



# San Luis Obispo Local Agency Formation Commission

**TO: MEMBERS OF THE COMMISSION**

**FROM: ROB FITZROY, EXECUTIVE OFFICER**

**DATE: OCTOBER 17, 2024**

**SUBJECT: CONTRACT FOR LEGAL SERVICES**

## RECOMMENDATION

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It is recommended that the Commission take the following action:

**Action:** Motion to authorize the Executive Officer to execute a legal services contract with Colantuono Highsmith & Whatley, PC (Attachment A).

## OVERVIEW

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In November 2018, the Commission appointed the law firm of Burke, Williams & Sorensen, LLP to provide legal services to the Commission and Brian Pierik of the Burke firm was designated as Legal Counsel. As discussed in the May 16, 2024, staff report, Brian Pierik is reducing the scope of his legal practice. At the May 16, 2024, meeting, the Commission provided direction to initiate a recruitment for new legal counsel. A Request for Proposals (RFP) was issued on June 4, 2024, to July 26, 2024. Five firms submitted proposals. At the September 19, 2024, meeting the Commission conducted interviews in Closed Session. The attached contract is for legal services with the firm Colantuono Highsmith & Whatley, PC. If the contract is approved today, our appointed legal counsel will be Holly Whatley of Colantuono Highsmith & Whatley, PC and she will begin providing legal services effective immediately upon execution of the agreement.

## ATTACHMENTS

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**Attachment A:** Contract for Legal Services

### COMMISSIONERS

Chair  
MARSHALL OCHYLSKI  
Special District Member

Vice-Chair  
STEVE GREGORY  
City Member

DEBBIE ARNOLD  
County Member

JIMMY PAULDING  
County Member

ROBERT ENNS  
Special District Member

ED WAAGE  
City Member

VACANT  
Public Member

### ALTERNATES

DAWN ORTIZ-LEGG  
County Member

Ed EBY  
Special District Member

CARLA WIXOM  
City Member

DAVID WATSON  
Public Member

### STAFF

ROB FITZROY  
Executive Officer

IMELDA MARQUEZ-VAWTER  
Analyst

MORGAN BING  
Clerk Analyst

BRIAN A. PIERIK  
Legal Counsel

# **Attachment A**

Contract for Legal  
Services

**AGREEMENT BETWEEN  
SAN LUIS OBISPO  
LOCAL AGENCY FORMATION COMMISSION  
AND COLANTUONO, HIGHSMITH & WHATLEY, PC  
FOR LEGAL COUNSEL SERVICES**

THIS AGREEMENT is effective on the first day of \_\_\_\_\_ 2024 between Colantuono, Highsmith & Whatley, PC (hereinafter called "Legal Counsel"), and the San Luis Obispo Local Agency Formation Commission (hereinafter called "LAFCO").

WITNESSETH:

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

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

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

I. EMPLOYMENT OF LEGAL COUNSEL

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

II. INTENT OF PARTIES

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

III. SCOPE OF LEGAL COUNSEL SERVICES

Legal Counsel shall undertake the following services:

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

3. Attend all regular LAFCO meetings, special meetings, annual strategic planning sessions, and study sessions via in-person or remote in coordination with the Executive Officer.
4. Review and comment on documents prepared by LAFCO staff including staff reports, resolutions, correspondence, administrative policies, and other documents as requested and in a timely manner.
5. Perform other assignments directed by the Executive Officer or Commission within the purview of legal counsel service.

IV. ADMINISTRATOR OF AGREEMENT

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

V. LEGAL COUNSEL'S EMPLOYEES AND EQUIPMENT

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

VI. TERM

This agreement shall become effective upon execution by both parties and shall continue until terminated or the date of expiration. The agreement shall remain in effect until such time as it is terminated pursuant to Sections X or XI.

VII. COMPENSATION AND MANNER OF PAYMENT

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

1. Labor

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

Compensation during travel to and from the LAFCO's offices shall be billed at

one-half the time actually incurred.

2. Expenses

Legal Counsel will also be compensated for its actual expenses incurred for materials, mileage at current IRS rates, long-distance telephone calls, and other expenses authorized by the Executive Officer and/or the Commission. Outgoing faxes will be reimbursed at \$1 per page and in-house photocopies will be reimbursed at twenty cents per page. Legal Counsel shall charge no administrative or other markup on expenses for which reimbursement is sought from LAFCO.

3. Manner of and Maximum Payment

Payment shall be made in arrears pursuant to written invoices submitted to the Executive Officer on a monthly basis. Payment shall be made within 30 days of receipt of invoices. Such payment shall constitute full and complete payment for the period covered by the invoice.

VIII. AUDIT AND INSPECTION OF RECORDS

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

IX. INTEREST OF LEGAL COUNSEL

- a. Legal Counsel covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Legal Counsel further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained under this Agreement.
- b. Except as provided in paragraph c. below, Legal Counsel agrees to not act as Legal Counsel or perform services of any kind for any LAFCO applicant without the prior written consent of LAFCO. When consent has been given, Legal Counsel shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Legal

Counsel or convey, utilize, or permit to be utilized, confidential information gained through its association with LAFCO for the benefit of any other client.

- c. Legal Counsel has informed LAFCO that it provides advisory services to the City of Paso Robles and is on the approved list of outside litigation counsel for the City of San Luis Obispo but is not currently providing such services to the City. Provided that Legal Counsel does not provide services in San Luis Obispo County which create a conflict under the Rules of Professional Conduct, or which pertain to an actual or potential application to LAFCO, Legal Counsel may continue its practice of providing legal services to local governments in San Luis Obispo County without further consent of LAFCO. Legal Counsel shall not provide services in San Luis Obispo County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, without the informed, written consent of LAFCO.
- d. Legal Counsel agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreement with said client, which would enable Legal Counsel to comply fully with its terms.
- e. Legal Counsel shall recuse himself/herself from discussions or actions that may result in a financial benefit to him/her or to any governmental agency that he represents. Notwithstanding this recusal provision, at such time, if ever, LAFCO adopts a conflict of interest code, Legal Counsel shall complete and submit any Conflict of Interest Statements that may become due during the effective period of this Agreement as may be required by such code.

X. TERMINATION OF AGREEMENT FOR CAUSE

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

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

for damages for compensation arising under this Agreement except as set forth in this section in the event of such termination.

XI. TERMINATION FOR CONVENIENCE OF LAFCO

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

XII. INSURANCE AND HOLD HARMLESS AGREEMENT

Legal Counsel agrees to maintain such insurance as will fully protect Legal Counsel and LAFCO from any and all claims under any workers' compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations carried on under this Agreement, either by Legal Counsel, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. Legal Counsel shall exonerate, indemnify, defend, and hold harmless LAFCO from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security, and income tax laws, with respect to Legal Counsel and Legal Counsel's employees engaged in performance of this Agreement. LAFCO and its agents, officers, and employees shall not be, nor be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of Legal Counsel or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of Legal Counsel or Legal Counsel's agents, employees, or representatives. Legal Counsel further agrees to indemnify, defend, and hold harmless LAFCO and its agents, officers, and employees, against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by LAFCO on account of any claim therefor. In the event that a court of competent jurisdiction should determine that LAFCO has not the authority to provide by agreement for the provision of the hereinabove-set-forth professional service, Legal Counsel nevertheless agrees to assume the foregoing obligations and liabilities, by which it is intended by both parties that Legal Counsel shall indemnify and save LAFCO free and harmless from all claims arising by reason of any negligent act or omission of Legal Counsel.

XIII. INTEREST OF LAFCO OFFICERS AND OTHERS

No officer, member, or employee of LAFCO and no member of its governing body shall participate in any decision relating to this Agreement that affects his/her

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personal interest, or the interest of any corporation, partnership, or association in which he/she is directly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XIV. ASSIGNABILITY

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

XV. FINDINGS CONFIDENTIAL

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

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

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

XVII. NOTICE

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

LAFCO:                      Rob Fitzroy, Executive Officer  
San Luis Obispo LAFCO  
1042 Pacific St. # A  
San Luis Obispo, CA 93401  
Tel. 805-781-5795  
E-mail: rfitzroy@slo.lafco.ca.gov



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

Payments shall be directed to Legal Counsel as follows:

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

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

#### XVIII. INDEPENDENT CONTRACTOR

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

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

#### XIX. EQUAL OPPORTUNITY

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

XX. SUBCONTRACTS

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

XXI. CHANGES

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

XXII. NOTICE OF TAXABLE POSSESSORY INTEREST

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

XXIII. APPLICABLE LAW

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

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

**SAN LUIS OBISPO LAFCO**

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**

BY \_\_\_\_\_  
ROB FITZROY  
Executive Officer

BY \_\_\_\_\_  
HOLLY O. WHATLEY  
Vice-President

DATE \_\_\_\_\_

DATE \_\_\_\_\_

## **Exhibit A**

### **Advisory Hourly Billing Rates\***

**For general counsel services:** Standard rates capped at \$315/hour.

**For special legal services:** Standard rates capped at \$345/hour.

“Special legal services” are those that are more complex in nature and require significant amounts of work and as approved by the Executive Officer in advance.

**For legal services reimbursed by applicants:** Standard rates capped at \$360/hour

### **Litigation Hourly Billing Rates\***

**Litigation Services:** Standard rates capped at \$430/hour

\* Beginning on July 1, 2026, the above rates will be adjusted annually based on the 12-month Consumer Price index for the Los Angeles-Long Beach-Anaheim region.