



Marin Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

January 24, 2024

Subject: Reissue of Request for Proposal

Dear Sir or Madam:

The El Dorado, Fresno, Marin, Santa Barbara, and Santa Cruz Local Agency Formation Commissions (LAFCo) are seeking proposals from qualified independent Certified Public Accounting firms to audit the financial statements of each LAFCo. The starting fiscal year will vary by LAFCo with the first one starting in with fiscal year ending June 30, 2023., All LAFCo are looking to go through FYE June 30, 2029. One LAFCo is only requesting services for every other year. An option to extend the contract for an additional one year will be considered for firms preparing a superior response.

LAFCos are state-mandated local governmental agencies charged with the responsibility of making difficult decisions on proposals for new cities, special districts, spheres of influence, and annexations. Each county in California is required to have a LAFCo.

If your firm is interested in being considered for this opportunity, please submit an electronic file, following the instructions described in the attached Request for Proposal (RFP), no later than **March 22, 2024 at 5pm**. If you have any questions regarding the RFP, please do not hesitate to contact me by email at jfried@marinlafco.org or by phone at (415) 578-2304.

Sincerely, Jason Fried

Executive Officer

Marin LAFCo

Attachment (1) – RFP

Attachment (2) – Price Chart

Attachment (3) – Sample Contract

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Cathryn Hilliard, Alternate
Southern Marin Fire Protection District

Larry Chu, Regular
Public Member

Roger Smith, Alternate
Public Member

**EL DORADO, FRESNO, MARIN, SANTA CRUZ, AND SANTA BARBARA
LOCAL AGENCY FORMATION COMMISSIONS
REQUEST FOR PROPOSAL FOR AUDIT SERVICES**

I. INTRODUCTION

General Information

The El Dorado, Fresno, Marin, Santa Barbara, and Santa Cruz Local Agency Formation Commissions hereby known as “The LAFCos” are seeking proposals from qualified independent Certified Public Accounting firms to audit the financial statements of each LAFCo. The starting fiscal year will vary by LAFCo with the first one starting in with fiscal year ending June 30, 2023. All LAFCos are looking to go through FYE June 30, 2029. One LAFCo only is requesting services for every other year. An option to extend the contract for an additional one year will be considered for firms preparing a superior response. Audit reports would be prepared each of the years – separate audits for each of The LAFCo’s. Links to copies of previous audits are available below in each LAFCo profile.

The LAFCos have agreed to participate in a joint RFP to realize cost savings on each annual audit and on the overall cost of preparation.

The audits are to be conducted in accordance with auditing standards generally accepted in the United States of America, Government Auditing Standards, issued by the Comptroller General of the United States and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

There is no expressed or implied obligation for LAFCo to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, an electronic file of the proposal must be received by Jason Fried, Executive Officer, Marin Local Agency Formation Commission, on or before **March 22, 2014 (5:00 p.m.)**. The LAFCos reserves the right to reject any or all proposals submitted.

During the evaluation process, LAFCos reserves the right, where it may serve LAFCo’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of LAFCo, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

LAFCo reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal is acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between LAFCo and the firm selected. A contract between the firm selected and each LAFCo will be approved separately by each LAFCo.

It is anticipated the RFP committee will make a selection of a firm by April 30, 2024. Each LAFCo will need to approve its own contract with the firm they selected which should occur within a couple of months of this date based on when each Commission meets.

A multiple -year contract with a one-year extension option is contemplated. The one-year renewal option will be subject to review by each LAFCo and satisfactory negotiation of terms (including a price acceptable to that LAFCo and to the selected firm).

Creation of LAFCos

In 1963, the State Legislature created Local Agency Formation Commissions to help direct and coordinate California's growth in a logical, efficient, and orderly manner. Each county within California is required to have a LAFCo. LAFCos are charged with the responsibility of making difficult decisions on proposals for new cities and special districts, spheres of influence, consolidations, and annexations.

LAFCo Profiles

El Dorado LAFCo

Is a 7 member Commission with 4 alternate members and has 2 FTE staff. It meets every other month with an approximate budget of \$620,000. It is part of the California Public Employees' Retirement System (CalPERS). El Dorado LAFCo is independent, but participates in the County benefits pool for health, dental, and vision insurance. LAFCo's payroll is processed by the County Auditor's office.

First Audit Year needed – FY23-24

Commission preference is to have the audit completed by the end of the calendar year for the prior fiscal year. The audit can be conducted remotely.

Most Recent Year Audit - <https://www.edlafco.us/audit-fy2021-22>

Contract – Use sample contract in Exhibit A attached to this RFP.

Fresno LAFCO

Fresno LAFCo is a 5-member commission with 3 alternate members and has 4 FTE staff. The Commission meets once per month and operates from a budget of \$665,000. As an independent body we offer retirement benefits through Mission Square which we offer an option 457b and Commission funded 401a but also hold an agreement with our County to provide Health benefits as well as tech related services. Our office space is about to enter the second year of a five year agreement and we currently contract out our payroll, human resources, insurance, and legal services.

First Audit Year needed – FY 23-24, with future audits done every other year

Audits have been completed within a 6-month period starting in December and completed in May before the Fiscal Year ends. While this is the preference of the Commission, there is flexibility on our end to adjust this should it allow for savings opportunities.

Most Recent Year Audit – <https://www.fresnolafco.org/files/b047d7542/Agenda+Packet+Aug+2022.pdf>
(pages 5-36 of the attached packet)

Marin LAFCo

Is a 7 member commission with 4 alternate members and has 3 FTE staff. It meets every other month with an approximate budget of \$630,000. It is part of the Marin County Employee's Retirement Association (MCERA). Marin LAFCo is mostly independent, only being part of the County benefits pool for such things as health and dental insurance which it pays its own bills for and signs up staff to be part of.

First Audit Year needed – FY 24-25

Books close in November/ December time frame. Normally ready to have audit done in December/ January time frame. Does not need to be an in person audit willing to have a remote audit being conducted.

Most Recent Year Audit - <https://www.marinlafco.org/annual-audit-report>

Santa Cruz

Santa Cruz LAFCo is a 7-member commission with 4 alternate members and has 2 FTE staff. It meets once a month with an approximate budget of \$669,000. It is part of the California Public Employees' Retirement System (CalPERS). Santa Cruz LAFCo is an independent body that contracts with the County as a vendor for various services, including but not limited to accounting and office space.

First Audit Year needed – FY23-24 (This will be the first independent audit they have done.)

Santa Cruz LAFCo's fiscal year runs July 1 to June 30 and financials are typically ready for an audit in the September/October time frame. An in-person audit is not necessary.

Santa Barbara LAFCo

Santa Barbara LAFCo is a 7-member commission with 4 alternates and has 2 FTE staff. The Commission contracts with County Counsel for legal services. LAFCo staff prepares draw warrants and journal entries for each expenditure and deposit. These are entered in the County's financial system (Workday). General Accounting services include the use of the County's centralized accounting system and the validation, processing, and recording of financial transactions submitted by LAFCo. LAFCo has access to the general ledger, revenue, expenditure, and budget status reports as needed. Services also include processing, recording, tracking and mailing expenditures. SBLAFCo operates under a single-program government fund with an annual budget of approximately \$572,000 and is a part its County retirement system (SBCERS).

First Audit Year needed – FY23-24

Normally ready to have an audit done in January/February time frame.

Most Recent Year Audit – FY 2020-2021

<https://www.sblafco.org/files/0550ab793/SBLAFCO+Final+Financials+2021.pdf>

Funding for LAFCos

In 2000, the State Legislature signed into a law the Cortese-Knox-Hertzberg Local Government Reorganization Act which provided more independence for LAFCos and changed the way LAFCos are funded. Previously, LAFCos were funded (staffing, facilities, etc.) through their respective counties. Beginning July 1, 2001, the law requires that LAFCos be independent of their respective counties and requires that LAFCos be independent of their respective counties and requires that LAFCO's beneficiaries, the county, cities and special districts, equally share in the funding of LAFCO's budgetary costs.

General for all LAFCos

Although the counties contribute half or one-third of the LAFCo funding, LAFCo is an independent agency and its budget is not subject to County approval or oversight. Because of available cost saving opportunities, each LAFCO has entered into various contractual arrangements with the appropriate county as well as private vendors to provide certain services for LAFCo, including: office facilities, insurance, banking/investment, purchasing, internal auditing and employee benefits. While some LAFCos may have independent bookkeeping and bill paying system by state government code Counties collect dues from member agencies. In addition some LAFCo have contracts they use for general services such as this. Please see each profile on if they have a general contract to be used.

II. SCOPE OF THE WORK TO BE PERFORMED AND STANDARDS TO BE FOLLOWED

The LAFCos desire its General Purpose Financial Statements (GPFS) to be prepared by Independent Auditors and be fully compliant for GASB #34 and any other applicable GASB pronouncements and then-current accounting/audit requirements and standards for the fiscal years as shown in attached spread sheet.

The following is a summary of the scope of the audit of LAFCos for the previous fiscal years:

1. The audit firm will perform an audit of all funds of LAFCo. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, issued by the Comptroller of the United States. The Audit will be in full compliance with GASB #34 and any other GASB pronouncements and then-current accounting/audit requirements and standards for the fiscal year being audited. The audit firm will render their auditors’ report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements. The audit firm will also apply limited audit procedures to Management’s Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the agency.
2. The audit firm shall issue a separate “management letter” that includes recommendations for improvements in internal control that are considered to be non-reportable conditions.

Each LAFCo staff will provide normal cooperation and assistance during the audit including typing of confirmation requests, referral to the appropriate person and/or department for supporting documents and reconciliations of major asset and liability balances. Each LAFCo staff will prepare the MD&A and transmittal letters based on a template supplied by the consultant. The format of supporting documents provided by LAFCo is at the discretion of each LAFCo. All other information and financial statements are the responsibility of the audit firm.

All working papers and reports are to be retained at the auditors’ expense for a minimum of three years. The audit firm will be responsible for making working papers available to each LAFCo or any other appropriate government agency.

III. TIMETABLE OF DELIVERABLE REPORTS

The audit firm shall be responsible for the preparation and word processing of the following financial statements:

<u>Report Description</u>	<u>Number of Copies</u>	<u>Due date</u>
General Purpose Financial Statements (GPFS)	1 electronic copy	Based on agreement with each LAFCo

A draft copy of each financial statement should be delivered to the LAFCo Executive Officer for review approximately 21 days prior to the deadlines noted above. Deadlines for delivery of draft and final financials statements may vary for each LAFCo referenced in this request for proposal and would be specified in the contract between the firm selected and each LAFCo.

IV. TIMETABLE OF AUDIT WORK TO BE PERFORMED

Each LAFCo has indicated above when they expected that LAFCo’s books will be closed and ready for audit. The audit consultant should work out with each LAFCo upon closing out of the books a time to meet each LAFCo needs. At the discretion of each LAFCo, the appropriate staff from the audit firm may be requested to present audit report to the Commission during a public meeting.

V. PROPOSAL REQUIREMENTS

The following material is requested to be received by the proposal due date or the firm will not be considered:

1. **Title Page** - The title page shall show the proposal subject, the firm's name and contact person and the firm's California CPA License Number and firm's Federal Identification Number.
2. **Cover Letter** - The cover letter should briefly state the proposer's understanding of the work to be performed, the commitment to perform the work in the required time frame and statements as to why the firm believes it is best qualified to perform the engagement. The cover letter should also make a statement that the firm's offer is a firm, irrevocable offer for at least 120 days. The cover letter should indicate whether the firm is independent with respect to LAFCo and that the firm is an Equal Opportunity Employer.
3. **Table of Contents**
4. **Proposer's Qualifications** - The audit firm should set forth the following:
 - A. **Qualifications and Related Experience of the Personnel Who Will Serve LAFCo** - Resumes of the Partner, Manager and Senior Auditor should be included. Resumes should include all relevant experience, education and CPA licenses and continuing education of the individuals over the past 3 years.
 - B. **Prior Experience Auditing Cities, Independent Special Districts and Other Local Governments** - Sufficient information should be provided regarding current local government audit clients, and date that the client has been served. Information should be provided regarding clients that the firm serves that have received the CSMFO and GFOA awards.
 - C. **Assistance in Implementation of GASB #34 and Other GASB Pronouncements** - Set forth your understanding of this accounting pronouncement and provide information on clients that you have assisted to date in implementing GASB #34 and other GASB Pronouncements.
 - D. **References of Local Government Clients** - Provide a listing of at least five municipal clients for which the firm's serves.
 - E. **Capabilities in General Consulting and Compliance Auditing** - Provide any other information regarding general consulting and special audits provided by the firm.
5. **Approach, Scope and Timing of the Audit**
 - A. **Provide in sufficient detail the firm's approach to LAFCo's audit**, including procedures to be performed, tasks to be accomplished under GASB #34 and other GASB pronouncements, tasks required as a part of the A-133 single audit, extent to which statistical sampling is to be used in the engagement, type and extent of use of software in the audit engagement, analytical procedures that may be used, the approach to be taken to gain and document an understanding of LAFCo's internal control structure, the approach to be taken in drawing audit samples for purposes of compliance testing, the consideration of laws and regulations, assistance required from LAFCo staff and proposed segmentation of the audit. Segmentation of the audit should include breakdown of hours required to perform the audit by classification and in total for the

planning and interim, GASB #34 and other GASB pronouncements implementation, final audit procedures including CAFR and reports preparation.

- B. Provide sufficient information of your firm’s understanding of the Objectives and Scope of the Engagement** - Specifics should be provided of the auditing standards to be followed and reports to be issued by the audit firm.

6. Hourly Rates

Hourly Rates of the Firm’s Employees should be provided by the firm for services which may be requested outside the scope of the audits as shown below. The hourly rates should be inclusive:

<u>Classification</u>	<u>Hourly Rate</u>
Partner	\$
Manager	\$
Senior Accountant	\$
Staff Accountant	\$_____

7. Maximum Fee

The maximum fees for the audit of each LAFCo should be provided in the attached excel spread sheet. The fees should be inclusive of any out of pocket expenses incurred by the audit firm. All proposals shall contain provisions to the effect that in the event that extraordinary circumstances warrant more intensive and detailed services beyond those in the contractual agreement, the firm shall provide in writing and in advance, the reasons for the additional services together with the firm’s estimate of costs, and a statement that no work will be performed without advance approval by LAFCo. Any and all additional work as agreed to in advance by LAFCo shall be compensated at the same rate quoted in the schedule submitted in the proposal.

8. Other Information Required in Proposal

The Auditing Firm shall provide a copy of its most recent Peer Review together with the California Society of CPA’s acceptance of such peer review. The auditing firm shall make a positive statement that it has the required insurance policies in force in amounts of coverage for not less than \$1,000,000 per occurrence or accident for each of the following: Professional Liability (Errors & Omissions), Workers Compensation and Employer’s Liability, Comprehensive General Liability and Bodily Injury Insurance, and Automobile Liability (Owned and Non-Owned) and Property Damage Insurance. Prior to any commencement of audit services, the auditor will be required to provide certificates of insurance coverage to LAFCo. The auditing firm shall make a positive statement that it will not delegate or subcontract its responsibilities without prior written consent of LAFCo.

9. Contract

Do you have any issues with using the sample contract attached at the end of the RFP? If so please indicate the issue with the contract.

VI. EVALUATION CRITERIA

Proposals will be evaluated based upon their response to provisions of this Request for Proposal. The following criteria will be used to evaluate responses to this proposal:

1. The firm’s licensing, independence with respect to LAFCo and results of most recent peer review (mandatory requirements)

2. Qualifications and Related Experience of the audit team who will serve LAFCo (Partner, Manager and Senior Auditors)
3. Experience of the firm auditing California agencies
4. Prior experience of the engagement team in implementation of GASB #34 and other GASB Pronouncements
5. Reference of local government clients
6. Thoroughness of approach to conducting the audit of LAFCo
7. Demonstration of the understanding of the objectives and scope of the audit
8. Commitment to timeliness in the conduct of the audit
9. Maximum fees to conduct the audit

Items 2 through 8 will represent 80% of the weight of the evaluation criteria. Item 9 will be assigned a 20% weighting in the overall evaluation.

This RFP does not commit any LAFCo to award a contract or to pay any costs incurred for any services. The LAFCOs, at their sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The LAFCOs may waive any irregularity in any proposal. All proposals will become the property of the LAFCOs. If any proprietary information is contained in the proposal, it should be clearly identified.

VII. CONFIDENTIALITY

The California Public Records Act ("PRA") (Cal. Govt. Code Sections 7920.000 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the LAFCOs and proposer, shall be available to the public in accordance with the PRA.

If a proposer believes any communication contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer shall request that the LAFCOs withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its price proposal as confidential.

VIII. OTHER INFORMATION

Firms are encouraged to contact Jason Fried, Executive Officer, Marin LAFCo, with any questions relating to this RFP or for copies of the LAFCOs' previous audits. Mr. Fried can be reached most easily by email at jfried@marinlafco.org. His telephone number is (415) 578-2304.

LAFCo	FY 23-24	FY24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29
El Dorado						
Fresno						
Marin						
Mendocino						
Santa Barbara						
Santa Cruz						

PLEASE PROVIDE THE NOT TO EXCEED AMOUNT FOR EACH YEAR.
 Black Box means that LAFCo does not need an audit for that FY.

[INSERT DATE]

[INSERT NAME]

[INSERT ADDRESS]

[INSERT CITY, STATE ZIP]

Dear [INSERT NAME]:

Letter Agreement for [Insert Type of Services]

This letter shall be our Agreement (“Letter Agreement”) regarding the [INSERT TYPE OF SERVICES] described below (“Services”) to be provided by [INSERT NAME OF PERSON OR FIRM AND INDICATE IF IT IS A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY] (“Consultant”) as an independent contractor to the Marin Local Agency Formation Commission (the “Commission”) for the Commission’s [INSERT NAME OF PROJECT] (“Project”). Consultant is retained as independent contractor and is not an employee of the Commission. Commission and Consultant are sometimes referred to herein as “Party” or “Parties.”

The Services to be provided include the following: [INSERT DETAILED DESCRIPTION OF SERVICES - IF THE CONSULTANT HAS A SEPARATE SCOPE OF SERVICES DOCUMENT, MAKE SURE IT IS CONSISTENT WITH THE LANGUAGE IN THIS LETTER AGREEMENT, MARK IT AS EXHIBIT “A”, ATTACH IT AND REPLACE THIS PARAGRAPH WITH THE FOLLOWING: The Services to be provided are more particularly described in the Scope of Services attached hereto as Exhibit “A” and are incorporated herein by reference.] Services on the Project shall begin immediately and shall be completed by [INSERT DATE], unless extended by the Commission in writing.

Consultant shall perform all Services under this Letter Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.

Consultant has represented to the Commission that certain key personnel will perform and coordinate the Services under this Letter Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of equal competence upon written approval of the Commission. In the event that the Commission and Consultant cannot agree as to the substitution of key personnel, the Commission shall be entitled to terminate this Letter Agreement for cause. The key personnel for performance of this Letter Agreement are as follows: [INSERT NAMES]

Compensation shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rate(s) of \$ [INSERT RATES FOR EACH TYPE OF EMPLOYEE TO BE USED, OR IF THE CONSULTANT HAS A RATE SHEET, MARK IT AS EXHIBIT “___” AND ATTACH IT, AND REPLACE THIS SENTENCE WITH THE FOLLOWING: Compensation shall be based on the actual amount of time spend in adequately performing the Services and shall be

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[Date]

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billed at the hourly rate(s) described in the Consultant’s rate sheet, attached hereto as Exhibit “___” and incorporated herein by reference]. The total compensation shall not exceed \$[INSERT DOLLAR AMOUNT] without written approval of the [INSERT POSITION/TITLE OF DEPARTMENT HEAD, OR EXECUTIVE OFFICER]. Consultant’s invoices shall include a detailed description of the Services performed. Invoices shall be submitted to the Commission on a monthly basis as performance of the Services progresses. The Commission shall review and pay the approved charges on such invoices in a timely manner.

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. [INSERT “IF” OR “SINCE” AS APPLICABLE] the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and [INSERT “IF” OR “SINCE” AS APPLICABLE] the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Commission shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Letter Agreement upon request. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

[INSERT “IF” OR “SINCE” AS APPLICABLE] the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable

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[Date]

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registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Commission. Consultant shall defend, indemnify and hold the Commission, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

Consultant shall provide proof of: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per occurrence for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Consultants providing professional services shall provide Professional Liability (Errors and Omissions) Insurance of at least \$1,000,000. Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A-VII" rating according to the latest Best Key Rating unless otherwise approved by the Commission. The Commission, its officials, officers, employees, agents, and authorized volunteers shall be named as Additional Insureds on Consultant's policies of Commercial General Liability and Automobile Liability insurance and such coverage provided to the Commission as an Additional Insured shall apply on a primary and non-contributory basis. Waiver of subrogation endorsements in favor of the Commission shall be provided on Consultant's policies of Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability insurance.

The Commission may terminate this Letter Agreement at any time with or without cause. If the Commission finds it necessary to terminate this Letter Agreement without cause before Project completion, Consultant shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. Consultant may terminate this Letter Agreement only upon 30 calendar days' written notice to the Commission only in the event of Commission's failure to perform in accordance with the terms of this Letter Agreement through no fault of Consultant.

To the fullest extent permitted by law, Consultant shall defend (with counsel of Commission's choosing), indemnify and hold the Commission, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors,

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[Date]

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consultants or agents in connection with the performance of the Consultant's services, the Project or this Letter Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Commission, its officials, officers, employees, agents, or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements; all emissions limits and permitting requirements imposed by the California Air Resources Board (CARB) or other governmental agencies; and all water quality laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Commission.

By executing this Letter Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Consultant shall maintain records of its compliance, including its verification of each employee, and shall make them available to the Commission or its representatives for inspection and copy at any time during normal business hours. The Commission shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Consultant's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services. Finally, Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Consultant shall indemnify Commission against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

«Vendor»

[Date]

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This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in Marin County, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the Commission. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the Commission.

Consultant shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the Commission, which may be withheld for any reason. This Letter Agreement may not be modified or altered except in writing signed by both parties. Except to the extent expressly provided for in the termination paragraph, there are no intended third party beneficiaries of any right or obligation of the Parties.

This is an integrated Letter Agreement representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

Consultant warrants that the individual who has signed this Letter Agreement has the legal power, right and authority to make this Letter Agreement and bind the Consultant hereto. If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below.

«Vendor»

[Date]

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MARIN LOCAL AGENCY FORMATION COMMISSION [INSERT CONSULTANT NAME]

Approved By:

Signature

Jason Fried
Executive Officer

Name

Date

Title

Attested By:

Date

Board Clerk