



# San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

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# 6g

**AGENDA REPORT**  
Consent | Action

August 7, 2023

**TO:** Commissioners

**FROM:** Priscilla Mumpower, Assistant Executive Officer  
Michaela Peters, Analyst I

**SUBJECT:** **Proposed Memorandum of Understanding with County of San Diego |  
Setting Roles + Responsibilities for New Planning Grant: SALC 2.0**

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## SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider approving a memorandum of understanding (MOU) with the County of San Diego’s Planning and Development Services (PDS) in partnering on a new two-year planning grant. The MOU establishes roles and responsibilities in implementing a recent grant award of \$500,000 from the Department of Conservation as part of the Sustainable Agricultural Lands Conservation Program (“SALC”). This is LAFCO’s second SALC grant – i.e., “SALC 2.0” and will involve performing market and related gap analysis to help inform small farming operations. The MOU designates LAFCO as grant administrator and responsible to perform consultant selection and management, accounting and billing, and quarterly reporting. The MOU designates PDS as program manager and responsible for performing outreach and preparing educational and strategic plans. Both parties would be responsible for preparing the final report and making recommendations. The memorandum also addresses the 10% matching contribution requirement. The memorandum has been reviewed by Commission Counsel and presented to the Commission for approval.

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## **BACKGROUND**

### **Sustainable Agricultural Lands Conservation Program**

SALC was created in 2014 as a component of the California Strategic Growth Council and administered by the Department of Conservation. The SALC program is primarily funded through the California Climate Investments, a statewide program that provides cap-and-trade funds through agricultural conservation acquisition and planning grants for programs intended to reduce greenhouse gas emissions. The principal goals of SALC are stated as:

- Protect at-risk agricultural lands from sprawl development to promote growth within existing jurisdictions, ensure open space remains available, and support a healthy agricultural economy.
- Further the purposes of Assembly Bill 32 by avoiding increases in the greenhouse gas emissions associated with the conversion of agricultural land to more greenhouse gas-intensive nonagricultural uses.

### **Grant Application and Approval | San Diego LAFCO and County of San Diego PDS**

In September 2022, San Diego LAFCO and PDS collaborated in submitting a planning grant application under SALC to perform market analysis for existing and emerging crops – with focus on small-farms – while also identifying government opportunities to help bridge economic gaps. The Commission – notably – authorized the grant proposal as lead applicant. LAFCO was subsequently awarded a two-year grant in the full amount of \$500,000 with work commencing in June 2023 and through September 2025.

## **DISCUSSION**

This item is for San Diego LAFCO to enter into a memorandum of understanding with PDS to guide the implementation of the recently awarded SALC planning grant. The proposed memorandum has been prepared with the assistance of Commission Counsel and in consultation with PDS. Should the Commission proceed with approval, it is expected PDS will consider the memorandum at its next regular meeting.

## **ANALYSIS**

Approval of the memorandum of understanding formalizes roles and responsibilities in proceeding with SALC 2.0. This is highlighted by bisecting and designating specific tasks to San Diego LAFCO and PDS. The memorandum of understanding as proposed commences retroactive to July 1, 2023 and terminates at the end of the grant funding period on September 30, 2023. A summary of key provisions included in the proposed memorandum of understanding follows and further detailed as part of Attachment One.

## Roles and Responsibilities

1. LAFCO's primary responsibility is to act as the grant manager and involves:
  - a. Assuming lead role for Task 1 (Grant Management) and involves fiduciary responsibilities including review, approval, and submittal of invoices and other report to the Department of Conservation as well as execution all professional services contracts for mutually selected consultants.
  - b. Assuming lead role – in consultation and close coordination with PDS – on Task 2 (Market Analysis), and Task 3 (GAP Analysis).
  - c. Co-lead the drafting, finalizing, and presenting the final report for Task 6 (Greening Agriculture | Final Report) with PDS.
  - d. LAFCO also commits to assuming  $\frac{1}{2}$  of the required match contribution – or 5% - and equaling \$25,000.
2. PDS's primary responsibility is to act as program manager and involves:
  - a. Assuming lead role on Task 4 (Outreach and Educational Plan) and Task 5 (Strategic Plan) in consultation with LAFCO.
  - b. Co-lead the drafting, finalizing, and presenting the final report for Task 6 (Greening Agriculture | Final Report) with LAFCO.
  - c. PDS also commits to assuming  $\frac{1}{2}$  of the required match contribution – or 5% - and equaling \$25,000.

## RECOMMENDATION

It is recommended San Diego LAFCO approve the proposed MOU as presented with any desired changes. This recommendation is consistent with Alternative One outlined in the proceeding section.

## ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO through a single motion:

Alternative One (recommended):

Approve the proposed memorandum of understanding provided as Attachment One with PDS with any specified changes.

Alternative Two:

Continue consideration to a future meeting and provide direction as needed.

Alternative Three:

Take no action.

**PROCEDURES**

This item has been placed on San Diego LAFCO's agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified by the Commission.

On behalf of the Executive Officer,



Michaela Peters

Analyst I

Attachment:

- 1) Proposed MOU

**MEMORANDUM OF UNDERSTANDING**

Administration of the State Department of Conservation’s  
Sustainable Agricultural Lands Conservation Program Grant

This Memorandum of Understanding (MOU) is for the purpose of administration of the State Department of Conservation’s Sustainable Agricultural Lands Conservation Program (SALC) Grant Award and is entered into and effective July 1, 2023 between the San Diego County Local Agency Formation Commission (“LAFCO”) and the County of San Diego Planning and Development Services (“PDS”). The LAFCO and PDS are each referred to herein as a “Party” and are collectively referred to herein as the “Parties”.

**RECITALS**

**WHEREAS**, the Sustainable Agricultural Lands Conservation (SALC) program was created in 2014 as a component of the California Strategic Growth Council and administered by the Department of Conservation; and

**WHEREAS**, the SALC program is primarily funded through the California Climate Investments, a statewide program that provides cap-and-trade funds through agricultural conservation acquisition and planning grants for programs intended to reduce greenhouse gas emissions; and

**WHEREAS**, SALC seeks to protect at-risk agricultural lands from sprawl development to promote growth within existing jurisdictions, ensure open space remains available, and support a healthy agricultural economy; and

**WHEREAS**, SALC furthers the purposes of Assembly Bill 32 by avoiding increases in the greenhouse gas emissions associated with the conversion of agricultural land to more greenhouse gas-intensive nonagricultural uses; and

**WHEREAS**, LAFCO recently partnered with the Resource Conservation District of Greater San Diego in completing a grant award under SALC, referred to as “SALC 1.0,” in assessing local agricultural trends in San Diego County; and

**WHEREAS**, the Parties collaborated on submitting a joint-grant proposal under the SALC program to implement a recommendation in SALC 1.0 to perform market and gap analysis to help inform and sustain small farming operations in San Diego County; and

**WHEREAS**, on December 16, 2022, the Department of Conservation formally awarded LAFCO as lead applicant \$500,000.00 —less a 10% match contribution — to proceed with their proposal; and

**WHEREAS**, LAFCO and PDS entered into a Grant Agreement with the Department of Conservation to administer the \$500,000 award (“Grant Agreement”), attached hereto as Attachment A and incorporated herein by reference; and

**WHEREAS**, the Parties wish to memorialize their respective roles, duties, and related expectations in implementing the grant award, hereafter referred as “SALC 2.0”;

**NOW, THEREFORE**, in consideration of the promises, terms, conditions, and covenants contained herein, the LAFCO and PDS hereby agree as follows:

## I. Purpose and Objectives

This MOU is entered into by the Parties for the purpose of partnering in SALC 2.0 to perform market analysis for existing and emerging crops – with focus on small-farms – in San Diego County while also identifying government opportunities to help bridge economic gaps. Specific objectives:

- a. Generate good and timely market information to help smaller farmers – current, prospective, and under-represented – achieve sustained economic success in San Diego County.
- b. General good and timely gap analysis to help local government – starting with the Parties as well as others – to take wise policy actions to support and facilitate sustained economic success for small famers in San Diego County.

All funding and related resources are based on the award of a \$500,000 grant from the State Department of Conservation’s SALC program.

## II. Agreement

The Parties to this MOU agree that:

The Parties will work in good faith and coordinate all activities, both as individual and independent agencies and as Parties under this MOU, to meet the objectives of this MOU. The Parties shall cooperate with one another and work as efficiently as possible in the pursuit of all activities and decisions described in this MOU.

The LAFCO and PDS shall act as the program managers under this MOU, performing actions and responsibilities in close consultation.

## III. Roles and Responsibilities

1. LAFCO shall serve as the grant manager of SALC 2.0.
  - a. As grant manager, LAFCO will be responsible for the following duties:
    - i. Assume lead role for **Task 1** and the administration of the grant and execute all professional services contracts for consultants and/or vendors in performance of SALC 2.0. All consultants and vendors shall be selected by LAFCO in consultation with PDS. LAFCO shall act in good faith to reasonably assure all consultants and vendors are agreeable to PDS with the authority, nonetheless, to proceed as LAFCO deems appropriate.
    - ii. LAFCO shall review, approve, and submit all of the following documents – on behalf of the Parties and partners – to the Department of Conservation:
      - Invoices;
      - Regular progress reports; and
      - The final report signed by both Parties.
    - iii. Maintaining an accounting system that accurately reflects all fiscal

transactions and provides accounting information, retaining all records and required documents as specified in Exhibit C of the Grant Agreement;

- iv. Assume  $\frac{1}{2}$  of the required match contribution – or 5% - and equaling \$25,000.
- v. Assume lead role for **Task 2** and **Task 3**. LAFCO shall act in good faith to reasonably assure all market and gap analyses performed under these tasks – including setting scope, scale, and related implementing assumptions – are agreeable to PDS with the authority, nonetheless, to proceed as LAFCO deems appropriate.
- vi. Share responsibility for **Task 6** with PDS with respect to drafting, finalizing, and presenting the final report to the LAFCO Commission and San Diego County Board of Supervisors among other stakeholder groups. This also includes providing a final report to the Department of Conservation in the form provided in Attachment 3 to the Grant Agreement.
- vii. Complete work on time, as provided in Attachment 2 of the Grant Agreement, and within budget, as provided in Attachment 4 of the Grant Agreement;
- viii. Comply with all terms and conditions of the Grant Agreement, including the General Terms and Conditions provided in Exhibit C and the Special Terms and Conditions provided in Exhibit D;
- ix. Comply with all local, state, and federal law.

2. PDS shall serve as program manager of SALC 2.0.

a. As program manager, PDS will be responsible for the following duties:

- i. Assume lead role for **Task 4** and **Task 5**. PDS shall act in good faith to reasonably assure all outreach as well as preparing the educational the strategic plans performed under these tasks – including setting scope, scale, and related implementing assumptions – are agreeable to LAFCO with the authority, nonetheless, to proceed as PDS deems appropriate.
- ii. Share responsibility for **Task 6** with LAFCO with respect to drafting, finalizing, and presenting the final report to the San Diego County Board of Supervisors and LAFCO Commission among other stakeholder groups. This also includes providing a final report to the Department of Conservation in the form provided in Attachment 3 to the Grant Agreement.
- iii. Assume  $\frac{1}{2}$  of the required match contribution – or 5% - and equaling \$25,000.
- iv. Drafting progress reports and invoices to support PDS expenses quarterly and in the form provided in Attachment 5 to the Grant Agreement;
- v. Using grant funds only for the purposes provided in the Grant Agreement;
- vi. Complete work on time, as provided in Attachment 2 of the Grant Agreement, and within budget, as provided in Attachment 4 of the Grant Agreement;

- vii. Comply with all terms and conditions of the Grant Agreement, including the General Terms and Conditions provided in Exhibit C and the Special Terms and Conditions provided in Exhibit D;
- viii. Comply with all local, state, and federal law.

#### **IV. Term**

1. This MOU will retroactively commence on July 1, 2023 and will terminate at the end of the grant funding period on September 30, 2025.
2. LAFCO and PDS may terminate this MOU for any reason on thirty calendar days' written notice to the other party. The parties are required to meet and confer during the thirty-day period before the effective date of the termination.

#### **V. Indemnification**

To the fullest extent permitted by law, PDS shall indemnify, hold harmless, and when LAFCO requests with respect to a claim, provide a deposit for the defense of, and defend LAFCO, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any (1) damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, (2) injury to any property, or (3) claim alleging mismanagement of funds arising out of or in connection with PDS's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of PDS or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either PDS or its subcontractors, in the performance of this MOU or Grant or its failure to comply with any of its obligations contained in this MOU or Grant, except such loss or damage which is caused by the sole active negligence or willful misconduct of the LAFCO. Such costs and expenses shall include reasonable attorneys' fees due to counsel of LAFCO's choice, expert fees and all other expenses of litigation. PDS shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have not been negligent.

#### **VI. Insurance**

1. During the term of this MOU, PDS shall carry, maintain, and keep in full force and effect (1) Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable and (2) Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
2. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to LAFCO as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this MOU, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
3. At all times during the term of this MOU, PDS shall maintain on file with LAFCO's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming LAFCO and its officers, employees, agents, and volunteers as Additional Insureds. Prior to commencement of work under this MOU, PDS shall file with LAFCO's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing



LAFCO as an Additional Insured.

4. PDS shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this MOU provided however, that LAFCO may waive the provision of Errors and Omissions Insurance by subconsultants in its sole discretion.
5. The general liability insurance required by this MOU shall contain an endorsement naming LAFCO and its officers, employees, agents, and volunteers as Additional Insureds. All of the policies required under this MOU shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to LAFCO. PDS agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

## **VII. Books and Records**

Each Party shall have access to and the right to examine any of the other Parties' pertinent books, documents, papers, or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this MOU, providing that nothing in this paragraph shall be construed to operate as a waiver of any applicable privilege. Each Party shall keep this information confidential to the extent allowed by law.

## **VIII. Notice**

All notices required by this MOU will be deemed to have been given when made in writing and electronically or physically mailed to the respective representatives of the Parties at their respective addresses as follows:

County of San Diego, Planning and Development Services Department  
Dahvia Lynch  
5510 Overland Ave. Suite 310  
San Diego, CA 92123  
[dahvia.lynch@sdcounty.ca.gov](mailto:dahvia.lynch@sdcounty.ca.gov)

San Diego Local Agency Formation Commission  
Keene Simonds  
2550 Fifth Avenue, Suite 725  
San Diego, California 92103-6624  
[Keene.Simonds@sdcounty.ca.gov](mailto:Keene.Simonds@sdcounty.ca.gov)

Any Party may change the address or facsimile number to which such communications are to be given by providing the other Parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail

## **IX. General Provisions**

1. Severability. If any term or provision of this MOU or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be

amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.

2. Non-delegable. PDS shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without LAFCO's prior written consent, and any attempt to do so shall be void and of no effect. LAFCO shall not be obligated or liable under this MOU to any party other than PDS.
3. Waiver. The waiver by LAFCO or PDS of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this MOU shall be deemed to have been waived by LAFCO or PDS unless in writing signed by one authorized to bind the party to be charged with the waiver.
4. Entire Agreement. This MOU is the complete agreement between LAFCO and PDS and may be amended only by written agreement signed by each of the parties involved.
5. Recitals. The recitals stated at the beginning of this MOU shall be conclusive proof of the truthfulness thereof and the terms and conditions of the recitals shall be deemed binding terms and conditions of this MOU.

IN WITNESS THEREOF, the Parties hereto have executed this MOU regarding the implementation of the SALC grant on date first above written.

**“LAFCO”**

**“PDS”**

By \_\_\_\_\_  
Keene Simonds  
LAFCO Executive Officer

By: \_\_\_\_\_  
Dahvia Lynch  
PDS Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Holly O. Whatley