrano, San Diego, San Luis Obispo, San Mateo, Santa Ana, Santa Clara, Santa Fe Springs, Santa Maria, Santa Rosa, Sausalito, Simi Valley, South Lake Tahoe, Sunnyvale, Torrance, Tracy, Tulare, Vallejo, Ventura, Vernon, and Vista; the counties of Marin, Mariposa, Riverside, San Benito and Solano; the Goleta Water District, the Montecito Water District, the Newhall Water District, the San Diego County Water Authority, the Pajaro Valley Water Management Agency and the Monterey Peninsula Water Management Agency; Monterey Regional Water Pollution Control Authority and the Goleta West Sanitary District; the McKinleyville and Santa Lucia Community Services Districts; the Plumas Hospital District; the Los Angeles and San Diego Tourism Marketing District Corporations and the Calaveras, Orange, San Bernardino, San Diego, San Luis Obispo and Yolo County LAFCOs. The firm recently completed a high-profile assignment for the County of Orange and has previously represented the cities of Irvine, San Bernardino, San Francisco, and San Jose.

Please visit our website at [www.chwlaw.us](http://www.chwlaw.us) for more information.

# City Can Control Cell Tower Aesthetics

By Mathew T. Summers

The Ninth Circuit recently affirmed the City of San Diego's denial of conditional use permit applications for three cell towers for which original permits had expired. (*American Tower Corporation v. City of San Diego*). The case confirms cities' and counties' power to deny cell tower permits for aesthetic reasons, if the decision is supported by substantial evidence. The Court also refused to apply the "deemed approved" provision of the Permit Streamlining Act because insufficient notice was given to affected neighbors.

American Tower applied for new permits for three existing towers in San Diego. After hearings before a hearing officer and the Planning Commission, the City denied all three applications, finding American Tower had failed to minimize the towers' visual impacts. San Diego's Municipal Code requires major telecommunications facilities to "be designed to be minimally invasive through the use of architecture, landscape architecture, and siting solutions."

The Ninth Circuit affirmed summary judgment for the City on

American Tower's Federal Telecommunications Act claims. Substantial evidence supported the City's finding that American Tower had not designed the facilities to be "minimally invasive." American Tower proposed only minor modifications to its towers; *i.e.*, painting and additional landscaping; and refused to consider redesign or reduced height. The case builds on previous Ninth Circuit cases affirming cities' rights, when supported by substantial evidence, to regulate wireless facilities on aesthetic grounds under state and federal law. The Court also rejected American Tower's argument the City unreasonably discriminated between providers, holding a city may impose different requirements on its own public safety communications facilities than on towers operated by commercial wireless providers.

Helpfully for cities and counties, the Court stated an applicant arguing a permit denial effectively prohibits provision of wireless service in violation of the Telecommunications Act must show the proposed facility is the least intrusive means to close a significant gap in service. American Tower asserted that point without

evidence. The opinion thus confirms a city or county may require a cell tower applicant to analyze alternative sites, demonstrating its preferred site is the least intrusive means to close a gap in service.

The Court also rejected American Tower's claim its applications had been automatically approved under California's Permit Streamlining Act. Under that Act, if a city or county fails to act on an application within 60 days of determining it exempt from CEQA, the application is deemed approved if required public notice has been given. San Diego did not act timely, but the Court concluded that the city's hearing notice was insufficient under state constitutional due process requirements because it failed to provide both notice and an opportunity for affected property owners to be heard. The opinion thus narrows the Permit Streamlining Act, requiring a city or county to provide notice and a public hearing to affected property owners before an application may be deemed approved.

♦♦♦

For more information on this topic, contact Matt at 213/542-5719 or [msummers@chwlaw.us](mailto:msummers@chwlaw.us).

## Police Office Records: *Brady* and *Pitchess* Collide

By Michael R. Cobden

In August, the San Francisco Court of Appeal held in *People v. Superior Court* (Case No. A140768) that prosecutors must inspect police personnel records and disclose potentially relevant information to the defense by a motion in court. The Court's stated intention was to harmonize statutory protection of police officers' privacy interest in their personnel records (discoverable only through "*Pitchess* motions"), and prosecutors' constitutional duty to disclose material exculpatory evidence to defendants under *Brady v. Maryland* (1963) 373 U.S. 83. The opinion may be short-lived; a petition for review and a depublishment request are pending in the California Supreme Court.

Under *Brady*, a prosecutor has a duty to learn of any exculpatory evidence known to any member of the prosecution team (including the arresting agency), but has no general duty to seek out other evidence that might help the defense. Courts have concluded that a prosecutor is not in "possession" of police personnel files for *Brady* purposes; if the prosecution wants personnel records, it must file a *Pitchess* motion just as a criminal defendant must.

In this case, the San Francisco District Attorney's *Pitchess* motion requested the Court to review the officers' files and disclose to the prosecution any *Brady* material so they could make it known to the defendant. Perhaps daunted (at

a time of deep cuts to court budgets) by the burden of regularly conducting such reviews, the Court denied the motion and ordered the DA to review the files for *Brady* material. The Court of Appeal agreed: the DA may review the files without violating officers' privacy rights.

In attempting to harmonize *Pitchess* and *Brady*, the Court of Appeal may have created new problems. For example, "good cause" for disclosure under *Pitchess* includes anything **relevant** to a proposed defense in the case. In contrast, under *Brady*, the standard for disclosure is **materiality** to a fair trial, a higher standard.

Further, *Brady* disclosure is broader than *Pitchess* discovery, as *Pitchess* statutes requires the trial court to exclude records more than five years old and *Brady* has no such limit. Finally, most courts limit *Pitchess* disclosure to the names and addresses of persons who have complained against the officers involved in a case; *Brady* disclosure is broader and can include training notes, internal discipline records, or anything else which may affect a fair trial.

If the Supreme Court allows this decision to stand, we predict many *Pitchess* motions — filed by prosecutors. The Court may review or depublish the case, so stay tuned!

♦♦♦

For more information on this topic, contact Michael at 530/798-2416 or [mcobden@chwlaw.us](mailto:mcobden@chwlaw.us).

### Welcome, Charlie LaPlante!

Charlie LaPlante joins us as Senior Counsel in our LA office and as a member of our litigation group. His work covers a broad range of disputes, including rate-making, taxation, and land use. He also advises governments on compliance with constitutional requirements for raising revenue. Current assignments include defending a city against claims by an investor which foreclosed on a development project and then disputed the scope of the rights it had acquired; a petition for review in the California Supreme Court in a dispute involving inverse condemnation liability for damage caused by a street tree toppled by a windstorm; and defense of a county fire suppression benefit assessment.

Before joining CH&W, Charlie represented lenders and loan servicers in litigation arising from disputes with borrowers, in class actions and other cases. He handled matters from the pleading stage through appeal, including a satisfactory result in an argument to the LA Court of Appeal.

Before moving to LA, Charlie was an associate in the Minneapolis office of Dorsey & Whitney LLP, where his practice included complex commercial litigation, securities law, intellectual property disputes, wage-and-hour law, the federal Administrative Procedure Act, and Indian law.

Charlie received his law degree from the University of Virginia School of Law in 2008, where he was a member of the editorial board of the **Virginia Law Review**. Charlie also worked as a research assistant for Professor Michael Klarman on projects concerning the Warren Court and the history of school desegregation. In 2005, Charlie graduated cum laude from Miami University in Oxford, Ohio, where he served as a research assistant in Professor Samir Bali's optics laboratory and earned a B.S. in Physics with minors in Mathematics and Political Science.

Welcome, Charlie!

## Fee Litigation on the Upswing

By Michael G. Colantuono

Suits challenging local government fees are increasing for many reasons. First, our Supreme Court's decisions in *Ardon v. Los Angeles* (2011) and *McWilliams v. Long Beach* (2013) to allow class action challenges to local government revenues is gaining attention in the plaintiff's bar — including some of the best-known and most resourceful firms in California. Second, the Court's *Bighorn* (2006) decision to apply Prop. 218 to utility charges based on metered consumption is still generating uncertainty and litigation, primarily as to water rates. Third, the 2010 approval of Prop. 26 extended cost-of-service limits to electric and wholesale water rates. The fee-making authority granted by new groundwater management statutes will generate controversies, too.

Charges by existing **groundwater management** agencies have been understood to be governed by Prop. 218 since the 2007 *Pajaro* decision. The Court of Appeal upheld Pajaro's new rates in the *Griffith* decision last fall, explaining how agencies can adopt rates in compliance with Prop. 218. Nevertheless, groundwater rate litigation is pending in San Jose, Ventura, and Los Angeles. Issues include whether Prop. 218 allows preferences for agriculture, whether groundwater charges should be subject to Prop. 26 instead, and whether an agency can give notice and protests to property owners rather than to well operators (water retailers) who pay the fees. While the San Jose case has been awaiting argument for nearly three years, the Ventura case will be decided soon, with post-argument briefs due November 3rd. Although the Superior Court invalidated the Water Replenishment District of

Southern California's rates almost three years ago, its case remains in LA Superior Court.

Retail water agencies are beginning to challenge **wholesale rates**. We successfully challenged rates imposed on Newhall County Water District by Castaic Lake Water Agency under Prop. 26. CLWA's appeal is pending in LA. CLWA based rates on its retailers' total water use, including use of local groundwater and other non-CLWA sources, effectively (in our view) taxing Newhall's use of groundwater. The San Diego County Water Authority has persuaded the San Francisco Superior Court that the Metropolitan Water District violated Prop. 26 in setting rates to carry water to San Diego from the Imperial Valley. The case is in the trial court.

Much attention has been paid to **tiered or "conservation block" water rates** after the 2011 *Palmdale* decision setting aside a water district's rates as insufficiently justified by its record. The Orange County Superior Court reached a similar conclusion as to San Juan Capistrano's rates in a case we are defending. Argument to the Orange County Court of Appeal had been set for November 21st, but the Court recently deferred argument to January and invited supplemental briefing. This case also involves funding of new recycled water service. The plaintiffs' lawyer in that case has sent a pre-litigation public records request to another large Southern California city and we will defend that matter, too.

We are also defending a class action in Santa Barbara County t challenging **discounted agricultural rates** for retail service that can be interrupted in drought.

Several large Southern California

cities have faced suits challenging **transfers from water funds** to general funds and to **surcharges on water customers outside city limits**. Such practices are most easily defended if supported by a cost-of-service study showing the value of general fund services to the utility or additional costs to serve out-of-city customers, respectively.

Gas and electric rates are exempt from Prop. 218, but not Prop. 26. Last year's *Brooktrails* case holds Prop. 26 is not retroactive as to local government, but this is being tested as to Redding's payment in lieu of taxes (PILOT) from its electric utility. We argued the case to the Sacramento Court of Appeal in September, but persuaded the Court to allow post-argument briefing, so the matter will not be submitted until November 6th. Decision is due 90 days after that. Electric utilities are well advised to consult counsel before setting rates to ensure they protect pre-2010 practices such as PILOTS, general fund transfers, low-income discounts, etc.

A.B. 2403 (Rendon, D-So. Gate) expands the statutory definition of "water" to include water "from any source". This means water supplies from storm and waste water can be funded by water rates and sewer rates may fund use of treated wastewater to recharge groundwater.

Plainly, a lot is going on under Props. 218 and 26. Rate-makers are advised to get good counsel in this very litigious environment. Change is coming quickly. As always, we'll keep you posted.

♦♦♦

For more information on this subject, contact Michael at 530/432-7357 or [mcolantuono@chwlav.us](mailto:mcolantuono@chwlav.us).



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Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Affiliation: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

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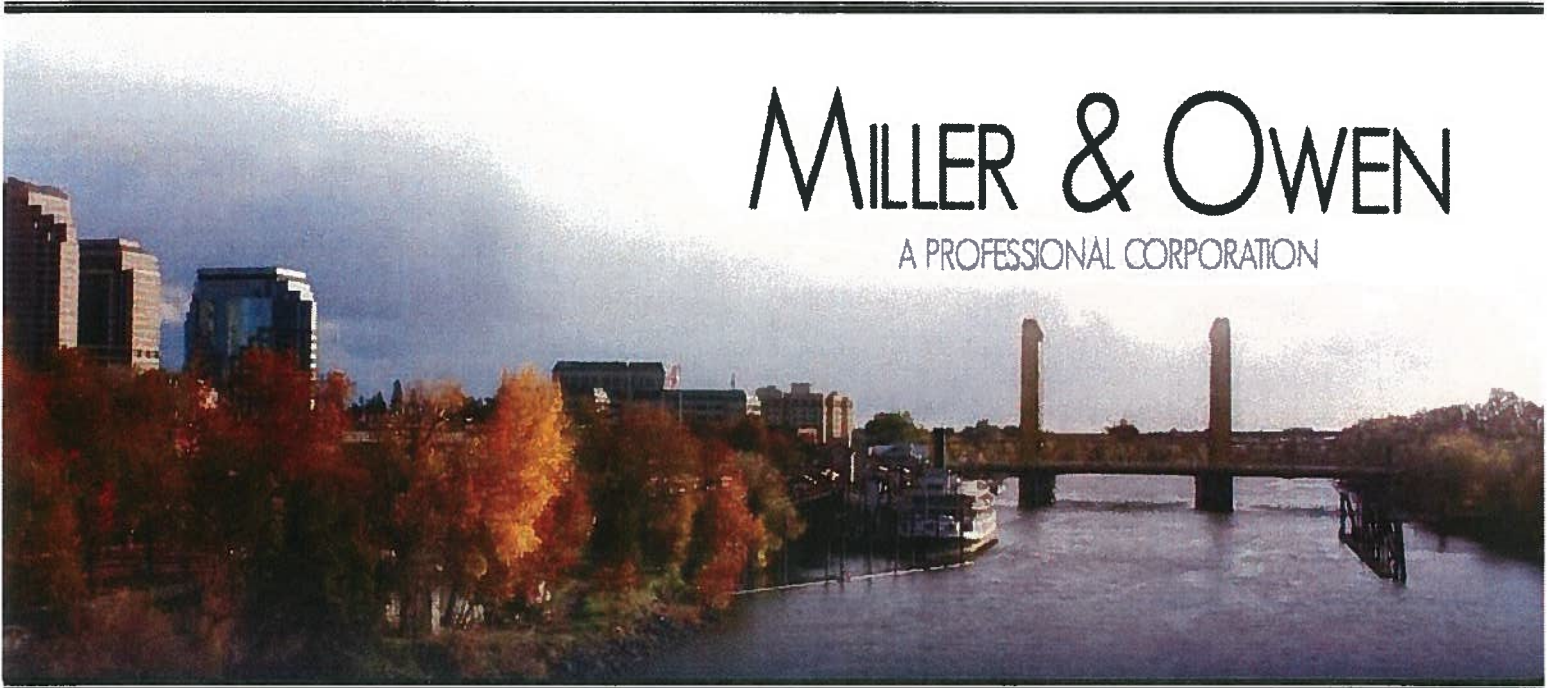
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The contents of this newsletter do not constitute legal advice. You should seek the opinion of qualified counsel regarding your specific situation before acting on the information provided here.

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LOCAL AGENCY FORMATION COMMISSION OF  
NAPA COUNTY

MILLER & OWEN

RESPONSE TO REQUEST FOR PROPOSAL (RFP)  
LEGAL COUNSEL

JANUARY 21, 2015

**MILLER & OWEN**

A Professional Corporation  
428 J Street, Suite 400  
Sacramento, CA 95814  
Office: 916.447.7933  
Fax: 916.447.5195  
[www.motlaw.com](http://www.motlaw.com)

**TABLE OF CONTENTS**

**COVER LETTER ..... i**

**PART I. FIRM DESCRIPTION AND SUMMARY OF QUALIFICATIONS.....1**

    A. FIRM DESCRIPTION .....1

    B. PROPOSED TEAM.....1

    C. SUMMARY OF QUALIFICATIONS .....2

**PART II. RELATED WORK EXPERIENCE AND REFERENCES .....4**

    A. RELATED WORK EXPERIENCE .....4

    B. CLIENT REFERENCES .....6

**PART III. APPROACH.....8**

**PART IV. PROJECT COST .....9**

    A. FEES FOR PROFESSIONAL STAFF .....9

    B. REIMBURSABLE EXPENSES .....9

**PART V. OTHER .....10**

    APPENDIX A: REPRESENTATIVE CLIENT LIST .....10

    APPENDIX B: ATTORNEY RESUMES .....21

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# MILLER & OWEN

A PROFESSIONAL CORPORATION

PAUL J. CHRISMAN  
JENNIFER V. GORE  
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WILLIAM L. OWEN, Ret.

January 21, 2015

Peter Banning  
Interim Executive Officer  
LAFCO of Napa County  
1030 Seminary Street, Suite B  
Napa, CA 94559

**Via FedEx**

Re: *Response to Request for Proposals for Legal Counsel*

Dear Mr. Banning:

Thank you for the opportunity to submit this proposal in response to the Request for Proposals (RFP) Legal Counsel issued by the Local Agency Formation Commission (LAFCO) of Napa County, dated December 26, 2014.

Miller & Owen, A Professional Corporation (Miller & Owen) has provided LAFCO-related services to public agencies state-wide for more than twenty years, including Sacramento LAFCO, San Francisco LAFCO, Orange County LAFCO, Santa Cruz County LAFCO, Fresno County LAFCO, Nevada County LAFCO, Los Angeles LAFCO, and various special districts, including the Metropolitan Water District of Orange County and the Truckee Donner Public Utility District.

On behalf of our LAFCO clients, we frequently attend Commission meetings, review requests from LAFCO members and Officers, offer written legal opinions, review contracts and other formal documents, including staff reports and resolutions, and advise our clients regarding litigation. The firm's LAFCO experience also includes assisting with the processing of applications for incorporation, annexation, and consolidation, as well as sphere of influence amendments, Municipal Service Reviews, and all associated services such as reviewing environmental impact reports, helping to negotiate revenue and taxation agreements, and all associated litigation. The firm also works with transportation planning agencies and Councils of Governments on the development of regional transportation plans and regional housing needs issues.

The firm has also served as special counsel to various LAFCOs when their general counsel has a conflict, including Los Angeles LAFCO, Orange County LAFCO, Nevada County LAFCO, Fresno County LAFCO, Placer County LAFCO, Yolo County LAFCO, and Santa Cruz

County LAFCO. Detailed information on the services provided to each of these agencies, as well as other municipal entities, is set forth in Appendix A of our attached proposal.

Miller & Owen is a small firm that emphasizes close relationships, and direct partner participation with all clients. Although the firm assigns a partner to be responsible for assuring that the client's work is performed well and efficiently, the firm has a team approach to client representation. We typically are within budget and work hard to avoid litigation by working closely with staff and Commissions to anticipate problems and respond accordingly. Our proposed rates are provided in Part IV of our proposal. We are open to discussing our proposed fees and expenses and working with the Commission to structure our representation to mitigate costs.

Our proposal remains firm and irrevocable for at least 90 days. Our firm is in the process of formally merging with Renne Sloan Holtzman Sakai LLP in the first quarter of 2015. However, this merger will not affect our proposal to provide services to LAFCO of Napa County – our personnel, proposed team, and proposed rates will not change.

We do not anticipate any conflicts with our current clients, and would avoid future conflicts of interest should we be selected to serve as Legal Counsel to LAFCO of Napa County. Finally, we have reviewed LAFCO's sample professional services agreement and are prepared to accept its provisions with two minor qualifications (see attached page).

Please feel free to contact me, Nancy C. Miller, President, Miller & Owen, should you have any questions. You can reach me at (916) 447-7933 or by e-mail at miller@motlaw.com. We are pleased to submit this proposal and we look forward to hearing from you.

Very truly yours,

MILLER & OWEN  
A Professional Corporation

By:   
Nancy C. Miller

**Proposed Exceptions to  
Sample Professional Services Agreement**

There are two instances where alternative provisions appear to have been included in the Sample Professional Services Agreement attached as Exhibit A to the RFP. The changes to the sections below reflect our proposed clarifying changes to those sections:

**3. Compensation.**

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

(b) Expenses. ~~No travel or other expenses will be reimbursed by LAFCO.~~ 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."

**23. Conflict of Interest.**

(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 executing this Agreement, the LAFCO hereby determines in writing 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.~~

CONTRACTOR agrees to timely comply with all filing obligations for a consultant under LAFCO's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

I.

**FIRM DESCRIPTION AND SUMMARY OF QUALIFICATIONS**

**A. Firm Description**

Miller & Owen is a leader in public agency law, entering its thirty-sixth year of practice. With special emphasis on local government, Miller & Owen has developed expertise in LAFCo law, environmental law (including CEQA and NEPA), land use law, special district law, law, general municipal law, utility issues, real property law, redevelopment law and dissolution, transportation law, joint powers authority law, personnel matters, public works contracts, and all related litigation. The firm represents various governmental entities, including several LAFCOs, as well as cities, counties, transportation and transportation planning agencies, special districts (including joint powers authorities), redevelopment oversight boards and redevelopment successor agencies, and quasi-public agency non-profits. The firm is based in Sacramento, but has access to offices in Berkeley and San Francisco as well, through its affiliate, Renne Sloan Holtzman Sakai LLP.

Miller & Owen prides itself on providing timely and thorough legal services with an emphasis on cost savings and efficiency. Miller & Owen provides a broad range of experience and qualifications that allow it to function at or above the high level of large firms, without the bureaucracy and lack of personal touch sometimes associated with larger organizations. Miller & Owen's clients have unparalleled access directly to the Miller & Owen team of attorneys.

Although the firm assigns one partner be primarily responsible for assuring that the client's work is performed well and efficiently, the firm has a team approach to client representation. All of the firm's attorneys are familiar with the firm's clients. The responsible partner is expected to utilize other senior attorneys and associate attorneys, when appropriate, to provide services in an efficient and cost-effective manner. This approach allows the firm to bill the client at the most cost-effective rate available while still providing high level, quality legal counsel.

The firm consists of seven (7) attorneys, including Nancy C. Miller, William Owen, Christiane Layton, Paul Chrisman, Jennifer Gore, Madeline Miller, and Maila Labadie. Collectively, the firm's attorneys have more than one hundred (100) years of experience representing local government agencies in California. As a small firm, Miller & Owen limits the clients it represents, and if selected by Napa LAFCo, would ensure that it has the availability to provide exemplary services in a timely and cost-effective manner.

**B. Proposed Team**

Nancy Miller would be the Principal/Partner in charge, while Jennifer Gore would be the primary contact for Napa LAFCo's day-to-day needs. Jennifer Gore, with assistance from Nancy Miller, Madeline Miller, and Maila Labadie as needed, would be the primary attorney available

to communicate with Napa LAFCo staff, attend Commission meetings on the first Monday of the month or special meetings as needed (in person or via conference call or Skype), or to meet with other agencies or applicants. Other firm attorneys would be available to provide support when appropriate (based on their expertise), and to provide services in an efficient and cost-effective manner, as described below.

### **C. Summary of Qualifications**

The firm's managing shareholder is Nancy Miller. Ms. Miller has been a principal of Miller & Owen, a Professional Corporation, since 1983. Ms. Miller is named as a "preeminent lawyer," the highest ranking by Martindale Hubble, and the firm has received an AV rating, the highest rating a law firm can receive from this nationally recognized legal reference publication, signifying preeminent levels of legal ability and the highest ethical standards. Further, since 2004, Ms. Miller has been rated as a "Super Lawyer" in her field by her peers through the independent research of *Law & Politics Magazine*. William Owen practices with the firm in an "of counsel" capacity and is the former acting City Attorney of the cities of Roseville, Davis and Sacramento. The firm is a small business and is an equal opportunity employer.

Jennifer Gore, since joining the firm in 2006, has provided legal services to various public agencies, including Sacramento and San Francisco LAFCo, as well as various special districts, joint powers agencies, transportation planning agencies, non-profit consolidated transportation planning agencies, and redevelopment agencies. Ms. Gore's services include general advice and counsel to both agency Boards of Directors and agency staff pertaining to LAFCo issues, CEQA review, open meeting and public records laws, redevelopment law and oversight board matters, public contracts and bidding, land use and planning issues, including RHNA, and public employment and human resources issues, and related litigation services.

Madeline Miller began her practice of law at the firm of Kronick, Moskovitz, Tiedemann, and Girard, where she represented water districts in litigation and transactional matters. Since joining Miller & Owen in 2004, Ms. Miller has continued her representation of local agencies, focusing on general public agency law, including LAFCo matters, CEQA issues, and related litigation.

Maila Labadie provides general and special counsel services on behalf of various public agencies, including Sacramento LAFCo, Los Angeles LAFCo, cities, counties, and special districts. She provides both transactional and litigation services, handling matters involving employment law and labor relations, environmental review and compliance, open government laws, real property transactions, public contracting, and transportation planning. Prior to joining Miller & Owen, Ms. Labadie worked with the law firm of Liebert Cassidy Whitmore, where she represented public agencies in labor and employment matters.

Christiane Layton is a Senior Attorney and has provided legal services to public agencies for over 20 years. Ms. Layton was formerly with Diepenbrock Wulf Plant and Hannegan before joining Miller & Owen. Ms. Layton specializes in the representation of joint powers agencies and special districts. Areas of representation include open meetings and public records law,



transportation planning law, public contracts and bidding, public employment and human resources, conflicts of interest, risk pooling, liability, and other insurance issues.

Paul Chrisman is a Senior Attorney and possesses more than 20 years of legal experience representing public agencies. Mr. Chrisman's practice focuses on the representation of joint powers agencies and special districts, with an emphasis on business and real property transactions and public financing. Mr. Chrisman has handled a number of major transactions, including sales of sports arenas, the issuance of bond obligations, and rail corridor acquisitions. Emily Ford and Angela Adame are paralegals with the firm, and are available to provide services as needed and appropriate.

Detailed resumes for all of the firm's attorneys are provided in Appendix B.

## II.

### RELATED WORK EXPERIENCE AND REFERENCES

#### A. Related Work Experience

Having represented Sacramento and San Francisco's LAFcos, as well as numerous other public agencies (as detailed in Appendix A), the attorneys at Miller & Owen have extensive experience with the areas of law detailed in the proposed Scope of Services for Napa LAFCo.

##### 1. *All Commission Matters, Including Litigation and Administrative Proceedings*

The attorneys at Miller & Owen routinely serve in a General Counsel capacity for a variety of public agencies throughout California, providing all legal services required, including litigation and administrative proceedings as necessary.

For example, Miller & Owen has served as general counsel for Sacramento LAFCo since 1993. Representation has included participation in numerous annexation and incorporation proceedings, as well as related litigation services. Ms. Nancy Miller was lead counsel in the California Supreme Court and the U.S. Supreme Court on behalf of LAFCo in litigation challenging the incorporation of a new city (*Board of Supervisors v. Sacramento County Local Agency Formation Commission* (1992) 3 Cal.4th 903). The League of California Cities joined as amicus in the suit. More recently, the firm has defended various CEQA challenges on behalf of Sacramento LAFCo and other clients (e.g., *ECOS v. Sacramento Local Agency Formation Commission Sacramento Superior Court*, Superior Court Case No. 34-2008-00004668).

##### 2. *General Legal Advice, Including CEQA and Cortese-Knox-Hertzberg Act*

As counsel to numerous agencies, the firm's attorneys provide general legal advice to public agency boards and commissions and staff members when requested related to general municipal or administrative law, including matters related to the Brown Act, Public Records Act, Political Reform Act, CEQA, and the Cortese-Knox-Hertzberg Act.

The firm has provided all aspects of representation related to Cortese-Knox-Hertzberg, including:

- Incorporation proposals: The firm has provided legal services regarding incorporations that have resulted in three new cities in Sacramento County – Citrus Heights, Folsom, and Rancho Cordova. The firm was instrumental in fashioning revenue neutrality agreements for all three cities. Outside Sacramento County, the firm served as special counsel in Fresno County LAFCo, Nevada County LAFCo, and Santa Cruz County LAFCo on proposed incorporation proposals.

- **Annexation:** We have processed numerous annexation requests for cities and special districts including the City of Folsom, Arden-Arcade, and large service areas such as Sacramento Municipal Utilities District's (SMUD) proposed annexation of parts of Yolo County and the annexation of the Greenbriar project area to the City of Sacramento in 2008.
- **Consolidation:** We have provided services to consolidate numerous special districts in Sacramento, including fire districts, regional sanitation districts, park districts, and water districts.
- **Spheres of Influence:** We have processed numerous Sphere of Influence requests, including requests from the City of Folsom, the City of Elk Grove, and various special districts.
- **Municipal Services Reviews:** We have drafted and reviewed Municipal Service Review documents as necessary.
- **Environmental Review:** We have participated in the preparation and review of numerous environmental impact reports (EIRs), as necessary, and have reviewed other environmental documents where an EIR was not required.

### 3. *On-Call Counsel*

As general and special counsel to agencies throughout California, the Miller & Owen team of attorneys regularly attends Commission and Board meetings. We have found that attendance from a remote location, via conference call or Skype is a cost effective way to provide services, as it allows us to avoid travel expenses, but also be available for routine meetings and/or on-call in the event that a question arises from the governing body or from a member of the public.

### 4. *In-Person Meetings or Other Contact*

Miller & Owen's attorneys routinely attend meetings with public agency Executive Officers and/or Commission members, as well as applicants and/or stakeholders to address issues as needed. We are also available via e-mail, cell phone, or landline for consultation at virtually any time. Our goal is to respond within the same business day or less for return calls or email, subject to other client commitments. In all cases, a response and estimate of time for a complete reply should be provided no longer than 24 hours after inquiry.

### 5. *Comment on Agenda Materials and Other Documents*

The firm's attorneys regularly prepare or review agendas, staff reports, and resolutions on behalf of clients in preparation for Commission meetings, as well as for various other clients. We also review correspondence, administrative policies and other documents in a timely manner, as needed. For example, we assisted Sacramento LAFCo in preparing one of the first Agricultural policies in the state, and have since provided similar services to LAFCOs in Yolo and Placer counties. We also routinely review and/or draft general administrative policies, such as contracting procedures, records retention policies, accounting and budgeting policies, and personnel policies, as requested.

6. *Prepare Legal Opinions*

The proposed team of attorneys from Miller & Owen provides formal and informal legal opinions on behalf of both its general and special counsel clients relating to a variety of topics ranging from an opinion for Orange County LAFCo related to issues of ethics and conflicts of interest, to advice to Los Angeles LAFCo regarding an applicant's CEQA document and analysis of nearby disadvantaged unincorporated communities.

7. *Contract Preparation/Review*

Miller & Owen recommends that clients utilize standardized template contracts for consultant services and indemnification agreements with applicants to minimize legal expenses. The use of templates avoids extensive legal review of most contracts (unless significant changes have been requested), but can also serve as a starting point for other specialized contracts for which a template contract may be inadequate without some customization.

8. *Prepare Reports and Presentations*

Miller & Owen regularly prepares reports and provides presentations during public hearings and Commission meetings as needed on behalf of various clients, such as presenting requested legal opinions.

**B. Client References**

Below is a brief list of clients, including contact persons and their addresses and telephone numbers, which are particularly relevant to LAFCo. A more comprehensive list of the firm's clients is attached in Appendix A, Representative Client List, which includes detailed information on the legal services provided to many of the firm's clients, including the clients listed below.

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION**

Peter Brundage, Executive Officer  
Sacramento Local Agency Formation Commission  
1112 I Street, Suite 100  
Sacramento, CA 95814  
(916) 874-6458

Gay Jones, Chair  
Sacramento Metropolitan Fire District  
c/o Board Clerk  
10545 Armstrong Ave, Suite 200  
Mather, CA 95655-4102  
(916) 208-0736

**CITY AND COUNTY OF SAN FRANCISCO LOCAL AGENCY FORMATION  
COMMISSION**

Supervisor David Campos  
San Francisco Local Agency Formation Commission  
1 Dr. Carlton B. Goodlet Place, Room 244  
San Francisco, CA 94102-4689  
(415) 554-7739

Supervisor John Avalos  
San Francisco Local Agency Formation Commission  
1 Dr. Carlton B. Goodlet Place, Room 244  
San Francisco, CA 94102-4689  
(415) 554-6975

**LOS ANGELES COUNTY LOCAL AGENCY FORMATION COMMISSION**

Paul Novak, Executive Officer  
Los Angeles Local Agency Formation Commission  
80 South Lake Avenue, Suite 870  
Pasadena, CA 91101  
(626) 204-6500

**METROPOLITAN WATER DISTRICT OF ORANGE COUNTY**

Russell G. Behrens, General Counsel  
McCormick, Kidman and Behrens  
650 Town Center Drive, Suite 100  
Costa Mesa, CA 92626  
(714) 755-3100

**TRUCKEE DONNER PUBLIC UTILITY DISTRICT**

Steven C. Gross  
General Counsel to Truckee-Donner Public Utility District (Porter Simon)  
40200 Truckee Airport Road, Suite 1  
Truckee, CA 96161  
(530) 587-2002

**SACRAMENTO COUNCIL OF GOVERNMENTS**

Michael McKeever, Executive Director  
Kirk Trost, Chief Operating Officer/ General Counsel  
Sacramento Area Council of Governments  
1415 L Street, Suite 300  
Sacramento, CA 95814  
(916) 340-6242

### III.

#### APPROACH

As stated in Part I.A., above, Miller & Owen assigns one partner to be primarily responsible for assuring that the client's work is performed well and efficiently, but has a team approach to client representation. All of the firm's attorneys are familiar with the firm's clients. The responsible partner is expected to utilize other senior attorneys and associate attorneys, when appropriate, to provide services in an efficient and cost-effective manner. This approach allows the firm to bill the client at the most cost-effective rate available while still providing high level, quality legal counsel.

To ensure that services remain cost-effective, Jennifer Gore will be the primary contact for Napa LAFCo's day-to-day needs, including communicating with Napa LAFCo staff, attending Commission meetings on the first Monday of the month or special meetings as needed (in person or via conference call or Skype), or meeting with other agencies or applicants.

Ms. Gore will utilize the services of Nancy Miller, Madeline Miller, and Maila Labadie, and other firm attorneys based on their expertise and prior experience with various issues that have arisen through our work with other LAFCOs. Based on our work with other LAFCOs, we are confident that Miller & Owen's attorneys can provide all of the legal services required by Napa LAFCo.

In addition to our work with other LAFCo clients and special districts, the firm's attorneys are also apprised of the latest LAFCo issues through our involvement with CALAFCO and attendance at relevant continuing education courses. Ms. Nancy Miller routinely attends and speaks at CALAFCO's annual conference.

## IV.

### PROJECT COST

#### A. FEES FOR PROFESSIONAL STAFF

Miller & Owen 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 for each attorney in the firm:

Nancy C. Miller	\$ 295
Paul J. Chrisman	\$ 275
Christiane E. Layton	\$ 275
Jennifer V. Gore	\$ 250
Madeline E. Miller	\$ 250
Maila A. Labadie	\$ 215
Other Associates	\$ 165 - 250
Paralegals	\$ 105

#### B. REIMBURSABLE EXPENSES

**The firm charges for half of any travel time.** The firm charges actual costs for any travel related expenses.

In addition to paying legal fees and half-time for any travel, 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 and other agencies, courier service, long distance telephone calls, computerized legal research, postage, facsimile charges, parking, mileage, out of town travel expenses, investigation expenses, consultants' fees, court reporter's fees, registered copy service fees, and other similar items. In-office photocopying charges are billed at \$.05 a page. All costs and expenses 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.

## V. OTHER

### APPENDIX A: REPRESENTATIVE CLIENT LIST

#### Local Agency Formation Commission (LAFCo) Clients

##### SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Since 1993, Nancy Miller has served as general counsel for Sacramento LAFCo. Sacramento LAFCo consists of members from the Sacramento County Board of Supervisors, representatives selected from the City of Sacramento, the City of Folsom, the City of Galt, the City of Elk Grove, the City of Citrus Heights, the City of Rancho Cordova, two representatives from the area Special Districts, and a public member. Representation has included numerous annexation and incorporation proceedings. Ms. Miller was lead counsel in the California Supreme Court and the U.S. Supreme Court on behalf of LAFCo in litigation challenging the incorporation of a new city. The League of California Cities joined as amicus in the suit.

The firm provides all aspects of representation including:

- Incorporation proposals: The firm has provided legal services regarding incorporations that have resulted in three new cities in Sacramento County. The firm was instrumental in fashioning revenue neutrality agreements for all three cities.
- Annexation: We have processed numerous annexation requests for cities and special districts including Folsom, and large service areas such as Sacramento Municipal Utilities District's (SMUD) proposed annexation of parts of Yolo County and the annexation of the Greenbriar project area to the City of Sacramento in 2008.
- Consolidation: We have provided services to consolidate numerous special districts in Sacramento, including fire districts, regional sanitation districts, park districts, and water districts.
- Spheres of Influence: We have processed numerous Sphere of Influence requests.
- Municipal Services Reviews: We have drafted and reviewed Municipal Service Review documents as necessary.
- Environmental Review: We have participated in the preparation and review of numerous environmental impact reports, as necessary, and have reviewed other environmental documents.



### **CITY AND COUNTY OF SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION**

The firm is retained as General Counsel by the San Francisco Local Agency Formation Commission to provide services related to creating a Community Choice Aggregation (CCA) Program. We have provided services to the Commission since 2000 on these issues and have been involved with the CCA process since that time. A request for proposals to implement the community choice energy program was published, and the firm assisted with contract negotiations and program development.

### **LOS ANGELES LOCAL AGENCY FORMATION COMMISSION**

The firm has provided special counsel services to Los Angeles LAFCo, including advice regarding an annexation application submitted by the City of Palmdale. The firm's work includes review of the City's environmental document and analysis regarding nearby disadvantaged unincorporated communities.

### **FRESNO COUNTY LOCAL AGENCY FORMATION COMMISSION**

Ms. Miller served as a facilitator to resolve a water dispute between the County of Fresno, Cities of Kingsburg, Fowler, Selma, Parlier, Sanger, and the Consolidated Irrigation District ("CID"). The dispute involved three major issues: surface water purchase rights; 2) groundwater recharge; and 3) stormwater discharge and retention. The County, five cities and Fresno LAFCo hired the firm to facilitate a new region-wide water agreement. The facilitation began in December 2007, continued through the summer of 2009. The firm was also retained in 2003 as Special Counsel when the County Counsel recused himself in the matter of the incorporation of the area of Malaga. Ms. Miller advised the Commission during the entirety of the incorporation proceedings.

### **SANTA CRUZ COUNTY LOCAL AGENCY FORMATION COMMISSION**

The Commission retained the firm to act as special counsel on a proposed incorporation of the City of Aptos. Litigation ensued in which LAFCo was the prevailing party, with all of its actions upheld.

### **NEVADA COUNTY LOCAL AGENCY FORMATION COMMISSION**

The firm has provided special counsel to services to Nevada County LAFCo when the general counsel had a conflict involving annexation. Further, the firm represented a District in litigation challenging the granting of a latent power to a public utility district (Truckee-Donner Public Utility District) by Nevada County LAFCo. The firm successfully defended the District and supported the Nevada County LAFCo's position. (*Cequel III Communications I, LLC v. Nevada County LAFCo* (2007) 149 Cal.App.4th 310.)

### **PLACER COUNTY LOCAL AGENCY FORMATION COMMISSION**

The firm was retained as special counsel when the Placer County Counsel had a conflict to review and process a petition for annexation of North Auburn to the City of Auburn. The matter was contested and also involved voter approval. The firm provided all services related to the annexation, the contest, and the vote.

### **YOLO COUNTY LOCAL AGENCY FORMATION COMMISSION**

The firm serves as special counsel to the Commission on an as needed basis. Services include all aspects of government reorganization and energy issues to general government reorganizations, including new cities and districts.

### **ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION**

The firm was retained by Orange County LAFCo to provide a conflicts opinion as special counsel. The firm was retained to review issues of ethics and conflicts and rendered opinions regarding the matter.

### **TRUCKEE DONNER PUBLIC UTILITY DISTRICT**

The firm successfully represented the Truckee Donner Public Utility District in this action when a third party challenged a decision by the Nevada County Local Agency Formation Commission to grant certain latent powers to the District. The Plaintiff in the action was a cable company seeking to prevent the District from providing broadband and other services. The Superior Court ruled in favor of the District and Nevada County LAFCo. The Plaintiff appealed the decision and after briefing and oral argument, the decision was upheld in favor of the District and Nevada County LAFCo. Nancy Miller provided all litigation services to the District and worked with LAFCo counsel to successfully defend LAFCo's actions. In the Superior and Appellate Courts, LAFCo was awarded judgment and full costs. (*Cequel III Communications I, LLC v. Nevada County LAFCo* (2007) 149 Cal.App.4th 310.)

### **METROPOLITAN WATER DISTRICT OF ORANGE COUNTY (MWDOC)**

The firm assisted the MWDOC in connection with a Governance Study of alternative governance forms, rate structures, and member agency representation. Ms. Miller served as an expert on local agency formation commission law, analyzing reorganization options and voting processes. MWDOC was able to reach a settlement with its member agencies that resolved all concerns related to MWDOC's management and governance.

## **County Clients**

### **SAN DIEGO COUNTY**

The firm is retained as special counsel to San Diego County regarding redevelopment and land use projects in the San Diego area, and currently provides advice and counsel on oversight board matters related to the dissolution of the redevelopment agency. The firm was involved in the Grantville Redevelopment Project - one of seven project areas in the City of San Diego, and negotiated on behalf of the County of San Diego with respect to the Center City Redevelopment project and the financing of a new stadium for the San Diego Chargers.

### **SANTA CLARA COUNTY**

The firm has acted as special counsel to the County in redevelopment, tax, and financing issues. The firm has assisted the County in successfully negotiating an agreement with the City of San Jose, involving over \$1 billion in tax increments. The firm also has advised the County on land use and annexation issues.

### **SOLANO COUNTY**

The firm has provided legal services to the County on a variety of issues including redevelopment, transportation and Development Agreements, including a joint public private partnership agreement for development of the County fairgrounds.

### **STANISLAUS COUNTY**

The County of Stanislaus retained the firm to assist in the review of three redevelopment projects which are located in Ceres, Modesto, and unincorporated areas of the County. The firm is currently providing advice and counsel on oversight board matters related to the dissolution of the redevelopment agency.

### **EL DORADO COUNTY**

The firm is retained as special counsel to El Dorado County regarding redevelopment and land use projects in the South Lake Tahoe area. Recently the firm negotiated a forty million dollar settlement with respect to a South Lake Tahoe improvement project for transit, air quality and redevelopment projects.

## **Special District Clients**

### **SACRAMENTO MUNICIPAL UTILITY DISTRICT (SMUD)**

The firm acts as special counsel to the General Counsel and District. The firm provides advice in the area of municipal utility law, energy issues, financing, conflicts of interest, contracts, and other areas as requested. Ms. Miller advised SMUD in the search for a

new general manager and other contract employees. The firm was responsible for drafting employment contracts for the general manager and general counsel.

#### **STATE & FEDERAL CONTRACTORS WATER AGENCY (SFCWA)**

The firm was recently engaged as general counsel to this joint powers authority, which is focused on facilitating habitat conservation measures and research related to the restoration of the Delta ecosystem, while assuring sufficient and reliable export water supplies to its customers.

#### **COOPERATIVE AGRICULTURAL SUPPORT SERVICES AUTHORITY (CASS)**

The firm serves as general counsel to this joint powers authority and provides counsel in all areas, including personnel matters, public contracting, and public meeting laws. CASS was created in 2006 by the California Department of Food and Agriculture and several counties to provide agricultural inspection services throughout the state. The firm has assisted the agency's Board of Directors and CEO with all start-up activities, including the implementation of appropriate contracting policies, personnel policies, and related Board policies, and handles all personnel matters on behalf of the JPA.

#### **CAPITAL SOUTHEAST CONNECTOR AUTHORITY (CONNECTOR JPA)**

The firm serves as general counsel to this joint powers authority and provides counsel in all aspects of public agency law including employment matters, public contracting, CEQA, and public meeting laws. The members of the Connector JPA include the cities of Rancho Cordova, Elk Grove, and Folsom, and the counties of Sacramento and El Dorado. The Connector JPA was created in 2007 to assist the member jurisdictions with the construction of a 35-mile roadway between Elk Grove and El Dorado County. After negotiating the original joint powers agreement between the members, the firm has continued to assist the agency's Board of Directors and CEO with all start-up activities and the ongoing environmental review for the project.

#### **SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT**

The firm acts as special counsel for litigation matters to the District and acted as general counsel in the past. Duties include all litigation and the firm works collaboratively with the general counsel on assigned matters.

#### **CALIFORNIA FAIR SERVICES AUTHORITY**

The firm acts as general counsel to this State-local authority. This joint powers authority initially was created to address rising insurance costs to county fairs, district agricultural associations, and citrus fruit fairs in California by creating self insurance pooling programs. Participants include the State of California, county fairs, and the Department of Food and Agriculture on behalf of district agricultural associations. The Authority also provides joint purchasing and management programs for these fairs.

### **SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY**

The firm has represented Sacramento Housing and Redevelopment Agency in special litigation as assigned, including issues ranging from contract disputes to the financing of light rail, transit projects, construction disputes and general governance issues.

## **Transportation Clients**

### **SACRAMENTO AREA COUNCIL OF GOVERNMENTS (SACOG)**

The firm provides general public agency law services to this regional transportation planning agency with approximately 50 employees. SACOG is an association of local governments, including all cities and counties in the six county Sacramento region. All employees except for senior management are represented by an unaffiliated employee's association. Representation includes all aspects of public agency law including employment matters, public contracting, CEQA, public meeting laws, and federal and state transportation laws. The firm and its subconsultants assisted SACOG with negotiating and documenting its current memorandum of understanding with the employee's association.

### **PARATRANSIT, INC.**

The firm acts as general counsel to Paratransit, Inc., a provider of transportation services to disabled and elderly residents of the City and County of Sacramento. Paratransit, Inc. is the designated Consolidated Transportation Services Agency for the greater Sacramento Area. The firm also assists Paratransit with its ongoing brownfield cleanup efforts, and prepared and negotiated all legal documents associated with the acquisition and construction of the Paratransit facility in South Sacramento.

### **VALLEY TRANSPORTATION SERVICES DISTRICT (VTRANS)**

The firm acts as general counsel to VTrans, a new non-profit corporation established in the San Bernardino Valley to provide transportation services to low-income, disabled, and elderly residents of. VTrans is also the designated Consolidated Transportation Services Agency for the San Bernardino Valley. As such, the firm's services to VTrans include many aspects of public agency law including public contracting, public meeting laws, and federal and state transportation laws.

### **SACRAMENTO REGIONAL TRANSIT DISTRICT (RT)**

The firm acts as special counsel to the District. We negotiated the purchase of land from Union Pacific Railroad to construct the light rail system (southern extension). The firm's current representation includes preparation of all legal documents for the acquisition and construction of the light rail extension. In addition we are currently negotiating for a multi modal transit station at the downtown Sacramento Union Pacific yard.

#### **PLACER COUNTY TRANSPORTATION PLANNING AGENCY (PCTPA)**

The firm is General Counsel to the Placer County Transportation Planning Agency. Firm services include all aspects of legal representation of a county transportation commission, including advice and counseling on personnel matters, contracts, environmental documents, and determining the priority of transportation planning projects. Projects include the preparation, revision and negotiation of environmental contracts for the preparation of a Program EIR for the Placer Parkway Project, a proposed highway to bisect Placer County, as well as the implementation of a Proposition 218 fee imposed countywide for a transportation improvement program in Placer County. Miller & Owen also drafted all documents for the imposition of the fee and the creation of a new joint powers authority to implement the program.

#### **SOUTH PLACER REGIONAL TRANSPORTATION AUTHORITY (SPRTA)**

This joint powers authority was formed to implement a county-wide transportation plan. The firm acts as general counsel to the Authority and implemented a new fee under Proposition 218 for a Regional Transportation and Air Quality Mitigation Fee. This fee is imposed by the County and four of the cities within the county for the construction of certain transportation improvements as specified. The firm provides all aspects of legal representation to the Authority.

#### **EL DORADO COUNTY TRANSPORTATION COMMISSION (EDCTC)**

The firm acts as general counsel to the El Dorado County Transportation Commission. Firm services include advising the Commission on all transportation issues, including state transportation improvements projects, federal projects, compliance issues, CalTrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and the California Environmental Quality Act (CEQA).

#### **NEVADA COUNTY TRANSPORTATION COMMISSION (NCTC)**

The firm acts as general counsel to the Nevada County Transportation Commission. The services provided to the Commission include advising on transportation issues, including state transportation improvements projects, federal projects, compliance issues, CalTrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and the California Environmental Quality Act.

#### **AMADOR COUNTY TRANSPORTATION COMMISSION (ACTC)**

The firm was retained by the Commission to act as general counsel commencing June 1, 2008. The firm provides all aspects of legal services including transportation planning,

funding, contracting, CEQA, operation of the Commission, Brown Act, and personnel issues.

#### **AMADOR TRANSIT (AT)**

The firm provides general counsel services as needed to this regional public transit agency. Our services to ARTS include advice in the areas of public contracting and human resources, as well as compliance with the Brown Act and the Public Records Act.

#### **MODOC COUNTY TRANSPORTATION COMMISSION**

The firm acts as special counsel to the Modoc County Transportation Commission. Among the services offered by the firm to the Commission are advising the Commission on transportation issues, including state transportation improvements projects, federal projects, compliance issues, Caltrans, and the setting of community priorities. Services also include regional transportation planning issues and all matters related to the operation of the commission including personnel, contracts, the Brown Act, and CEQA.

#### **SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY (SPTC-JPA)**

The firm was selected as general counsel for this joint powers authority soon after its formation. The Authority's members are the Sacramento Regional Transit District, the City of Folsom, the County of El Dorado, and the County of Sacramento. The Authority was created with the stated purpose of acquiring the Placerville Branch of the Southern Pacific Railroad for future expansion of passenger rail service in the Sacramento region. Together with the Authority's staff, the firm negotiated the real property acquisition from Southern Pacific and was responsible for documenting the acquisition, as well as the ongoing shared use of the Placerville Branch Corridor by the member agencies.

#### **THE "BIZZ JOHNSON" HIGHWAY INTERCHANGE JOINT POWERS AUTHORITY**

The firm acts as general counsel to this joint powers authority created in 1990, by the City of Rocklin, the City of Roseville, and the County of Placer to finance and construct highway interchanges on Highway 65. The Authority is working to finance the interchanges with benefit assessments, developer fees, and state and federal highway funds. Bonds may also be issued. The firm's representation includes preparation of all legal documents necessary for the construction and financing of the interchanges, advice on CEQA compliance, public works law, the Brown Act, conflict of interest laws, personnel rules, and insurance.

#### **SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION**

The firm assembled an acquisition/consulting team to acquire a 30-mile rail line in Santa Cruz County. In addition to negotiating the acquisition with Union Pacific, the firm is

analyzing the freight operations on the Branch Line to develop business plan options that could involve the Commission's assumption of the freight operations on the Branch Line and the incorporation of a recreational trail along scenic Highway 1.

#### **AMICUS ROLE IN LITIGATION INVOLVING SAN DIEGO ASSOCIATION OF GOVERNMENTS**

The firm was recently engaged by a consortium of businesses, a chamber of commerce, landowners, and developers to draft an amicus brief in support of the San Diego Association of Government's (SANDAG) Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS), which is facing a legal challenge. The RTP/SCS was developed in accordance with California Senate Bill 375 and is a new element of SANDAG's 2050 Regional Transportation Plan adopted in 2011. SANDAG's SCS lays out how the San Diego region will meet the greenhouse gas reduction targets set by the California Air Resources Board (CARB).

#### **Redevelopment Dissolution Clients**

##### **CITY OF SACRAMENTO OVERSIGHT BOARD**

The City of Sacramento's Oversight Board retained the firm to serve as general counsel and provide advice and counsel to the Oversight Board on all matters related to the dissolution of the City of Sacramento's Redevelopment Agency, including litigation filed against the Department of Finance in cooperation with the Successor Agency to the Redevelopment Agency.

##### **MORGAN HILL OVERSIGHT BOARD**

The Morgan Hill Oversight Board retained the firm to serve as conflicts counsel and provide advice to the Oversight Board related to the ongoing litigation between the Successor Agency/Morgan Hill Economic Development Corporation and the California State Controller's Office. The firm remains available to the Oversight Board to provide advice and counsel on the dissolution of the Morgan Hill Redevelopment Agency, as necessary.

#### **City Clients**

##### **SOLANA BEACH**

The firm represents the City of Solana Beach in connection with the proposed sale of the Del Mar fairgrounds. The firm's work includes negotiating with other public entities, including the City of Del Mar and the 22<sup>nd</sup> District Agricultural Association, and advising on legislation related to the sale.



### **CITY OF FOLSOM**

The firm represented the City of Folsom in a variety of eminent domain matters, including acquisitions for the American River Bridge Project.

### **CITY OF NAPA**

The firm has represented the City of Napa on a number of transactions and special litigation matters. These matters include, among other things, trial and appellate litigation in the areas of inverse condemnation, eminent domain, land use, CEQA, insurance, municipal taxation, and elections.

### **CITY OF PLEASANT HILL**

The firm has represented the City in litigation matters concerning CEQA, planning and zoning laws, and related matters.

### **CITY OF SACRAMENTO**

The firm has represented the City of Sacramento in negotiations over purchase of land for a multi-modal transit facility at the Union Pacific railyards. The firm has also represented the City of Sacramento in connection with the relocation of Packard Bell Electronics to Sacramento. The firm negotiated and prepared a long-term lease of the Sacramento Army Depot to Packard Bell, as well as a \$26 million secured loan agreement for the conversion of the Army Depot to a computer production plant. The City also contracted with the firm in 1994 to have Mr. Owen act as interim City Attorney and to analyze the ongoing management and organization of the City Attorney's office.

### **CITY OF WHITTIER**

The firm was retained to represent the City of Whittier in connection with its acquisition of approximately 5.2 miles of Union Pacific's right-of-way in the City of Whittier. The City has a recreation and bike trail plan for the right-of-way.

### **CITY OF BRENTWOOD**

The firm represents the City of Brentwood in special litigation and in certain transportation matters.

### **CITY OF WALNUT CREEK**

The firm represented the City in defending a voter-approved initiative limiting the development on slopes and hillsides in the City of Walnut Creek. The plaintiffs and petitioners, owners and developers of a large undeveloped parcel of land within the City, filed a general challenge to the initiative, including claims for inverse condemnation.

The firm obtained a defense judgment for the City. The firm has also represented the City in other litigation in federal court.

#### **CITY OF FAIRFIELD**

The firm has represented the City of Fairfield in special litigation on a variety of matters, including landslide litigation, insurance matters, public construction disputes, and unlawful detainers, among other things.

### **Non-Profit Clients**

#### **TRANSITIONAL LIVING AND COMMUNITY SUPPORT, INC. (TLCS)**

TLCS is a non-profit housing corporation providing services to the mentally ill. We serve as general counsel to the corporation. Services include all landlord/tenant matters, drafting of leases, contracts, and legal notices. We provide advice regarding all real estate and governmental matters.

#### **NORTHERN CALIFORNIA CONSTRUCTION & TRAINING, INC. (NCCT)**

NCCT is a non-profit corporation providing construction training services in Northern California. Funds are received from public agencies. The firm acts as general counsel to the corporation. The corporation is currently under contract with the Sacramento Housing and Redevelopment Agency to construct low-income housing and to train disadvantaged youths for apprenticeship in the construction trades.

## **V. OTHER**

### **APPENDIX B: ATTORNEY RESUMES**

**NANCY C. MILLER**  
**State Bar No. 84225**

**PROFESSIONAL EXPERIENCE:**

**Miller & Owen:** (1982 – current)

President and Shareholder - 1983 to present. Miller & Owen is a professional law corporation that has provided specialized legal services since 1978. Specializing in public agency law, with special emphasis on local government, Ms. Miller focuses on water and real property law, environmental law, LAFCo law, utility issues, habitat conservation, CEQA law, special district law, municipal law, redevelopment law, transportation law, joint powers authority law, personnel matters, public works contracts, and all related litigation. Ms. Miller represents varied governmental entities, including several cities, counties, LAFCo's, joint powers authorities, transportation commissions, redevelopment agencies, districts, and private businesses and individuals.

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing  
Sacramento County Bar Association  
California and U.S. District Court, Eastern and Northern Districts of California  
U.S. Court of Appeals, Ninth Circuit  
U.S. Supreme Court

**BOARDS AND CIVIC ACTIVITIES:**

**Committee Member, California  
Citizens Compensation Commission**

February 2013 – Present. Appointed by Governor Edmund G. Brown Jr. The Committee sets the salaries and medical, dental, insurance and other similar benefits of Members of the Legislature and the State's other elected officials.

**Chairperson - Judicial Selection  
Committee, Eastern District**

1992 – Present. (Member 2000 – 2008.)  
Committee appointed by Senator Feinstein and Senator Boxer that considers and recommends federal judiciary and U.S. Attorney appointments.

**President, California  
Commission on Autism Foundation**

2005 – Present. Foundation which assists Bi-Partisan State Legislative staff and Blue Ribbon Commission on Autism issues and legislation.

**Committee Member, Civil Advisory  
Committee to the Sacramento  
County Presiding Judge**

2009 – Present. Committee of local attorneys and judges reviewing the practices and procedures of the Court.

<b>Sacramento County Bar Association</b>	1979 – Present.
<b>Public Lawyers Association</b>	1986 – Present.
<b>Voluntary Legal Services</b>	1984 – Present. Member of lawyer panel which provides pro bono legal services to indigent families.
<b>St. Francis Preparatory High School</b>	2002 – 2008. Member, Board of Directors.
<b>California Musical Theatre</b>	2010 – Present. Member, Board of Directors.
<b>California Children’s Choir</b>	2010 – Present. Member, Board of Directors.

**POSITIONS; PUBLIC PRESENTATIONS; AWARDS:**

<b>Adjunct Professor, McGeorge School of Law</b>	1999 – 2010. Local Government Law.
<b>Lecturer, U.C. Davis School of Law</b>	1996 – 1998; 2004; 2005. Local Government Law.

**EDUCATION:**

Undergraduate:	Bachelor of Arts - April 1974 <b>Stanford University</b> Major in History and Political Science
Law School:	<b>University of California (Hastings)</b> Juris Doctor - 1978  <b>Recipient of Pomeroy Law Scholarship - 1978</b>

**REPRESENTATIVE CASES:**

**California Supreme Court**

***Board of Supervisors v. Sacramento County Local Agency Formation Commission***  
**(1992) 3 Cal.4th 903.**

Ms. Miller was lead counsel defending LAFCo in litigation challenging LAFCo’s approval of an incorporation on constitutional, statutory, CEQA, and land use law grounds. A unanimous Supreme Court upheld LAFCo’s action.

**California Courts of Appeal**

***Cequel III Communications I, LLC v. Nevada County LAFCo (2007) 149 Cal.App.4th 310.***

Ms. Miller successfully represented the Truckee Donner Public Utility District in this action challenging a decision by the Nevada County Local Agency Formation Commission. The Plaintiff in the action is a cable company seeking to prevent the District from providing broadband and other services. The Superior Court ruled in favor of the District and Nevada LAFCo. The Plaintiff appealed the decision and after briefing and oral argument, the decision was upheld in favor of the District and Nevada LAFCo.

***Beach-Courchesne v. City of Diamond Bar (2000) 80 Cal. App. 4th 388.***

Ms. Miller acted as amicus counsel to a number of counties objecting to the redevelopment plan of the City of Diamond Bar. The Court unanimously agreed with the County's position and invalidated the plan.

***County of Solano v. Vallejo Redevelopment Agency (1999) 75 Cal. App. 4th 1262.***

Ms. Miller acted as lead counsel in litigating on behalf of the County of Vallejo against the redevelopment agency. The issue involved the financing of more than \$30 million of improvements and CEQA issues. The dispute was successfully resolved in the County's favor and Ms. Miller received an award of attorney's fees.

**Unreported Cases**

***Favero v. City of Sacramento, Sacramento Superior Court, Case No. 512889***

This was a complex contamination/leaking underground storage tank case involving a gas station leased by the City by Paratransit, Inc., during the 1980's. This case was one of the first leaking underground storage tank cases to be tried in California. The firm represented the main defendant Paratransit, Inc., and successfully reached settlement with four insurance carriers. Clean up activities continue on the site. We continue to oversee the clean up, to which Paratransit has not been required to contribute any costs. We were also successful in receiving State funds to fund a significant portion of clean up costs.

**Proposition 16 – New Two-Thirds Vote Requirement for Local Public Electricity Providers (Original Title: Taxpayers Right to Vote Act) *Modesto Irrigation District; Sacramento Municipal Utility District; City and County of San Francisco, San Francisco Local Agency Formation Commission; et al v. Secretary of California State (2010) Sacramento County Superior Court, Case No. 34-2010-80000478***

The firm represented the City and County of San Francisco Local Agency Formation Commission in relation to Proposition 16, which was placed on the June 2010 ballot. The firm successfully challenged the initiative title and summary which led to the

Attorney General modifying both. The firm also challenged the constitutionality of Proposition 16 on the grounds that false and misleading statements in the qualifying petition violated the due process guarantee of the U.S. and California Constitution and further violated Elections Code section 18600.

***Grantville Action Group v. The City of San Diego; The County of San Diego; The Redevelopment Agency of the City of San Diego, et al.* (2010) San Diego County Superior Court, Central Division, Case No. 37-2008-00092628-CU-MC-CTL; *County of San Diego v. The Community Redevelopment Agency of the City of San Diego, the City of San Diego, the Council of the City of San Diego, et al.* (2008) San Diego County Superior Court, Central Division, Case No. GIC 850455**

This case involves CEQA issues and land use law, including habitat issues, as well as redevelopment issues and constitutional issues of eminent domain. The firm is retained as special counsel to San Diego County regarding redevelopment and land use projects in the San Diego area.

***Pacific Gas and Electric Company v. Sacramento Municipal Utility District; Sacramento LAFCo* (2007) Sacramento County Superior Court, Case No. 05GS01582**

This case dealt with CEQA issues and legislative grant of powers regarding electric utility service. Sacramento LAFCo has retained the firm to act as General Counsel since 1993. Sacramento LAFCo consists of members from the Sacramento County Board of Supervisors, the City of Sacramento, the City of Folsom, the City of Galt, City of Elk Grove, City of Citrus Heights, City of Rancho Cordova, and area Special Districts. Representation has included numerous annexation and incorporation proceedings. We have processed numerous annexation requests for cities and special districts including large service areas such as Sacramento Municipal Utilities District's (SMUD) proposed annexation of parts of Yolo County and the annexation of the Greenbriar project area to the City of Sacramento in 2008.

***Katz v. Ross* (1999) Los Angeles Superior Court, Northwest District, Case No. LC046014/ Appeal Case No. B129048**

This unreported appellate case dealt with SLAPP issues and constitutional free speech issues. It was one of the first SLAPP suits dealing with political speech during a state legislative campaign. At a Court trial, the firm was successful and received a total defense verdict and was awarded attorney fees. Nancy Miller acted as co-counsel with the California Anti-SLAPP project (Mark Goldowitz) to assist in the defense.

***Fair Oaks Cemetery District, et al. v. County of Sacramento, Sacramento LAFCo, et al.* (2012) Appellate Case No. C066643; Sacramento County No. 34-2010-00068616**

This case involved challenges by two Cemetery Districts to the Sacramento Local Agency Formation Commission's approval of annexations of additional territory to those

Districts. Ms. Miller succeeded in defeating all claims at the trial court and the appellate court recently upheld the judgment in favor of LAFCo in its entirety.

***ECOS v. City of Sacramento Local Agency Formation Commission Sacramento Superior Court, Superior Court Case No. 34-2008-00004668.***

Nancy Miller and Madeline Miller, with assistance from Jennifer Gore, successfully defended the LAFCo and the City against CEQA claims from environmentalists, which also involve land use issues and the extension of light rail service to Amtrak and to the Sacramento International airport. We anticipate that the matter will be appealed and we will handle the defense.

***National Leasing v. Northern California Construction Training, Inc., Court of Appeal, Third Appellate District, State of California Case No. C066421; Sacramento County Superior Court Case No. 34-2008-00029412-CU-BC-GDS***

Nancy Miller represented the building and construction trades council's non-profit training entity (NCCT) in a lease dispute. Following a court trial, NCCT prevailed and was awarded attorneys fees. The case was adjudicated March 2010. The firm continued to represent NCCT on appeal, during which the matter was successfully settled.

***Environmental Council of Sacramento v. Capital SouthEast Connector JPA, Sacramento Superior Court Case No. 34-2012-80001107-CU-WM-GDS***

This case involved challenges to the JPA's Program Environmental Impact Report. Ms. Miller and Ms. Gore successfully settled the litigation.



**JENNIFER V. GORE**  
**State Bar No. 232489**

**PROFESSIONAL EXPERIENCE:**

**Miller & Owen**, Sacramento, CA, August 2006 – Present

Associate Attorney

Practice involves general representation of public agencies, including transactions and litigation.

**Department of Managed Health Care**, Sacramento, CA, January 2003 – August 2006

Law Clerk and Enforcement Counsel

Conduct legal research; draft appellate briefs, legislative analyses and memoranda relating to health care policy issues.

**Research Assistant to Professor Brian K. Landsberg**

**McGeorge School of Law**, Sacramento, California, June 2002 – May 2004

Conduct research regarding the Voting Rights Act and the impact of litigation by the U.S. Department of Justice on this important legislation.

**U.S. Department of Justice, Environment and Natural Resources Division**, January – May 2003, Law Clerk

Conduct legal research and draft motions.

**EDUCATION:**

**University of the Pacific, McGeorge School of Law**, Sacramento, California

Juris Doctor, May 2004

*Honors and Activities:*

Order of the Coif

Dean's Honor List 2001 – 2004

Traynor Honor Society

Law Review Managing Editor, 2003–2004, Law Review Staff Writer, 2002–2003

Witkin Award, Administrative Law

Academic Honors Scholarship

**California Polytechnic State University**, San Luis Obispo, California

Bachelor of Arts in English, Minor in Philosophy, June 1999

*Honors and Activities:*

Dean's List

Tracy and Stella Scholarship

President of English Honor Society

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing  
Sacramento County Bar Association, Public Law Section  
California and U.S. District Court, Eastern District of California

**CIVIC ACTIVITIES:**

**Sacramento-Yolo Mutual Housing Association, Board Member and Treasurer, September  
2008 - 2013**

**MADELINE E. MILLER**  
**State Bar No. 221568**

**PROFESSIONAL EXPERIENCE:**

**Miller & Owen**

*Associate Attorney*, June 2004 – present.

Practice involves general representation of public agencies, including transactions and litigation.

**Kronick, Moskovitz, Tiedemann & Girard, Sacramento, CA**

September 2002 - June 2004. Associate Attorney.

Conduct legal research; assist in litigation and regulatory compliance involving water districts, water agencies, and municipalities; participate in administrative proceedings before the State Water Resources Control Board.

**Ellison, Schneider & Harris, Sacramento, CA**

May 2001 - May 2002. Law Clerk.

Conduct legal research and write memoranda regarding Water Law and Environmental Law issues, draft motions and briefs for CEQA litigation.

**EDUCATION:**

**University of the Pacific, McGeorge School of Law, Sacramento, California**

Juris Doctor, May 2002, With Distinction

*Honors and Activities:*

Dean's Honor List 2000-2001, 2001-2002

Traynor Honor Society

First Year Mock Trial Competition Finalist, 1999

McGeorge Academic Scholarship Recipient

Transnational Lawyer Law Review, Managing Editor 2001-2002, Staff Writer 2000-2001

**University of San Diego, San Diego, California**

Bachelor of Arts in History, Minors in Political Science and Philosophy, May 1999,

Magna Cum Laude

*Honors and Activities:*

USD Honors Program

Alpha Delta Pi Sorority President

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing

Sacramento County Bar Association

California and U.S. District Court, Eastern District of California

**MAILA A. LABADIE**  
**State Bar No. 279326**

**PROFESSIONAL EXPERIENCE:**

**Miller & Owen, Sacramento, CA**

*Associate Attorney*, July 2013 – Present

Practice involves general representation of public agencies, including transactions and litigation.

**Liebert Cassidy Whitmore, San Francisco, CA**

*Associate Attorney*, January 2012 – July 2013

Represented public agencies in all aspects of employment law and labor relations. Assisted agencies with legal proceedings before arbitrators, PERB, and courts. Advised agencies regarding labor relations matters such as recognition and unit representation of employee unions, unfair labor practice charges and union negotiation strategy. Counseled agencies regarding compliance with employment laws, public employee retirement plans and employee health benefits. Conducted investigations regarding allegations of employee harassment, discrimination or other misconduct. Updated agency personnel policies and procedures.

**EDUCATION:**

**University of California, Davis School of Law, Davis, CA**

Juris Doctor, May 2011

*Honors and Activities:*

UC Davis Law Review, Senior Editor

UC Davis Environmental Law & Policy Journal, Executive Editor

Moot Court, Top Ten Oral Advocate

UC Davis Civil Rights Clinic

UC Davis Pro Bono & Public Service Certificates

Judicial Extern, Office of Staff Attorneys, U.S. Court of Appeals, Ninth Circuit

Judicial Extern, Judge Garland E. Burrell, Jr., U.S. District Court, Eastern District

**Washington University in St. Louis, St. Louis, MO**

Bachelor of Arts in Political Science and Spanish Literature, May 2007

*Honors and Activities:*

Varsity Women's Soccer

Pi Sigma Alpha, National Honorary Political Science Society

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing

Sacramento County Bar Association

**CHRISTIANE E. LAYTON**  
**State Bar No. 125369**

**PROFESSIONAL EXPERIENCE:**

**Miller & Owen.**

*Senior Attorney*, 1990 to present

Practice emphasizes general representation of public entities with special emphasis on public employment and human resources; public contracts and bidding; open meetings and public records law; risk pooling and insurance; joint powers law; transportation law; conflicts of interest; and legislation. Ms. Layton represents a variety of governmental entities including special districts, joint powers agencies, councils of government, and transportation commissions. Ms. Layton holds an "AV" Martindale-Hubbell Peer Review Rating, the highest rating available for legal ability and professional ethics.

**EDUCATION:**

**Georgetown University Law Center**, Washington, D.C.

Juris Doctor, *cum laude*, 1986

- Admitted to bar, 1986, California and U.S. District Court, Eastern District of California; 1987, U.S. District Court, Northern District of California.

**University of California, Santa Barbara**

Bachelor of Arts with High Honors, Law and Society, 1980

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing (Public Law Section)

Sacramento County Bar Association (Administrative Law Section)

California and U.S. District Court, Eastern and Northern Districts of California

**LEADERSHIP POSITIONS/AFFILIATIONS:**

**McGeorge School of Law**, Sacramento – Adjunct Professor, Local Government Law.

**Cristo Rey High School**, Sacramento – Founding Member, Board of Directors; Non-profit high school dedicated to providing a college preparatory education to low income students.

**PAUL J. CHRISMAN**  
State Bar No. 143030

**EXPERIENCE:**

**Miller & Owen**

*Senior Associate Attorney*, December 1989 to Present

Public agency law and business transactions practice with emphasis in real property transactions.

General Counsel to:

Sacramento-Placerville Transportation Corridor Joint Powers Authority

South Placer Wastewater Authority

Bizz Johnson Highway Interchange JPA

Major transactions include:

Sale of Sacramento Kings and Arco Arena (1992)

Lease/loan from the City of Sacramento to Packard Bell Electronics (1995)

Commercial property sales and financing transactions for various public and private clients (1991-Present)

Issuer's counsel for multiple bond issuances on behalf of the following public clients: California Fairs Financing Authority, Capitol Area Development Authority, South Placer Wastewater Authority and South Placer Regional Transportation Authority (1991-Present)

Special counsel to the following public agencies for various rail corridor acquisitions: Sacramento-Placerville Transportation Corridor Joint Powers Authority, Sacramento Regional Transit District, City of Whittier, City of Tempe, City of Fremont, Contra Costa Transportation Authority and Santa Cruz County Regional Transportation Commission. (1992-Present)

**Hyde, Miller & Savage**

*Law Clerk*, Summer 1988

Performed legal research and writing.

**United States Department of Justice, Sacramento**

*Law Intern*, Summer 1987

Worked in Civil Section of U.S. Attorney's office

Performed legal research and writing. Assisted in depositions.

**Physics Dept., California State University, Sacramento**

*Student Assistant*, September 1983 - December 1985

Graded papers and tutored students in physics courses, assisted in development of physics laboratory experiments.

**EDUCATION:**

**School of Law, University of California, Davis**

J.D., Class of 1989

Honors: American Jurisprudence Award in Property

Admitted to California State Bar, 1989

Admitted to practice before the California State Courts and U.S. District Court, Eastern District of California; 1989

**California State University, Sacramento**

B.S., Physics, Mathematics minor, December 1985

Honors: Member, Sigma Pi Sigma, Physics honor society  
Graduated with honors

**PROFESSIONAL MEMBERSHIPS:**

State Bar of California, Active member in good standing

Sacramento County Bar Association

California and U.S. District Court, Eastern District of California

Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

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(213) 617-8100

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**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

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**Malathy Subramanian**  
(925) 977-3303  
msubramanian@bbklaw.com

January 21, 2015

Mr. Peter Banning  
Interim Executive Officer  
LAFCO of Napa County  
1030 Seminary Street, Suite B  
Napa, CA 94559

Re: Response to Request for Proposals for Legal Counsel Services for LAFCO  
of Napa County

Dear Mr. Banning and LAFCO Commissioners:

On behalf of Best Best & Krieger ("BB&K"), I am pleased to submit this proposal outlining our qualifications to provide legal services to the Local Agency Formation Commission of Napa County ("LAFCO"). We have reviewed the scope of legal services expected of your LAFCO Counsel and are confident we are extremely well-qualified to provide all aspects of the work. Specifically, we are prepared to provide the following services at a blended attorney rate of \$250 per hour:

- Serve as legal counsel and representative in all Commission matters, including litigation and administrative proceedings as necessary;
- Provide general legal advice to the Commission or the Executive Officer when requested, typically on matters of general municipal or administrative law, including CEQA, and on matters relating to the Cortese-Knox-Hertzberg Act or case law specifically involving local government boundaries or organization in California;
- Serve as on-call counsel to the Commission, mainly from a remote location, unless attendance at meetings is requested in advance;
- Attend in-person meetings with the Executive Officer and/or Commission committees when required or maintain telephone and e-mail contact as needed;
- Review and comment upon monthly agendas, staff reports, resolutions, correspondence, administrative policies and other documents prepared by LAFCO staff as requested and in a timely manner;
- Prepare legal opinions on specified issues;



- Prepare and/or review contracts and indemnification agreements on request;
- Prepare occasional reports and present information at public hearings and represent the Commission as counsel during meetings as needed.

I am the proposed lead counsel and primary contact. In my practice, I represent a diverse set of public agencies throughout Northern California and the Central Valley. I serve as general counsel to Santa Clara LAFCO and Merced LAFCO, and various cities and other public agencies. My contact information is:

Mala Subramanian  
Best Best & Krieger  
2001 North Main Street, Suite 390  
Walnut Creek, CA 94596  
Telephone: (925) 977-3303  
Fax: (925) 977-1870

With more than 170 attorneys available to LAFCO, BB&K is uniquely qualified to provide the highest quality legal representation. LAFCO would be able to access any of these professionals should a specific legal need arise beyond the scope of our proposed team. In addition, we have nearly a dozen attorneys who work specifically with LAFCOs around the state, including Clark Alsop, Paula C.P. de Sousa and Scott C. Smith, who are available to support if needed. Detailed information about our practices and experience appear in Section II of our proposal.

We have determined that we do not represent any entity whose interests may constitute a conflict of interest that would prevent us from providing legal services to LAFCO. In addition, we have reviewed and accepted the sample professional services agreement attached as Exhibit A to the RFP with the following exceptions:

- In number 7 (Insurance), letter b, number 3, please remove “owned” as the firm does not own any autos.
- In number 7 (Insurance), letter c, number 1, please remove “or material change”
- In number 7 (Insurance), letter c, number 1, please remove the Additional Insured/Waiver of Subrogation requirements for Automobile Liability as attorneys/partners driving their own vehicles are insured under the firm’s policy in an excess capacity only.
- In number 7 (Insurance), letter c, number 3, please remove “The certificate or other evidence of coverage shall 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”
- In number 7 (Insurance), letter c, number 4, please remove entire sentence.
- In number 7 (Insurance), letter d, last sentence, please add “or CONTRACTOR shall have the option to terminate the contract” after “defense expenses”

- In number 8 (Hold Harmless/Defense/Indemnification), letter a, first sentence, please remove “all” after “arising from” and add “negligent” before “acts or omissions...” Also delete “subcontractors” before “in rendering services...”

Thank you for the opportunity to submit our qualifications. Our proposal is valid for 90 calendar days from the submission date of January 21, 2015. We look forward to the opportunity to discuss our qualifications with the Local Agency Formation Commission of Napa County in more detail. We also welcome the opportunity to meet in person to discuss our capabilities and readiness to provide the legal services requested by LAFCO.

If there is any additional information or background material that you require, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Malathy Subramanian', with a long horizontal flourish extending to the right.

Malathy Subramanian, Partner  
of BEST BEST & KRIEGER LLP

Proposal to Provide  
Legal Counsel Services

Presented to:

**Local Agency Formation Commission  
of Napa County**

**January 21, 2015**



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

# TABLE OF CONTENTS

	Page
I. SUMMARY OF QUALIFICATIONS .....	1
A. Firm Experience.....	1
B. Attorney Experience.....	2
1. Mala Subramanian (Partner) – Lead Counsel/Primary Contact .....	2
2. Joshua Nelson – Assistant .....	3
II. RELATED EXPERIENCE & REFERENCES .....	4
A. Cortese-Knox Hertzberg Local Government Reorganization Act of 2000.....	4
B. Public Agency Experience .....	5
1. Contracts.....	5
2. Brown Act and Public Records Act.....	5
3. Ethics and Conflicts of Interest .....	6
4. Elections .....	6
C. CEQA and Environmental Law .....	7
D. Litigation Experience .....	7
E. On-Call Counsel and In-Person Meetings .....	8
F. Presentations, Reports and Other Documentation .....	8
G. References .....	8
III. APPROACH.....	9
IV. PROJECT COST .....	10
A. Rate/Fee Schedule.....	10
B. Reimbursements.....	10
C. Cost of Living Adjustments .....	11
V. CONCLUSION .....	11

## I. SUMMARY OF QUALIFICATIONS

### A. Firm Experience

BB&K has one of California's most extensive practices in providing legal services to governmental agencies. Established in 1891, BB&K has eight offices strategically located throughout California and one office in Washington D.C. BB&K is the most experienced and largest full service public agency law firm in the State.

BB&K will bring to the Commission an exceptional depth of experience acquired from representing a multitude of public agencies, including LAFCOs around the state. We are committed to providing our clients with knowledgeable, efficient and cost-effective legal counsel, therefore enabling us to quickly and effectively address a variety of issues which may be encountered by the Commission. BB&K offers the unique ability to handle complex, multi-disciplinary issues and provide creative solutions to government leaders. BB&K is a "one-stop legal shop," offering a full array of legal services for agencies such as the Commission.

BB&K has served as general counsel to the California Association of LAFCOs ("CALAFCO") since 1985, San Bernardino County LAFCO since 1985, Orange LAFCO since 1994, El Dorado County LAFCO since 2004, and Merced County LAFCO since 2006. Additionally, we provide special counsel (since 2008) and general counsel (since 2009) services to the Santa Clara County LAFCO. BB&K has also performed special counsel work for Los Angeles County LAFCO, Marin County LAFCO and Monterey County LAFCO. We regularly represent cities and special districts before LAFCOs.

The firm's attorneys practice virtually every legal specialty of interest to the Commission, including the following: familiarity with the function and purpose of LAFCOs; knowledge of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and amendments; adoption of spheres of influence and defending against their adoption; advising public officials, administrators and employees on the complex and frequently changing laws pertaining to local government administration, organization, regulations, transactions and litigation matters; statutory compliance; contracting; California Environmental Quality Act ("CEQA"); water quality; personnel and employment; intergovernmental relations; real estate; tax and bonds; land development and planning; infrastructure projects and zoning laws. We also have extensive experience in advising clients regarding ethical issues such as the Ralph M. Brown Act, the Political Reform Act, the Public Records Act, ethics and conflicts of interest, and public records requests.

We frequently provide Commissioners, Executive Officers, and staff with "in-service" seminars on issues of concern to the Commission, and our lawyers regularly write and lecture on topics of interest to public agencies, including the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the Ralph M. Brown Act, the Public Records Act, labor issues, the Political Reform Act and other conflict of interest issues, CEQA, public contracting issues, and recent developments in public law and water law.

BB&K is an active member of numerous state and national public law organizations and associations, such as CALAFCO, the League of California Cities, the California State Association of Counties, the California Chapter of the American Planning Association, the Association of Environmental Professionals, and the Urban Land Institute.

Through our extensive experience providing legal counsel to various LAFCOs throughout California, BB&K attorneys are extremely knowledgeable with how LAFCOs operate. As detailed in the next section, BB&K is well versed in all aspects of LAFCO law.

## **B. Attorney Experience**

We are prepared to commit our most qualified team of attorneys to assist LAFCO on legal issues. This includes providing all the services requested and proposed in the RFP as well as any other issues that may arise. These attorneys have the special expertise and experience to provide the legal services to LAFCO. The depth of our public agency experience and the unique qualifications of our legal team is invaluable. We are committed to providing seamless, timely and efficient legal services.

As previously noted, BB&K is proposing **Mala Subramanian** as lead counsel and primary contact. **Josh Nelson** would serve as assistant to Mala. Although the firm's regular business hours are from 8:00 a.m. to 5:30 p.m., Mala and Josh will make themselves readily available at any hour via e-mail, cell phone and direct dial numbers. BB&K is confident that our staff will effectively and efficiently meet LAFCO's legal needs.

### **1. Mala Subramanian (Partner) – Lead Counsel/Primary Contact**



California Bar No. 204185 (1999)  
University of California, Hastings, J.D.

2001 N. Main Street, Suite 390  
Walnut Creek CA, 94596  
Phone: (925) 977-3303  
Fax: (925) 977-1870  
Email: [msubramanian@bbklaw.com](mailto:msubramanian@bbklaw.com)

**Mala Subramanian** is a partner in the Municipal Law practice group of the firm's Walnut Creek office. She represents a diverse set of public agencies throughout Northern California and the Central Valley. Mala serves as general counsel to Merced LAFCO, Santa Clara LAFCO, the Contra Costa Transportation Authority, and various joint powers authorities and special districts. Before their dissolution, she served as general counsel to several redevelopment agencies. She also serves as city attorney for the cities of Clayton and Lafayette.

Mala is a skilled transactional attorney with expertise in a variety of substantive areas, including conflicts of interest, land use and planning, transportation law, and the Cortese-Knox Hertzberg Local Government Reorganization Act. In addition to regularly representing her clients at their public meetings, she frequently trains clients on the Public Records Act, the Brown Act, conflicts of interest, and AB 1234 ethics compliance.

Mala is active in the League of California Cities and serves on the Municipal Law Institute Committee. She is also on the editorial board for the *Climate Change Law & Policy Reporter*.

Mala has served as president of the Bay Area City Attorney Association and Contra Costa County City Attorney Association. In 2007, she received the *East Bay Times* Women of Distinction

Award.

## 2. Joshua Nelson – Assistant



California Bar No. 260803 (2008)  
University of California, Davis, J.D.

500 Capitol Mall, Suite 1700  
Sacramento CA, 95814  
Phone: (916) 551-2859  
Fax: (916) 325-4010  
Email: [joshua.nelson@bbklaw.com](mailto:joshua.nelson@bbklaw.com)

**Josh Nelson** serves as the city attorney for the City of Jackson, general counsel for the Alpine Springs County Water District, Beckwourth Fire District, and Plumas-Eureka Community Services District, assistant city attorney for the City of Williams, and deputy city/town attorney for the Town of Mammoth Lakes and City of Woodland. He also provides general public law advice to numerous other cities and special districts statewide. In addition to general public agency governance, Josh has experience assisting public agencies with code enforcement, telecommunications, solid waste, Prop. 218/Prop. 26 compliance, and general utilities issues. Josh has experience prosecuting all manner of civil and administrative code enforcement actions, including health and safety receiverships. For telecommunications, he has negotiated wireless communications facilities siting agreements and assisted with rights-of-way management issues, including utility undergrounding efforts. Related to solid waste, he has assisted clients with all manner of solid waste issues, including franchising, landfill leasing, diversion compliance, and construction and demolition programs. Josh regularly represents public and private clients before the California Public Utilities Commission. He also co-authored “California Water Crisis: Meeting the Challenge” (2010) Vol. 33, No. 1 Public L. J. 19.

Josh’s speaking engagements include issues related to public agency and legal ethics. These include presentations for the County Counsel’s Association of California’s Hazardous Materials and Solid Waste semi-annual conference, continuing legal education seminars and continuing education seminars for public employees. Josh is admitted to practice in California and Nevada.

Josh received his Juris Doctorate degree from the University of California, Davis and a Bachelor of Science in Industrial and Labor Relations from Cornell University.

## II. RELATED EXPERIENCE & REFERENCES

### A. Cortese-Knox Hertzberg Local Government Reorganization Act of 2000

BB&K provides advice to our clients under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. BB&K has participated in literally hundreds of changes of organization; more than any other law firm in the State. As mentioned above, our firm serves as general counsel to the CALAFCO, and to the Santa Clara, San Bernardino, Orange, El Dorado, and Merced County LAFCOs. In addition to our duties as LAFCO general counsel, we advised Orange County LAFCO on a series of incorporations since 1996, including Laguna Woods, Rancho Santa Margarita, and Aliso Viejo. These incorporations were among the first following passage of the revenue neutrality statute. BB&K assisted Orange County LAFCO in developing models for master fiscal analysis of incorporations and annexations of unincorporated County “islands” and its review of the proposal to incorporate the Rossmoor community. That work included evaluating the initial resolution of application, reviewing and commenting on the CFA, reviewing questions of election law, and reviewing potential utility tax measures for compliance with Propositions 13, 62, and 218. We also represented Los Angeles County LAFCO on the incorporation of the City of Malibu as well as the incorporation of the City of Calabasas. BB&K has provided advice to the chief petitioners in the proposed San Fernando Valley special reorganization process as described below. We often provide litigation services to LAFCOs and other public agencies in matters relating to organizational changes.

The firm represented Valley Vote, the applicant in the special reorganization involving the San Fernando Valley. On this matter, we assisted with the evaluation of the special reorganization’s effect on the fiscal viability of the resulting governmental entities: the City of Los Angeles and the proposed new city, distribution of employees, distribution of assets and liabilities, and organization of new council districts. We also provided advice to the Citizens to Protect the Ranch (Rancho Santa Fe incorporation proponents).

Before becoming its general counsel, Mala provided alternate legal counsel services to Santa Clara County LAFCO in connection with the incorporation of San Martin, California. On this matter, we advised LAFCO on its ability to impose specific terms and conditions, and defended LAFCO in the litigation that resulted from the application. She has also advised Santa Clara LAFCO on various municipal services reviews, including review of a hospital district and its governance structure.

We drafted legislation and presented testimony to the California Senate Local Government Committee proposing revisions to the Cortese-Knox Act of 1985. We were further involved in drafting the 2000 version of the Act and have worked periodically on task forces for legislative clean-up. We counseled CALAFCO on LAFCOs’ ability to impose terms and conditions during revenue neutrality negotiations and assist our LAFCO clients in facilitating interagency discussions about governmental efficiency.

BB&K participated on a task force comprised of representatives of the League of California Cities, the California State Association of Counties, and CALAFCO to modify and clarify the revenue neutrality statute and other provisions of the Cortese-Knox-Hertzberg Act relating to incorporations. We served as legal sub-consultants to OPR on its adoption of a new State Guide to the LAFCO Process for Incorporations and worked on the State task force to adopt guidelines for



municipal service reviews.

## **B. Public Agency Experience**

One of the most active practice areas of BB&K is its general representation of public agencies. BB&K's Municipal Law Practice Group focuses solely on helping public clients successfully maneuver through legal complexities and governmental mandates. We have unparalleled experience in all areas of law affecting public agencies. Because BB&K has a history of extensive involvement in all aspects of municipal and special district law, we have pioneered methods to deliver advisory and litigation services in a comprehensive and cost-effective manner. Our approach ensures the highest quality and most timely representation available in California. Our team is qualified to represent LAFCO in the following relevant areas:

### **1. Contracts**

We are well-versed in issues relating to public contracts in the agency formation context and have successfully managed assignment of numerous contracts under relevant Constitutional prohibitions relating to impairment. Our services include preparation and review of contract specifications and required bidding documents, as well as the negotiation and drafting of professional services agreements, including work by consultants of all kinds. Our work for LAFCOs frequently involve interpreting inter-agency contracts and allocating the burdens and benefits of those contracts to successor agencies. In order to keep legal costs down, we have developed model contracts for virtually every contracting situation faced by our public agency clients, and these model contracts allow our clients to operate effectively and with the highest level of legal protection. Of course, when litigation arises, our litigators are experienced in providing the best representation available.

### **2. Brown Act and Public Records Act**

BB&K has extensive experience advising clients on the interpretation and application of the Brown Act. Advice often pertains to:

- Requirements for agenda preparation, posting, and distribution
- Closed session topics and reporting
- Notices and agendas for special and emergency meetings
- Adding agenda items after agenda is posted
- Conducting meetings by teleconferencing
- Application of Brown Act to committees of official bodies
- Avoiding violations and penalties

BB&K regularly advises clients on all aspects of California's Public Records Act. We routinely brief our clients on pending legislation and cases in this area. With the emergence of new technology, we regularly advise clients regarding the use of e-mail, records retention, and the public's right to access electronic information. We regularly speak at seminars and workshops regarding updates concerning the Public Records Act and e-mail/technology issues. Our lawyers were

involved with the preparation of the League of California Cities' book on the Public Records Act. We developed a model electronic records retention policy in Lake Forest that Calaware has proposed as a model statewide.

### **3. Ethics and Conflicts of Interest**

BB&K provides advice to elected and non-elected public officials regarding conflicts of interest laws including:

- Political Reform Act (Government Code § 81000 et seq.)
- Self-interested contracts (Government Code § 1090)
- Campaign contribution conflicts (Government Code § 84308)
- Incompatibility of public offices

BB&K frequently provides advice and training workshops to elected and non-elected public officials regarding conflicts of interest laws including the Political Reform Act, self-interested contracts (Government Code Section 1090), campaign contribution conflicts, incompatibility of public offices, and AB 1234. Our lawyers played an integral role in preparing the League of California Cities' seminal publication on open meeting laws, "Open and Public."

We are informed of the most recent decisions from the Fair Political Practices Commission. We also monitor statutory and common law changes to the law and regularly advise clients of such changes. This effort is led by Public Policy and Ethics practice group which is headed by a BB&K attorney with 35 years of experience with the State Attorney General, serving 20 of those years as the head of the AG's San Diego Office as Senior Assistant Attorney General.

### **4. Elections**

BB&K provides a wide range of advice to our clients on local, state and federal elections law. We routinely assist clients during all stages of the elections process including initiative drafting, filing, publication and circulation, spending limits, ballot arguments, campaign regulations, election contests, election timing, ballot security, recall procedures, ballot recounts, election result contests and other post-election matters. We regularly provide advice to clients on the conduct of regular, special and consolidated elections. We also advise clients on voter registration issues, candidate qualification and nomination procedures, ballot pamphlet issues, and ethics laws. We frequently counsel clients in their redistricting efforts and assist clients with California and Federal Voting Rights Act compliance and other state and federal laws pertaining to reapportionment.

Our attorneys frequently draft articles and posts on BB&K's Political Law Update blog, which covers key state and federal court rulings, current election law trends and news, and rules and enforcement decisions from the California Fair Political Practices Commission and the Federal Election Commission. Our election law attorneys are always up-to-date on new laws and court rulings impacting voting rights, initiatives, redistricting, election-related lawsuits, and campaign finance and rules.

### **C. CEQA and Environmental Law**

BB&K is a nationally recognized leader in environmental law. Because we represent so many water providers and other public agencies, we are experts in environmental and regulatory law. For projects involving water rights, water quality, compliance with CEQA, endangered species, air quality, hazardous waste, or other environmental issues, we have the environmental expertise to help our clients achieve their objectives.

BB&K's expertise in CEQA is recognized throughout California, where we are known for our ability to handle the complete CEQA environmental review and approval process for large scale public and private development projects. Our attorneys have assisted hundreds of clients through all aspects of the CEQA and land use entitlement process, from document preparation to any subsequent litigation. We also represent clients with pre-project planning and strategy – before CEQA is triggered – to minimize legal and project costs and to improve clients' environmental documents. As a further illustration of our CEQA expertise, BB&K prepares local CEQA guidelines on behalf of more than 70 public agency clients, including cities, school districts, water districts, and special districts.

More specifically, our CEQA attorneys regularly review and prepare notices of exemption, initial studies, negative declarations, findings and statements of overriding considerations, addenda, and mitigation monitoring and reporting plans. We are also experts at writing and editing environmental impact reports to fully comply with CEQA's requirements. If a legal challenge should arise, our CEQA lawyers are skilled in the procedural and substantive intricacies of litigating a CEQA case, including shortened statutes of limitations, administrative record requirements, and unique briefing and oral argument strategies.

We are also adept at understanding the interplay between CEQA and other environmental statutes, including the State and Federal Endangered Species Acts, the National Environmental Policy Act, and the State and Federal Clean Water Acts.

### **D. Litigation Experience**

The firm's civil litigation practice encompasses a broad variety of subjects, including major cases involving spheres of influence, incorporations, the California Environmental Quality Act (CEQA), land use challenges, tort liability, water resources and quality, fee and rate challenges (including Proposition 218), the Brown Act, the California Public Records Act, hazardous materials and toxic cleanup, real estate, labor and employment matters, public contracting and bidding disputes, equal protection claims, civil rights claims, and First Amendment issues. The firm's litigation attorneys practice in all federal and state courts, at both the trial and appellate levels.

Our litigators focus on developing an understanding of issues and procedural requirements necessary to meet those goals no matter what the controversy or the stakes.

We offer municipal and public agency clients a full range of litigation support in such areas as labor and employment, contracts, construction, energy, transportation, redevelopment, foreclosure and water use. As counsel for public agencies charged with Endangered Species Act compliance, our litigators have thwarted repeated inverse condemnation, Federal Endangered Species Act, California

Endangered Species Act, California Environmental Quality Act, and National Environmental Policy Act challenges. Clients throughout California rely on us to handle any dispute over allocation of water resources.

Complementing our extensive trial practice, BB&K offers a broad range of appellate experience in both federal and state courts, serving private as well as public clients. In everything from private commercial disputes to far-reaching water law controversies, BB&K has developed an outstanding reputation as an effective appellate advocate. In fact, a number our lawyers serve by appointment as mediators for the State's Fourth District Court of Appeal. In addition, we are also skilled at alternative dispute resolution, and regularly handle both arbitration and mediation proceedings.

#### **E. On-Call Counsel and In-Person Meetings**

BB&K understands that LAFCO is seeking on-call and as-needed legal services, and that there are no outstanding legal issues or present or anticipated litigation pertaining to LAFCO's activities. We also recognize that work relating to CEQA will be reduced due to the retention of a consulting firm. Should we be called upon to assist with any legal issues, we will be available and prepared to work immediately. We will also be prepared to attend any in-person meetings as requested.

#### **F. Presentations, Reports and Other Documentation**

Much of our work in this area is the representation of boards and commissions at their respective public meetings. Our attorneys are familiar with the Brown Act and Robert's Rules of Order, and see that the role and responsibility of legal counsel, among other things, is to render advice about the rules of procedure and decorum at commission meetings.

Virtually every attorney in our firm is trained in resolution and ordinance drafting and statutory construction. The firm has an extensive electronic library for use in researching, drafting and interpreting resolutions and ordinances.

Examples of some of our more specialized work include drafting resolutions making determinations regarding changes of organizations and reorganizations, (including incorporations and special reorganizations) and ordinances relating to water conservation, hillside grading, habitat conservation, growth management, density transfers and agricultural preserves. We have assisted clients in sophisticated enforcement issues requiring the application of overlapping general plan policies, ordinances, easements and quasi-public enforcement of CC&Rs.

#### **G. References**

Please feel free to call any of the references listed below for a more in depth discussion and better understanding of the level of service BB&K and your proposed counsel could offer LAFCO.

### References for Mala Subramanian

Neelima Palacherla  
Executive Officer  
Santa Clara County LAFCO  
70 W. Hedding Street, 11th Floor East Wing  
San Jose, CA 95110  
[neelima.palacherla@ceo.co.scl.ca.us](mailto:neelima.palacherla@ceo.co.scl.ca.us)  
(408) 299-5127

William Nicholson  
Executive Officer  
Merced County LAFCO  
2222 M Street  
Merced, CA 95340  
[BNicholson@co.merced.ca.us](mailto:BNicholson@co.merced.ca.us)  
(209) 769-0472 Mobile

### References for Josh Nelson

Mike Daly  
City Manager  
City of Jackson  
33 Broadway  
Jackson, CA 95642  
[mdaly@ci.jackson.ca.us](mailto:mdaly@ci.jackson.ca.us)  
(209) 223-1646

Frank Motzkus  
General Manager  
Plumas-Eureka Community Services District  
200 Lundy Lane  
Blairsden, CA 96103  
(530) 836-1953

### III. APPROACH

BB&K proposes that Mala Subramanian be LAFCO's primary contact and lead counsel throughout the RFP process and the term of an awarded contract. She would be responsible for all legal opinions and advice as they pertain to her areas of expertise. She will be assisted by Josh Nelson. In addition, we have other well-respected attorneys with significant LAFCO experience that would be available to you, such as Clark Alsop, Scott Smith and Paula de Sousa.

Mala would be responsible for coordinating all services assigned to the firm and for ensuring that they are performed efficiently and in a timely manner. This approach will serve to avoid duplication of efforts among our attorneys and help minimize legal costs.

Mala is experienced in providing legal services to LAFCOs on an as-needed basis. At her suggestion, she currently coordinates with the Executive Director for Merced LAFCO to determine which meetings she should attend to avoid unnecessary legal costs.

It is imperative that we are always available to LAFCO. We will be available in-person, by phone, or by email at all times of the day to respond to any communication from you. We will return phone calls and answer emails as quickly as possible, and we will address routine inquiries in a timely manner. The firm also has videoconferencing capabilities in all of its offices which can be utilized for last-minute and emergency meetings, and to reduce costs when travel is not necessary.

Mala is located in the firm's Walnut Creek office, located at 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596; telephone (925) 977-3300. The firm's other office where work will be performed is in Sacramento, located at 500 Capitol Mall, Suite 1700, Sacramento, CA 95814; telephone (916) 325-4000.

LAFCO staff can arrange the transmittal of legal service requests in any manner which would best accommodate its needs. At the time each request is made, the attorney assigned and time

frame for response will be defined. All requests will be expedited according to the instructions provided by LAFCO.

The firm is committed to responding to LAFCO requests in the time frame the matter requires. The response time will vary with the urgency and complexity of the task. Given the depth of the firm's resources in both personnel and experience, the firm is capable of responding to complex requests in an expedited manner, whenever necessary. Routine matters can often be answered immediately, since it is likely that one of our attorneys has already handled a matter of the same or similar nature.

As a final point, we would be pleased to work with LAFCO to provide legal services in whichever fashion is determined to be the most efficient, economical and in the best interests of LAFCO.

#### **IV. PROJECT COST**

As one of the leading public agency law firms in California, BB&K has a longstanding commitment to the efficient and cost-effective delivery of legal services. We believe that the depth and quality of our expertise and experience in the public law field is second to none. We are able, therefore, to address complex legal issues with creativity, speed, efficiency and accuracy at a fair and reasonable cost.

##### **A. Rate/Fee Schedule**

BB&K has represented a variety of LAFCOs for many years. We recognize the need not only to keep legal costs under control, but to reduce them by cooperatively implementing more cost-effective and efficient systems for delivering legal services in a timely fashion and at an affordable cost. Based on our experience, we believe we can provide a full range of legal services within your budget parameters, greatly reducing the need and excessive cost of contracting with additional legal specialists.

For all legal services provided, BB&K proposes the following blended rates to LAFCO:

Attorneys:     \$250 per hour

Paralegals:     \$140 per hour

BB&K recognizes that there is no "one-size-fits-all" compensation arrangement. Therefore, we would welcome the opportunity to discuss LAFCO's needs in more detail so that we can work out a fee structure that works for both of us; including, for example, a retainer agreement.

##### **B. Reimbursements**

The Commission would reimburse BB&K for reasonable and necessary expenses incurred by it in the performance of the services under its agreement with LAFCO. BB&K does not charge for routine word processing, secretarial and office costs, including telephone and fax charges. Reimbursement of costs advanced by BB&K on behalf of LAFCO, as well as other expenses, will be billed at actual cost. These currently include but are not limited to, mileage at the IRS authorized rate, actual expenses for being away from our offices on LAFCO business, postage, legal research and any cost of printing or reproducing documents, photographs or other items necessary for legal

representation. Additionally, costs advanced on your behalf may include the preparation of transcript books, electronic media or any other costs associated with your matters.

### **C. Cost of Living Adjustments**

BB&K will honor these rates through fiscal year ending June 30, 2016. At that time and every fiscal year following, rates and amounts would increase by the percentage change in the Consumer Price Index for the San Francisco-Oakland-San Jose area, with advanced written notice.

### **V. CONCLUSION**

Thank you for considering our proposal. BB&K would be pleased to provide legal counsel services to the Napa County LAFCO. We believe we have special expertise in virtually every practice that will be of value to you and hope you will select BB&K as your counsel. If you require any additional information, please contact me at (925) 977-3303 or [msubramanian@bbklaw.com](mailto:msubramanian@bbklaw.com).

We look forward to the opportunity to discuss our qualifications with you in more detail and, if selected as on-call/as-needed legal counsel, we would be honored to work with you in the years ahead.