

**Request for Qualifications  
For Legal Services**

**County of San Diego  
Independent Redistricting Commission  
Special Voting Rights Act Counsel**

**Request for Qualifications**  
**County of San Diego Independent Redistricting Commission**  
**Special Counsel**  
**(This is not a competitive bid)**

**SECTION I - Introduction**

County of San Diego Independent Redistricting Commission (the “Commission”) is charged with the responsibility, in the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, to adjust the boundary lines of the County of San Diego Supervisor districts (also known as “Redistricting”) in conformance with the standards and process set forth in the California Elections Code sections 21550, et seq.

**SECTION II – Purpose of this Request for Qualifications**

The Independent Redistricting Commission is seeking Statements of Qualifications (“SOQ”) from attorneys, including law firms and other entities to provide legal services to assist the Commission with its responsibilities pursuant to the Elections Code § 21552(a)(2), “Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).”

The SOQ will be used by the Commission to select special counsel specifically to provide legal guidance to the Commission about drafting maps to achieve compliance with the VRA, render opinions, written or oral, on the legal sufficiency of maps or portions of maps drafted by the Commission and legal questions relating thereto under the federal Voting Rights Act (“VRA”). Special legal counsel’s opinion on the legal sufficiency under the VRA of the Commission’s adopted map will be made part of the report the Commission is required to issue with its adopted map explaining the basis on which the Commission made its decisions in achieving compliance with the criteria described in Elections Code § 21552.

**SECTION III – Submission Requirements, Due Date and Time**

Statements of Qualifications must be received by 10:00 a.m. on Monday, September 20, 2021. The Statement of Qualifications should be addressed to: Marguerite Mary Leoni, General Counsel to the County of San Diego Independent Redistricting Commission, by email to [mleoni@nmgovlaw.com](mailto:mleoni@nmgovlaw.com).

**Questions Pertaining to this Request for Qualifications**

Requests for clarification or interpretation related to the requested information must be submitted in writing by Tuesday, September 14, 2021 to the attention of Marguerite Mary Leoni, General Counsel to the County of San Diego Independent Redistricting Commission, by email to [mleoni@nmgovlaw.com](mailto:mleoni@nmgovlaw.com).

**A. Key Action Dates**

Listed below are the key dates and times by which the actions are expected to be completed. If the Commission finds it necessary to change any of these dates, it will be accomplished by addendum.

<b>Action</b>	<b>Time</b>	<b>Date</b>
Release Request for Qualifications (“RFQ”)	NA	9/10/21
Questions Due	3:00pm	9/14/21
Responses to Questions Posted to IRC Website	3:00pm	9/16/21
Submissions of SOQs Due	10:00am	9/20/21
Interview	TBD	9/23/21-9/24/21
Selection	NA	9/30/21
Contract Award and Execution	NA	10/1/21 - 10/6/21

The Commission reserves the right to change these dates if necessary. Changes in dates will be communicated by email to all individuals/firms responding to this RFQ and posted to the Commission website.

#### **B. Evaluation Process**

- The Commission’s Legal Ad Hoc Committee (the “Subcommittee”) will review all SOQs submitted.
- Following this initial review of the SOQs, the Subcommittee will invite those applicants deemed in the Subcommittee’s discretion most qualified, to interview with the Subcommittee as set forth above.
- The Subcommittee will make a recommendation on the hiring or retention of one or more applicants to the full Commission at a public meeting, tentatively scheduled between September 30, 2021.

#### **C. Documents Submitted**

Preparation and submission of the SOQ will be at no cost or obligation to the Commission. All materials submitted will become the property of the Commission and will not be returned.

**The materials submitted are not confidential and will be placed on the Commission website.**

Applicants must send all materials by email to the attention of Marguerite Mary Leoni, General Counsel to the County of San Diego Independent Redistricting Commission, at mleoni@nmgovlaw.com by 10:00am Monday, September 20, 2021.

## **SECTION IV – General Information**

### Terms and Conditions

Any attorney, law firm or legal entity selected by the Commission will be required to enter into a Legal Services Agreement for the work described in this RFQ. It is anticipated that work will begin as soon as practicable following the selection process and continue through approximately December 15, 2021, or until final map adoption, whichever is later.

The Commission may also choose to select more than one attorney or law firm to perform the legal services described herein.

### Good Standing and Compliance

Applicants and/or firms must be in good standing with the State Bar of California, and/or in compliance with any applicable law or policy at all times with regard to the practice of law in California. Applicable laws and or policies include, but are not limited to, California Business and Profession Codes (§6072, for example) and Elections Code § 21551(c)(4).

## **SECTION V – Statement of Work and Experience**

The required legal services may include, but will not be limited to, legal support to the Commission, staff and consultants regarding the redistricting process and the application of the VRA. This may include but is not limited to: analysis of Racially Polarized Voting (“RPV”) data developed by the Commission’s demographic consultant’s subcontractor to advise the Commission; legal guidance to the Commission with regard to drafting maps to achieve compliance with the VRA; rendering opinions, written or oral, on the legal sufficiency of maps or portions of maps drafted by the Commission and legal questions relating thereto under the VRA; preparation of a legal opinion on the legal sufficiency under the VRA of the final map selected by the Commission for adoption, which opinion will be made part of the report the Commission is required to issue with its final map explaining the basis on which the Commission made its decisions in achieving compliance with the criteria described in Elections Code § 21552; and virtual or in person attendance, as requested by the Commission, at Commission meetings.

Applicants must have demonstrated expertise in the federal Voting Rights Act, the California Elections Code provisions applicable to the Commission, the Fair Maps Act, and relevant federal and state case law.

Those responding to this RFQ should provide a description of their prior redistricting experience, including litigation experience as part of the response described in Section VI below.

All applicants to this RFQ shall demonstrate qualifications and will be required to perform timely legal services in each of the areas described below:

1. Perform all normal and customary duties required of special redistricting counsel in connection with legal issues related to the legal sufficiency of draft maps and the Commission's adopted map under the VRA.
2. Advise the Commission and Commission legal staff regarding preparation of draft maps and the Commission's adopted map to comply with the VRA, and specifically work with Commission, Commission staff, the demographic services contractor, and Commission legal staff in connection with drawing new district boundaries.
3. Advise the Commission, Commission staff, demographic services contractor, and Commission legal staff regarding the requirements of State and Federal laws relevant to redistricting activities under the VRA, drawing on applicant's expertise and experience with Section 2 of the Voting Rights Act, and relevant cases. This advice will require the use and analysis of Racially Polarized Voting data developed by the Commission's demographic services contractor and subcontractor.
4. Advise the Commission, Commission staff and Commission legal staff of litigation risks associated with draft maps and the Commission's adopted map and provide Commission with alternative approaches to limit such risks.
5. Attend various Commission public meetings and hearings, virtually or in person, as requested by the Commission, Commission staff or Commission legal staff.
6. Submit written interim and final reports and summaries with specified deadlines as requested by the Commission, Commission staff or Commission legal staff.
7. Prepare a written opinion on the legality under the VRA of the Commission's adopted map including the rationale based in federal case law and the record of the Commission's proceedings to be made part of the report the Commission is required to issue with its final map explaining the basis on which the Commission made its decisions in achieving compliance with the criteria described in Elections Code section 21552.
8. Perform requested legal services on a timely basis as requested by the Commission given the statutory timeframe in which the Commission is required to perform its duty to redistrict the Supervisorial Districts of the County of San Diego. For reference, a copy of the Commission's tentative timeline can be found here [provide link to posted timeline on IRC website]

## **SECTION VI – Submission Requirements/Format**

Attorneys, law firms and other entities qualified and interested in performing the legal services as described herein are asked to submit the following information formatted into Sections 1-4 as requested below. Responses should not exceed 10 pages, not including resumes and client lists. The responses must be whole and complete in the submitted document and not depend on hyperlinks for required content.

1. Personnel

In the case of a law firm or other entity, identify the lead attorney and other attorneys, if any, who will be assigned to the work and the anticipated percentage of time for each; a statement of the attorneys' availability to perform the work on a timely basis as requested by the Commission considering other client commitments of the attorney(s); and a statement of availability to interview in the timeframe specified in this RFQ. Also please attach a resume for each attorney.

If the law firm or entity that is awarded the contract contemplates additional attorney assignments after the award of the contract, the personnel must be approved individually by the Commission. The lead attorney must remain the same. Prior to the date of additional assignment, the law firm or entity must submit a resume for preliminary review and approval by Commission staff, Commission legal staff and/or Chairperson and Vice-Chairperson. The individual may be provisionally cleared to work on behalf of the Commission until final approval. Final approval must be obtained by vote of nine members of the Commission.

2. Attorney/Firm General Description

If the Statement of Qualifications is submitted by a law firm or other entity, provide a general description of the firm.

3. Experience

List significant experience in districting, redistricting, VRA matters, and other relevant elections activities, as described in Section V above, for each of the attorneys listed above. The list should include:

- (a) The names of the public entities or private parties represented in redistricting matters, including experience representing boards or commissions in connection with this work;
- (b) The principal legal issues presented in each matter handled by the attorney, law firm or entity; if the matters are numerous, the principal legal issues presented in at least five of the matters;
- (c) Experience with Section 2 and/or Section 5 of the Voting Rights Act;

- (d) The outcome of prior redistricting representations, e.g., completed without litigation, negotiated settlement, trial on the merits, etc.;
- (e) Any relevant published work.

Please end with a summary of how this experience prepares the attorney and/or law firm to perform the services sought by this RFQ.

4. Certification re Conflicts of Interest

- a. Compliance with California Elections Code section 21551(c)(4).

California Elections Code section 21551(d)(1) prohibits the Commission from retaining a consultant who would not be qualified as an applicant pursuant to paragraph (4) of subdivision (c) of Section 21550. All personnel assigned to work in connection with this representation must certify eligibility to do so pursuant to section 21551(d)(1). Also, please disclose whether any of the activities described in Elections Code Section 21551(c)(4)(B) - (D) were performed on a volunteer basis.

- b. Work that Could Present the Appearance of a Conflict of Interest.

In addition: (1) identify any lobbying work the firm has performed in California during the past 10 years; and (2) identify any political contributions to members or candidates for election to the San Diego County Board of Supervisors during the past ten years.

Please describe any work relating to Redistricting or other work for current or prior clients during the past 10 years, even if such work has concluded and was not related to Redistricting, that could present the appearance of a conflict with representing the Commission. For example, if the attorney or law firm represents or has represented an entity seeking an approval from the San Diego County Board of Supervisors or opposing the issuance of such an approval, such work must be disclosed and the implications of the current or prior representation for this assignment must be described.

- c. Other Conflicts.

The attorney or law firm must comply with the rules as set forth in the California Rules of Professional Conduct. Please identify any matter in which the attorney or firm is presently adverse or potentially adverse to the Commission. In addition, identify any work previously provided by the attorney or law firm on behalf of any potential adverse party or witness, to the extent known.

Finally, for all attorneys expected to work in connection with this representation, please disclose any active volunteering for, consulting for, or service as paid staff for any candidate for public office or any public

office holder for the past 10 years in San Diego County. If retained by the Commission, all attorneys will be expected, for the duration of the representation, to continue such disclosures, as well as to refrain from such activities for any candidate for election to the San Diego County Board of Supervisors.

**5. Contracting and Fee Arrangements**

The applicant must be prepared to execute a professional services agreement in the form attached hereto as Exhibit 1, with exceptions/additions agreeable to the County of San Diego. Please indicate your acceptance of the terms of the professional services agreement and any proposed exceptions/ additions.

The Commission requests all applicants to provide a fee estimate based on the description of the work contained in this RFQ, section V. It is the Commission’s preference to contract for the legal services described herein – exclusive of litigation and attendance at public meetings – on a fixed fee rather than an hourly basis, assuming the assignment will continue from October 15 through December 15, 2021, or until final map adoption, whichever is later. (The Commission recognizes that it is not presently possible to state the number of meetings at which counsel will need to be present, and as such requests an estimate of such fees on a per meeting basis assuming the appearance of Special Counsel virtually.) The Commission will accept offers up to \$60,000.00 for these legal services.

Please describe your willingness to contract in this manner and how you would structure such a proposal.

**SECTION VII – Evaluation Criteria & Scoring**

The following elements represent the evaluation criteria that will be considered during the evaluation process:

Criteria	Max. Evaluation Points
1. Certification of Compliance with California Elections Code section 21551(c)(4) by all attorneys assigned to this work.	Pass/fail
2. No work that could give the appearance of a Conflict of Interest	Pass/fail
3. Acceptance of terms of professional services agreement – Exhibit I with exceptions/additions agreeable to contractor	Pass/fail
4. Responsiveness to the RFP. a. Requested information included and thoroughness of response.	15



b. Clarity of the response.	
5. Staffing Plan. a. Qualification of personnel to perform the work. b. Clearly defined roles of lead attorney and other assigned attorneys. c. Availability to perform the work on a timely basis.	25
6. a. Experience in districting, redistricting, VRA matters, and other relevant elections activities of the lead attorney and other assigned attorneys, and b. Clarity and quality of interview.	40
5. Fee proposal.	20

**SECTION VIII – Miscellaneous**

Any attorney, law firm or legal entity selected by the Commission will be required to:

1. Agree to adhere to legal cost and billing guidelines designated by the Commission.
2. Adhere to phasing of activities designated by the Commission.
3. Submit and adhere to legal budgets as designated by the Commission.
4. Maintain legal malpractice insurance and other insurances as set forth in Section 5 of the professional services agreement, which is attached hereto as Exhibit 1.
5. Submit to legal, bill audits and law firm audits if so requested by the Commission. The audits may be conducted by employees or designees of the Commissions or by any legal cost-control provider retained by the Commission for that purpose.
6. Remain in good standing with the State Bar of California, and in compliance with any applicable law or policy. The latter is also applicable to any attorney's, law firms', or legal entities' attorney staff or subcontractor assigned to work on this matter and/or on behalf of the Commission.

**EXHIBIT 1 TO RFQ**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(PRELIMINARY DRAFT)**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into effective as of \_\_\_\_\_ (“Effective Date”) by and between NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP (“Contractor”) for the benefit of the COUNTY OF SAN DIEGO INDEPENDENT REDISTRICTING COMMISSION (“Commission”) and \_\_\_\_\_ (“Counsel”) with reference to the following facts:

**RECITALS**

A. The Commission is in need of legal services as reflected in the Scope of Work attached hereto as Exhibit 1 in connection with the redistricting of the County of San Diego Supervisorial Districts light of the 2020 Federal Census and California Elections Code § 21550 et seq. (“Project”)

B. Counsel possesses the specialized legal skills and expertise necessary to represent the Commission in connection with the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants listed below to be performed by the respective parties, it is agreed as follows:

**SECTION 1: ENGAGEMENT OF COUNSEL**

**1.1 Engagement of Counsel/Scope of Services.** Counsel is being retained by \_\_\_\_\_. The Commission is the client of Counsel and Counsel shall work directly with the Commission, the Commission’s general counsel, and County staff working on behalf of the Commission in the provision of legal services. In performing these services, \_\_\_\_\_ (“Counsel’s Representative”) shall personally conduct or shall oversee and direct the rendering of professional services, assisted by attorneys \_\_\_\_\_ employed by Counsel as Counsel deems necessary or appropriate, with concurrence of \_\_\_\_\_.

**1.1.2 Counsel to be Engaged on a “Nonexclusive” Basis.** Counsel’s services are retained on a “nonexclusive” basis. \_\_\_\_\_ may, at any time, engage the services of legal professionals other than Counsel to perform a portion of the services specified herein.

**1.2 Counsel’s Performance.** Counsel shall, in a professional manner and in accordance with the highest fiduciary standards, furnish all labor, technical, administrative, professional and other personnel necessary to provide the services required under this Agreement to the satisfaction of the Commission.

**1.2.1 Independent Contractor.** Counsel is, for all purposes of this Agreement,

an independent contractor, and neither Counsel nor Counsel's employees shall be deemed to be employees of \_\_\_\_\_ or the Commission. Counsel shall perform its obligations under this Agreement according to Counsel's own means and methods of work which shall be in the exclusive charge and under the control of Counsel, and which shall not be subject to control or supervision except as to the results of the work. Neither Counsel nor Counsel's employees shall be entitled to any benefits to which Contractor or \_\_\_\_\_ employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.

**1.2.2 Counsel's Subcontractors.** Counsel shall not engage the services of any subcontractor to perform any of Counsel's duties hereunder without the prior written consent of \_\_\_\_\_; provided, however, that this provision shall not require approval of contracts of employment between Counsel and its employees, or of parties named by Counsel in its proposal, as submitted to the Contractor, to perform work under this Agreement. Unless approved in writing, retention by Counsel of any subcontractor shall be at Counsel's sole cost and expense, and \_\_\_\_\_ shall have no obligation to pay Counsel's subcontractors; to support any such person's or entity's claim against the Counsel or other parties; or to defend Counsel against any such claim. Counsel shall indemnify and hold \_\_\_\_\_ harmless from all claims whatsoever arising out of the demands of Counsel's subcontractors or suppliers arising out of Counsel's performance of this Agreement. Use by Counsel of a subcontractor pursuant to this provision shall not relieve Counsel of any of its duties hereunder.

**1.2.3 Reviews of Counsel's Performance.** The Commission's Representatives and other County Personnel, as appropriate, will meet periodically with the Counsel to review Counsel's performance.

## **SECTION 2: COMPENSATION**

**2.1 Counsel's Fee.** Subject to the provisions of Section 2.3, "Billing Guidelines," below, Contractor shall pay a "fee per hour of work" to Counsel for its services in accordance with the rate offered by Counsel to its government clients as set forth below:

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COUNSEL will be reimbursed for any required in-person travel pursuant to Exhibit B.

Counsel will provide all legal services required under this agreement for a total sum not to exceed \$ \_\_\_\_\_. Under no circumstances shall fees, costs and expenses billed by Counsel under this agreement exceed the amount of \_\_\_\_\_. Counsel will be paid by Contractor only upon receipt by Contractor of adequate funds from the County to pay counsel's billing statements. Counsel shall not look to Contractor for payment under any circumstances, except as set forth in the previous sentence.

**2.2 No Increase in Fees.** Counsel shall not increase its fees during the term of this engagement.

**2.3 Billing Guidelines.** Not all of the services provided or expenses incurred by Counsel under this Agreement are compensable or reimbursable. Those services and expenses that are or are not compensable or reimbursable are identified in the Billing Guidelines attached

hereto as Exhibit "B." Contractor shall pay Counsel for compensable services in installments based on Counsel's submittal of monthly invoices for work accomplished to date in the form and containing the information required by the Billing Guidelines. Counsel shall include an updated "Attorney Fee Summary," in the form attached hereto as Exhibit "C," with each monthly invoice.

**2.4 Maximum Compensation.** The maximum compensation under this Agreement shall not exceed One Hundred-Fifty Thousand dollars (\$\_\_\_\_\_.00).

### **SECTION 3: TERMINATION OR SUSPENSION OF AGREEMENT**

**3.1 Termination of Agreement By Contractor.** \_\_\_\_\_, on written notice, may immediately suspend, postpone, abandon, or terminate this Agreement at any time and for any reason, including convenience, and such action shall in no event be deemed to be a breach of contract.

**3.2 Termination Of Agreement By Counsel.** Counsel, on thirty days' prior written notice to Contractor, may terminate this Agreement.

**3.3 Disposition of Material and Records Upon Termination.** On the effective date of any termination, Counsel shall immediately cease to perform any services under this Agreement. Counsel shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall transmit the same to Contractor as soon as possible, and no later than the fifteenth day following the receipt of the above written notice of termination, together with a description of the cost of the Services performed to the date of termination.

### **SECTION 4: ADMINISTRATION**

This Agreement shall be administered on behalf of the Commission by \_\_\_\_\_, and on behalf of Counsel by Counsel's Representative, \_\_\_\_\_. The parties warrant these persons have authority to act of their behalves.

### **SECTION 5: INSURANCE**

Counsel represents and warrants that it has obtained all professional liability and any other insurance required to practice law in the State of California under applicable provisions of the Business and Professions Code.

### **SECTION 6: CONFLICTS OF INTEREST**

#### **6.1 General.**

(A) Prior to executing this Agreement, Counsel shall perform a detailed conflict of interest check. The results of that check are included in Exhibit E, which is part of this Agreement.

(B) During the course of this Agreement, Counsel shall not represent any other client (1)

in a matter adverse to the County or the Commission where such matter is substantially related to any work under this Agreement that Counsel is performing, or (2) in any matter, whether or not related to Counsel's work under this Agreement, that will involve the filing of any lawsuit against the County or the Commission (collectively items (B)(1) and (B)(2) are hereinafter referred to as, "an impermissible conflict of interest"), unless Counsel provides notice to County and the Commission of the impermissible conflict of interest and obtains an express written waiver of such conflict. When there is a disagreement between the parties to this Agreement as to whether or not Counsel has, or may in the foreseeable future have, an impermissible conflict of interest, County's determination shall be final and dispositive of the issue. Where County determines that Counsel's representation, or intended representation, of any client constitutes an impermissible conflict of interest, then, unless County waives such conflict, Counsel shall, within five days of delivery of notice by County to Counsel, withdraw from the representation of the client as to the matter that gave rise to the impermissible conflict of interest, or, unless waived by County in writing, upon thirty days prior written notice to County, withdraw from representation of County, or both.

(C) Counsel shall not have any material financial interest, including, without limitation, interests in other projects or contracts, and shall not acquire any such interest, direct or indirect, which would undermine Counsel's ability to be impartial or otherwise conflict with the performance of the services Counsel is required to perform under this Agreement. Counsel shall not employ or retain any person having any such material financial interest to perform any duties under this Agreement. Counsel shall not hire County'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 County.

**6.2 California Political Reform Act.** Counsel acknowledges that the California Political Reform Act ("Act"), Government Code Section 81000, et seq., provides that counsel hired by a public agency such as the County may be deemed to be a "public official," subject to the Act, if the counsel advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. Within thirty days of undertaking any work hereunder, therefore, Counsel, and any "subcontractors," as defined in Section 1.2.2, above, retained by Counsel hereunder, shall either (i) read and sign the "Conflict of Interest Declaration" attached hereto as Exhibit "D," or (ii) disqualify itself from undertaking any work hereunder.

**6.3 Elections Code sections 25551 and 21550.** Counsel is aware of the requirements set forth in Elections Code sections 25551 and 21550 and considered its independent ethical obligations of attorneys and represents the attorneys identified above are eligible to represent the Commission.

## **SECTION 7: CHANGES**

Contractor may, at any time, by written order, make changes within the general scope of this Agreement; provided, that any material revision of such scope is subject to Counsel's prior consent.

## **SECTION 8: REPORTS, RECORDS AND OTHER PRINTED OR WRITTEN MATERIALS**

**8.1 Reports, Records and Other Printed or Electronic Documentation.** All

reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties produced under this Agreement, whether in printed or “electronic” format, shall be the sole and exclusive property of the County of San Diego. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right without the express written consent of the County. Counsel shall submit reports to County in the form specified by County’s Representative, or as may be specified elsewhere in this Agreement. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by Counsel under this Agreement.

**8.2 Audit and Inspection of Records.** County shall have the right to audit and inspect those books, records and documents of Counsel, and other data in the possession of Counsel, which pertain directly to Counsel’s performance of its duties pursuant to this Agreement. Upon prior written request therefore from County, Counsel shall make such records available at County’s offices, during regular business hours, for inspection, audit or reproduction, until the expiration of three years from the date of final payment to Counsel under this Agreement, or, if this Agreement is terminated pursuant to the provisions of Section 4.1, above, then such records shall be made available for County’s inspection for (i) three years from the date of such termination, or (ii) until any litigation, appeal or claim submitted to mediation or arbitration arising out of such termination shall have been finally adjudicated or settled, whichever is longer.

**8.3 Confidential Records and Findings.** Any reports, studies, information, data, statistics, forms, designs, plans, procedures or systems of a confidential nature, or any form of knowledge of a confidential nature given to or prepared or assembled by Counsel under this Agreement, shall be kept strictly confidential, shall be subject to all applicable privileges which may be held by the Contractor and/or its clients, and shall not be revealed or made available to any individual or organization without the prior written approval of the Contractor and the Commission.

## **SECTION 9: COMPLIANCE WITH LAWS AND POLICIES**

Counsel shall become and remain informed of all applicable federal, State and local laws, ordinances, rules and regulations that may in any manner affect Counsel’s performance of its services hereunder. Counsel shall comply with such laws and regulations during its performance of this Agreement.

## **SECTION 10: DISPUTES**

Except as may be otherwise provided in this Agreement, any dispute concerning a question of fact arising hereunder shall be decided by the Contractor’s Representative who shall furnish such decision to the Counsel in writing. The decision of the Contractor’s Representative shall be final and conclusive unless it is subsequently determined by a court of competent jurisdiction to have been erroneous. Counsel shall proceed diligently with the performance of this Agreement pending any decision by Contractor’s Representative on a dispute.

## **SECTION 11: GENERAL PROVISIONS**

**11.1 Assignment.** Neither Counsel nor Contractor shall have the right to assign

their respective rights or obligations under this Agreement without the prior written consent of the other party.

**11.2 Authority.** Counsel represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Counsel are the duly designated agents of Counsel and are authorized to do so.

**11.3 Entire Agreement.** This Agreement, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Counsel and requests for proposals from Contractor, are superseded.

**11.4 Exhibits.** All exhibits referred to herein are attached hereto and incorporated herein by reference. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any exhibit attached hereto, the terms of this Agreement shall govern.

**11.5 Further Assurances.** The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

**11.6 Governing Law.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

**11.7 Headings.** The captions and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

**11.8 Modification, Waiver.** Except as otherwise provided in Section 7, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.

**11.9 Notices.** Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three business days after deposit in the U.S. Mail, as the case may be.

Contractor's Address for Notice:

Contractor's Representative:

Counsel's Address for Notice:

Counsel's Representative:

Either party may change its address for notice by delivering written notice to the other party as provided herein.

**11.10 Severability.** If any court of competent jurisdiction holds any term, provision, covenant or condition of this Agreement to be invalid, void or otherwise unenforceable, to any extent, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**11.11 Waiver.** The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

This Agreement shall be effective as of the date of its approval by Contractor.

FOR CONTRACTOR:

FOR COUNSEL:



**EXHIBIT "A"**  
**STATEMENT OF WORK**

**EXHIBIT “B”**  
**OUTSIDE COUNSEL BILLING GUIDELINES**

Outside Counsel monthly invoices must follow these guidelines. Bills less than \$500 should be carried over to the subsequent month.

**A. Time Charges.** Time charges must be set forth in increments of one tenth of an hour (.10). The time entered must be the actual time expended on each function. Block billing, which groups functions together, must not be used, unless the total time incurred is one tenth of an hour or less. We will not accept nor pay for standardized charges.

**B. Activity Descriptions.** Generic and general activity descriptions are not acceptable and will not be reimbursed in the absence of further information. All legal activities must be identified in detail in the billing statement. The test is whether an attorney not familiar with the billing attorney, case, or firm's billing practices can determine exactly what professional service was provided and can assess the appropriateness of the related time charge. For example, when billing for telephone conversations, specifically describe the parties and purpose of the telephone call. All correspondence, contracts and other documents reviewed must be distinctly identified. Examples:

**Incorrect**

**Correct**

Telephone call.

Telephone call to John Doe re RFP.

Review agreement.

Review agreement with XYZ Corp.

**C. Task Identification and Budget Accounting.** If applicable, all invoices must identify the Task in Counsel's Project Budget against which the charges should be entered, the total amount billed against that Task for that month, and the amount remaining for that Task in the Project Budget. Counsel shall not submit billings for any Task that will cause the total amount billed for that Task to exceed the amount shown in the then-current Project Budget, unless and until Counsel shall have submitted and Contractor has approved a revised Project Budget that raises the total amount that may be billed for such Task.

**D. Hourly Rates.** The Contractor Representative must give written approval to any requests for changes to hourly rates or to the billing agreement that vary from those previously authorized. No automatic annual increase of Counsel's hourly rates shall be permitted.

**E. Clerical/Secretarial/Administrative Functions.** We only pay for professional services. We do not pay for clerical services, secretarial, or administrative functions, including word processing, filing or indexing, whether performed by attorneys, paralegals or non-professional staff. Time or expenses incurred in preparing invoices or negotiating

billing questions are also non-compensable.

**F. Duplicative Billing.** We normally pay for only one attorney to accomplish any task; however, more than one attorney may work on different aspects of a task (e.g. different topics in a legal opinion) and be compensated for that work.. The preparation for, and attendance at, a meeting by more than one attorney, paralegal, etc. will not be paid unless prior approval is obtained from the Contractor Representative. We will not pay for any attorney redoing the work of another attorney or for duplicative entries for reviewing and analyzing documentation and legal research unless Contractor authorizes Counsel to assign a junior attorney to a project with the understanding that a more senior attorney will review his or her work.. If for any reason, law firm replaces a team member, the cost associated with the education of the new team member will be the responsibility of the law firm.

**G. Conferencing.** Conferencing or analysis among attorneys in Counsel's office is generally not compensable, unless the conference or analysis is related to some significant legal issue which requires the conferencing of the attorneys involved in the conference or unless Contractor authorizes Counsel to assign a junior attorney to a project and such conference is required to provide appropriate guidance to such junior attorney.

**H. Paralegals.** We encourage the appropriate use of paralegals. However, assignment of work to paralegals must not result in duplicative work by attorneys. Any functions that are normally and routinely performed by paralegals employed by Counsel, whether performed by paralegals or attorneys, are to be billed at the paralegal rate. Paralegal time will be compensated at Counsel's approved paralegal hourly rate under this Agreement.

**I. Reimbursement of Allowable Expenses.** The Contractor shall reimburse Counsel for actual, necessary, and reasonable out-of-pocket expenses in accordance with the guidelines set forth below. An itemized breakdown of actual expenses must be provided. All expenses must be claimed for reimbursement at cost and must not include mark-ups by the firm. Allowable routine expenses incurred should be paid directly by the law firm and then claimed for reimbursement. All expenses submitted for reimbursement must be fully described. We will not accept any "miscellaneous" expense items. We may require supporting documentation for any expenses. The following guidelines should be followed with regard to specific expense items:

**1. Photocopies**

In-house photocopying and associated services or tasks are to be charged at actual cost.

**2. Local/Long Distance Vehicle Travel**

We will pay for travel time at the agreed hourly rate only for the actual time that services are performed for Contractor during the travel.

The miles associated with round trip vehicle travel between the Contractor Administration Center (CAC) and the Counsel's work-site will be reimbursed at the current IRS mileage reimbursement rates. The Contractor will not provide reimbursement for any travel, taxi, or rental vehicle during any stay in San Diego, unless it is specifically related to providing services to the Contractor (e.g., taxi fares for transportation between the airport and the CAC, or taxi fares to another location to meet with others in the performance of services for the Contractor).

### **3. Air Travel/Vehicle Travel**

All air travel will be reimbursed at economy or coach class fares. The actual receipt from the airline ticket shall be made available with claims for reimbursement. Air travel arrangements should be made as early as possible to avoid higher fares.

### **4. Hotels**

If the provision of services to the Contractor requires Counsel to stay overnight in San Diego, Counsel will be reimbursed for actual room charges, plus taxes, for hotel accommodations in San Diego not to exceed the rate established by the U.S. Government General Services Administration (GSA) for San Diego. Proof of actual room charges must be submitted for reimbursement.

### **5. Meals**

Contractor will not provide reimbursement for the expense of food or drink incurred in connection with the services provided under this Agreement.

### **6. Telephone**

Long distance telephone charges directly related to the services provided to the Contractor will be accepted for reimbursement. The statement must indicate the date of the telephone call, the telephone number called, the total cost, and the nature of the call.

### **7. Facsimile Charges**

Facsimile charges, with the exception of actually incurred long distance telephone charges, are considered part of normal overhead and will not be accepted for reimbursement.

### **8. Messenger/Courier/Delivery/Express/Overnight Mail Services**

The use of expedited delivery services is discouraged and will be reimbursed only

if its use is determined to be absolutely necessary.

## **9. Computer-Assisted Research**

We will not pay for computer-assisted research. We consider charges for expenses associated with the use of Westlaw, Lexis, Dialog, Information/America and other computer research databases, and Internet access charges to be similar to the purchase and maintenance of the firm's law library. Therefore these charges will not be accepted for reimbursement.

## **10. Database/Data Entry/Document Imaging Charges**

Prior approval must be obtained from the Contractor Representative before incurring any charges for the preparation, maintenance, data entry, imaging, programming and document input (included imaging charges) of file material to a database or document management system. If approved, we will pay for the cost of these tasks at an agreed upon clerical rate. We will only pay paralegal or attorney rates for the actual professional time spent determining the documents to be entered, how documents are categorized or summarizing documents, as appropriate.

## **11. Additional Non-reimbursable Expenses**

We will not reimburse the following costs as these expenses are considered part of normal overhead:

- a) Clerical or secretarial salaries or overtime compensation;
- b) Word processing charges;
- c) Office supplies;
- d) Postage;
- e) Entertainment or personal expenses;
- f) Commuting expense to or from work for firm personnel;
- g) Heating, air conditioning, utility charges;  
or
- h) In-house conference room charges.

**EXHIBIT "C"**  
**ATTORNEY FEE SUMMARY**

Services Through [Date]	Hours	Fees	Costs	Total	Unpaid
Total-to-Date					

Fee Cap	
Amount Billed to Date	<u>0.00</u>
Remaining Fee Cap	0.00

**EXHIBIT D**  
**CONFLICT OF INTEREST DECLARATION**

The California Political Reform Act (Government Code section 81000 - 91015) (the “Act”) provides that individuals who, under contract, provide information, advice, recommendation or counsel to a local government agency are deemed to be “public officials” subject to the conflict-of-interest provisions of the Act. In the opinion of Contractor Counsel, individuals performing the services contemplated under the Agreement on behalf of Counsel will be deemed to be public officials for purposes of the Act.

Section 87100 of the Act prohibits public officials from participating in making, or in any way attempting to use their position to influence, a governmental decision in which they know, or have reason to know, that they have a direct or indirect financial interest. For purposes of the Act, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on:

12. Any business entity in which the public official has a direct or indirect investment worth \$1,000 or more.
13. Any real property in which the public official has a direct or indirect interest worth 1,000 or more.
14. Any source of income (with certain exceptions) aggregating \$250 or more in value received or promised to be received within 12 months prior to the time when the decision is made.
15. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
16. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within twelve months prior to the time that the decision is made.

For purposes of applying these criteria, the term “indirect investment or interest” means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse and dependent children own directly indirectly, or beneficially, a ten percent interest or greater.

I hereby acknowledge that I have read and understand the above and certify that any work to be performed by me on the project identified below will not constitute a conflict of interest under the Act.

PROJECT NAME: \_\_\_\_\_

[To be signed by all individuals performing the services contemplated under the Agreement on behalf of Counsel]

NAME

DATE

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