



Local Agency Formation Commission
LAFCO of Napa County

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Napa, California 94559
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<http://napa.lafco.ca.gov>

May 4, 2009
Agenda Item No. 5a (Consent)

April 27, 2009

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer

SUBJECT: Approval of a Professional Services Agreement for Website Hosting and Maintenance Services

The Commission will consider approving a professional services agreement with Planeteria to provide website hosting and maintenance services.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires Local Agency Formation Commissions (LAFCOs) to establish and maintain websites. Government Code Section 56300 specifies LAFCO websites must provide notices of meetings and hearings as well as other pertinent information for public review.

A. Discussion

In November 2008, LAFCO of Napa County (“Commission”) entered into a professional services agreement for Planeteria, Inc. to design and develop a new agency website for an amount not-to-exceed \$28,500. Staff is currently working with Planeteria on finalizing the layout and content of the new website. It is expected the new website will be completed by the end of the month and presented at the Commission’s June 1, 2009 meeting.

With the new website close to completion, staff believes it would be prudent for the Commission to enter into a separate professional services agreement with Planeteria to provide hosting and annual maintenance services. Planeteria’s hosting services cost \$39.95 a month and include 125MB of content storage along with daily backup. Planeteria’s maintenance services are billed as needed at \$99 and \$130 per hour and include generating new pages, database programming, and redesigns.

B. Analysis

The Commission’s current website is hosted by the Computer Engineering Group, Inc. (CEG) at a monthly cost of \$29.95. All maintenance services on the current website are provided by staff. While hosting services provided by CEG have been excellent, contacting with Planeteria would allow the Commission to consolidate all of its website related service needs with one vendor. Additionally, the \$10 more in monthly costs to the Commission for transferring hosting services to Planeteria are adequately covered under the adopted proposed budget for 2009-2010.

Juliana Inman, Vice Chair
Councilmember, City of Napa

Lewis Chilton, Commissioner
Councilmember, Town of Yountville

Joan Bennett, Alternate Commissioner
Councilmember, City of American Canyon

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

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

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

C. Recommendation

Staff recommends the Commission take the following actions:

- 1) Approve the attached professional services agreement for Planeteria, Inc. to provide website hosting and maintenance services.

Respectfully submitted,

Keene Simonds
Executive Officer

Attached: as stated

**LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
AGREEMENT NO. 08-002**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, _____, by and between the LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "LAFCO", and Planeteria, Inc., whose business address is 1955 Cleveland Avenue, Suite 201, Santa Rosa, California 95401, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, LAFCO wishes to obtain specialized services for a contractor to provide website hosting and maintenance services; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to LAFCO under the terms and conditions set forth herein;

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall continue indefinitely unless terminated by either LAFCO or the CONTRACTOR. Either party may terminate the Agreement by giving written notice of such action to the other party not less than thirty days prior to the effective date of termination.
2. **Scope of Services.** CONTRACTOR shall provide LAFCO those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.
3. **Compensation.**
 - (a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, LAFCO shall pay CONTRACTOR at the rates set forth in Exhibit "A", attached hereto and incorporated by reference herein.
 - (b) Expenses. No travel or other expenses will be reimbursed by LAFCO unless authorized by the LAFCO Executive Officer.
4. **Method of Payment.**
 - (a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to LAFCO of an itemized billing invoice in a form acceptable to the LAFCO Executive Officer which indicates, at a minimum,

CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

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

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

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, LAFCO, in addition to any other rights or remedies which LAFCO may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

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

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

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

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

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

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of LAFCO's Risk Manager, demonstrated by other evidence of coverage acceptable to LAFCO's Risk Manager, which shall be filed by CONTRACTOR with the LAFCO Executive Officer prior to commencement of performance of any of CONTRACTOR's duties; shall reference this Agreement by its LAFCO number or title and department; shall be kept current during the term of this Agreement; shall provide that LAFCO shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming LAFCO, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of LAFCO shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to LAFCO with respect to any insurance or self-insurance programs maintained by LAFCO. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following

forms: CG 20 10 10 93 or 03 94. Upon request of LAFCO's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, LAFCO's Risk Manager, which approval shall not be denied unless the LAFCO's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by LAFCO's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects to LAFCO, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. Hold Harmless/Defense/Indemnification.

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

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

9. Termination for Cause. If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 15 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving 5 days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). LAFCO hereby authorizes the LAFCO Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for cause.

10. **Termination for Convenience.** This Agreement may be terminated by either party for any reason and at any time by giving no less than 30 days prior written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by LAFCO unless an opportunity for consultation is provided prior to the effective date of the termination. LAFCO hereby authorizes the LAFCO Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for the convenience of LAFCO.

11. **Disposition of, Title, to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for the convenience of a party under Paragraph 10, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of LAFCO, the property of and shall be promptly returned to LAFCO, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only LAFCO shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to LAFCO for damages sustained by LAFCO by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was terminated for convenience or cause, and LAFCO may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to LAFCO from CONTRACTOR is determined.

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

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

LAFCO
Keene Simonds, Executive Officer
LAFCO of Napa County
1700 Second Street, Suite 268
Napa, California 94559

CONTRACTOR
Jamie Spooner, President
Planeteria, Inc
1955 Cleveland Avenue, Suite 201
Santa Rosa, California 95401

14. **Compliance with LAFCO Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Napa County Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents, and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by LAFCO employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

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

16. **No Assignments or Subcontracts.**

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

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

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

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

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

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

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of gender or self-identified gender, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any

state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of LAFCO by the State of California pursuant to agreement between LAFCO and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

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

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

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

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

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

23. **Conflict of Interest.**

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

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

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

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

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

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

28. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

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

PLANETERIA, INC.
"CONTRACTOR"

By: _____
Jamie Spooner, President

Carolyn Mayes, Chief Financial Officer

LAFCO OF NAPA COUNTY

By: _____
Brian J. Kelly, Chair

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|--|
| <p>APPROVED AS TO FORM Jacqueline Gong, LAFCO Counsel</p> <p>By: _____</p> <p>Date: _____</p> |
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EXHIBIT “A”
SCOPE OF SERVICES
AND
COMPENSATION REIMBURSEMENT

The CONTRACTOR shall provide website hosting and maintenance services consistent with the scope of work and costs outlined in EXHIBIT “A-1.”

p l a n e t e r i a
Hosting and Maintenance Agreement
General Terms and Conditions

Effective Date: 9/24/2008

Parties:

Planeteria, Inc. ("Planeteria")
1955 Cleveland Ave., Suite 201
Santa Rosa, CA 95401

LAFCO of Napa County ("Customer")
1700 Second Street, Suite 268
Napa, CA 94559

1. DEFINITIONS. When used in this agreement, unless otherwise required by the context:

1.1 "Planeteria" means Planeteria, a corporation whose mailing address is 1955 Cleveland Avenue, Suite 201, Santa Rosa, CA 95401.

1.2 "Client" means **LAFCO of Napa County**

1.3 "Agreement" means this instrument in its entirety as signed by the parties.

1.4 "Host" or "Hosting" means to have any or part of client's Web site to reside and utilize the resources all or in part of the Net server chosen by Planeteria.

1.5 "Creation" means the actual process of designing and programming a Web site, to include content creation and editing.

1.6 "Maintenance" means the act of updating the Web site and/or keeping the actual files on the Host server functioning correctly.

2. CIRCUMSTANCES. The client requests that Planeteria perform any or all of the following activities, or allows Planeteria to subcontract any or all of the following: hosting, domain registration, database functionality, registration of Web site with various Internet search engines, site creation, site maintenance, graphic design for Web site.

3. RATES & PAYMENT.

Maintenance Updates

Maintenance of the site is available for an hourly fee of \$99.00. The following items fall under the category of maintenance: content updates, addition of an image to the site, basic HTML changes such as table formatting, font size or color changes, communication with Hosting provider for technical support issues.

Front end development Updates

Generation of new pages or templates not associated with database design billed at \$99.00 per hour.

Back end development Updates

Generation of database programming billed at \$130.00 per hour.

Design Updates

Site redesigns, creation of new pages or content areas, creation/modification of site artwork billed at \$130.00 per hour.

For work not included in categories above, an estimate on costs will be provided upon request of the work.

4. APPROVAL OF CONTENT. Planeteria reserves the right to censor, reject, alter, or refuse any content at its sole discretion in accordance with any rules Planeteria (or company chosen Planeteria for hosting of site) may now have, or may adopt in the future concerning acceptance of content matter. No change will be made in content without client's prior consent.

5. RECOGNITION. Planeteria reserves the right to place a creation logo linked to Planeteria web site at the bottom of the main index (home) page that will be no larger than 350 x 100 pixels in size.

6. HOSTING/SUPPORT SERVICES. Services are maintained as agreed to by Planeteria, at rates as agreed to by both parties or as laid out in Planeteria Pricing Policies.

BUSINESS PLUS PACKAGE \$39.95/month. This solution is good for business web sites utilizing a database-driven application such as a Content Management System. Excellent bandwidth. FREE DeepMetrix Live Stats included in this package to track detailed hits, sessions, and visitors to your site.

Features:

- 7 GB per month of data transfer

-
- 125MB* of disk storage space
 - DeepMetrix Live Statistics
 - Shared SQL Server database (50 MB)
 - 24/7 FTP access to your account
 - Microsoft Index Server
 - Dell Power Edge Xeon Processor
 - 30-day money-back guarantee
 - Daily Backup

E-mail:

- Up to 100 POP e-mail accounts

Technology supported:

- Active Server Pages (ASP)
- Perl, Java
- Microsoft Access
- Macromedia Flash/Shockwave
- On-demand streaming media (Windows Media, Real Audio, QuickTime)

One-time set up fee: \$75

* additional space available in 10Mb increments for \$5/mo.

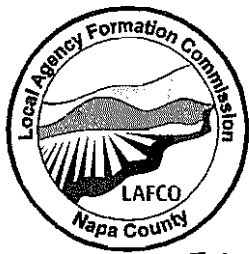
7. INDEMNIFICATION. Client assumes full and complete responsibility and liability for the content produced or published and shall indemnify and hold Planeteria harmless from and against all demands, claims, or liability of any legal action, including but not limited to libel, copyright, trademark, or licenses, or any other wrongful conduct. Client shall reimburse Planeteria for any amount paid Planeteria in settlement of claims or in satisfaction of judgments obtained by reason of publication of such content together with all expenses incurred in connection therewith, including, but not limited to, attorney's fees and costs of litigation. The provisions of this paragraph shall remain effective and inure to the benefit of the respective parties notwithstanding the expiration, cancellation, or termination of this agreement.

8. IMPOSSIBILITY OF PERFORMANCE. Planeteria shall not be responsible or liable for any damages to the client for failing to perform the above services if the cause is technical difficulties or mechanical failure of Planeteria's (or sub-contracted party's) computer equipment, provided Planeteria (or sub-contracted party) has taken reasonable steps to avoid such difficulties or failures, or their reoccurrence; labor disputes or strikes; wars; riots; civil unrest; or insurrections; fires; floods; accidents; storms; acts of God; or any other cause beyond Planeteria's control. If the client's site cannot be accessed because of an occurrence described in this paragraph for a period

of more than twenty-four hours, and Planetaria is the Host of the site, Planetaria shall at its option, (a) extend the term of the agreement for an equivalent period without additional charge to client, or (b) refund the prorated value of the advertising.

9. COPYRIGHTS AND TRADEMARKS. Any of client's trademarks or copyrighted material is permitted for use by Planetaria on or in relation to client's Web page. Content is copyrighted in the name of the client while coding is copyrighted in the name Planetaria.

10. ADDITIONAL ITEMS. Additional terms, addendums, or changes to this agreement before signing may be made either directly on the pages of the agreement to be signed or on a separate page. Any copies made after the agreement is signed must contain the changes made to the agreement before signing.



Local Agency Formation Commission
LAFCO of Napa County

1700 Second Street, Suite 268
Napa, California 94559
Telephone: (707) 259-8645
Facsimile: (707) 251-1053
<http://napa.lafco.ca.gov>

February 9, 2009

Mr. Mike Rice
Miller-Sorg Group, Inc.
710 Kellogg Street
Suisun City, California 94585

SUBJECT: *Proposed Formation of the Villa Berryessa Water District*

Mr. Rice:

This letter serves as a follow up to my October 9, 2008 e-mail to you regarding the Miller-Song Group's application with the Local Agency Formation Commission (LAFCO) of Napa County to form the Villa Berryessa Water District (attached). The referenced e-mail noted four outstanding issues relating to the review of the proposal – two of which remain unaddressed and are summarized below.

- Written confirmation on whether the use-permit with the County of Napa to develop the 100-lot subdivision requires you to bond for both the sewer and water systems.
- Written confirmation on whether you have communicated with the Pensus Group regarding the possibility of the Villa Berryessa Water District entering into outside service agreements to provide water and/or sewer services to Putah Creek.

The above issues need to be addressed to complete the review of the proposal. Additionally, as previously discussed, LAFCO requires documentation to help assess the financial capacity of the Miller-Sorg Group to fulfill its stated commitment to cover the monthly sewer and water charges for unsold properties in Villa Berryessa. With this in mind, please provide LAFCO copies of Miller-Sorg Group's latest financial statements.

At your earliest convenience, please contact me by telephone at (707) 259-8645 to discuss LAFCO's review of your proposal and the requests outlined in this letter.

Sincerely,

Keene Simonds
Executive Officer

cc: William Abbott, Abbott & Kindermann
Leslie Z. Walker, Abbott & Kindermann

Attachment: as stated

Juliana Inman, Vice Chair
Councilmember, City of Napa

Jack Gingles, Commissioner
Mayor, City of Calistoga

Cindy Coffey, Alternate Commissioner
Councilmember, City of American Canyon

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

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

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer