

# SHASTA LAFCO

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**Report to the Shasta LAFCO Executive Committee**

**From: Jan Lopez, Executive Officer**

**Meeting Date: February 19, 2015**

**Agenda Item #: 9. C.**

**Subject: Proposal for 18-Month Agreement for Independent Consultant Executive Officer  
(Action Requested)**

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## **Background**

As we are at the end of this sixteen month term, a proposal for executive officer services for the next 18 months is being submitted for consideration by the Commission. Exhibits A and B (enclosed) address the scope of work and remuneration proposed for providing this work to Shasta LAFCO.

The primary work of the concluding Agreement, completion of SOI/MSR studies for all Shasta County local agencies under the jurisdiction of the Commission, were presented to the Commission prior to the end of December 2014. This fulfilled the primary work task, as determined by the Commission, under the previous Agreement. Because of the November deadline set by the settlement agreement and the large number of agencies requiring these studies, regular executive officer duties were addressed as necessary, but could not be addressed to the extent required to bring Shasta LAFCO current in financial, operational, and other important administrative areas.

The new primary work tasks for the Commission and its staff are identified in the attached proposal and encompass the following main tasks:

- SOI/MSR – Remaining staff work (Exhibit A)
- Duties of the Executive Officer (8 items, Exhibit A)
- Other Specific Services (10 items, Exhibit A)
- Extraordinary Services (Exhibit B)

At the conclusion of the proposed 18-month term, Shasta LAFCO operations are expected to be up to date and functional.

Exhibit B of the proposal presents an updated compensation plan for performing the above work over an 18-month period, beginning March 1, 2015 and ending August 31, 2016. Rates have been projected for the entire 18-month period, and anticipate using only 39% of available revenues for that period for this position. This will be a significant savings from previous executive officer position expenses.

## **Discussion**

It is estimated, now that the first round of SOI/MSR studies have been prepared and nearing completion, that an 18-month term will permit the completion of a long list of necessary

administrative tasks, many that have long been incomplete, inaccurate, or left undone for a number of years.

The proposed tasks for March 2015 through August 2016 will elevate Shasta LAFCO operations and processes to the level that a future consultant experienced in LAFCO but unfamiliar with our local issues and operations could assume the executive officer position.

Due to the intense program of studies over the past 16 months it was only possible to address administrative issues that rose to a level of an emergency need or when the data was needed to assist with the SOI/MSR Updates. In other words, staff was able to provide a Band-Aid to administrative issues. These proposed changes are expected to remove the Band-Aid and complete the much needed healing processes to those identified issues.

### **Conclusion**

LAFCO staff, including the executive officer, are well on the path to addressing and resolving numerous issues identified in Exhibit A – Scope of Work, and at the reasonable expense of approximately 39% of available revenues as shown in the attached Exhibit B – Compensation.

### **Recommendation**

The term of the current executive officer contract was extended to conclude at the end of February 2015. The Commission is recommended to review the attached proposal and its exhibits included with this report when considering the amended contract exhibits for additional executive officer services by the current independent contractor.

### **Attachments:**

- Proposed 18-Month Agreement for Independent Contractor Executive Officer, with Exhibit A and Exhibit B.

**AGREEMENT FOR EXECUTIVE OFFICER SERVICES  
FOR THE SHASTA LOCAL AGENCY FORMATION COMMISSION**

This Agreement is made and entered into by and between the Shasta Local Agency Formation Commission (hereinafter the "Commission") and Jan Lopez (hereinafter the "Contractor"), effective March 1, 2015.

**RECITALS**

A. The Contractor has performed as the appointed Executive Officer for Shasta LAFCO pursuant to that contract dated October 25, 2013, as extended by the Commission to February 28, 2015; and

B. The parties desire to enter into another Agreement for independent contractor professional services, as stated herein.

**TERMS**

**1. Scope of Services**

A. The Contractor shall serve as the Executive Officer of the Commission. In her capacity as Executive Officer the Contractor shall provide those services stated in attached "Exhibit A" which is incorporated herein by reference.

B. In the event of an actual or perceived conflict of interest in the performance of professional services hereunder, the provisions of Government Code 56384 *et seq.* shall apply. The Contractor may engage the services of one or more independent, qualified consultants, as determined by her to be necessary to perform the affected services. Any such services shall be provided to the Commission pursuant to GC 56384 (a) and (d), and receive the Commission's prior approval on a case by case basis. The Commission may charge fees to cover the costs of hiring an alternate executive officer for this purpose.

C. Evaluation of Contractor's work status or end product may be requested from time to time, pursuant to state and federal statutes for independent contractors. Such evaluations may not, under state and federal statutes for independent contractors, review the processes, details, or methods of work used to perform the end product of this Agreement.

**2. Compensation**

A. The Contractor shall be compensated consistent with attached "Exhibit B" which is incorporated herein by reference.

B. The compensation to be paid to the Contractor by the Commission shall be for all professional services to be provided by the contractor except as expressly provided in Exhibit B,

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attached hereto and incorporated by reference. Accordingly, this shall be considered a comprehensive Agreement for professional services with all Contractor's consulting business expenses as may be incurred in the performance of services hereunder, including those services to be performed by others engaged by her, to be the Contractor's responsibility except as expressly provided for in Exhibit B.

C. The Commission shall provide all necessary facilities, services, supplies, and staff required for the normal operation of the agency's regular business. Budgets for special Commission projects or studies as may be assigned to Consultant by the Commission shall have a separate budget for the project or study and be funded from Commission revenues, regular or special, or applicant fees.

**3. Resolution of Fee Disputes.**

Any controversy between the parties involving the construction, application or performance of any of the terms, provisions, or conditions of this Agreement shall, on the written request of either party served on the other, be submitted to mediation before a mediator acceptable to all parties. The mediation shall occur within 45 days of the initial request, unless extended by Agreement of the parties. Should any party commence arbitration or court action based on a dispute or claim to which this Section applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action or arbitration process.

**4. Term of the Agreement.** This Agreement shall be effective as of March 1, 2015, and shall terminate eighteen (18) months from the effective date, or August 31, 2016, unless otherwise terminated in accordance with the provisions of Section 5 hereof. During this term the Commission may request periodic Contractor performance or status reviews of the Scope of Action targeted activities identified in Exhibit A.

**5. Termination of the Agreement.**

A. Either party may terminate this Agreement upon thirty (30) days advance notice to the other party. In the event of such a termination notice the Contractor shall prepare a transitional work plan to be submitted to the Commission that addresses how to manage pending Commission matters in an orderly manner. Failure of the Commission to approve said work plan presented by Contractor will not change the end date of the properly noticed to terminate, except as agreed upon by both parties in writing prior to that end date.

B. Either party may terminate this Agreement for contractual default or breach of contract, as defined statutes, with advance notice, and an opportunity to cure the alleged default or breach, if it is determined that the either party has not performed consistent with

Agreement terms. The Contractor shall be compensated for all services properly rendered as of the effective date of the termination, including authorized reimbursable costs.

C. All Commission property in the Consultant's possession shall be returned to the Commission by any termination effective date served upon either party.

**6. Files and Records.**

A. All files prepared, maintained or used by Contractor pertaining to the Commission shall be and remain the property of Commission.

B. The Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. Commission shall have the right to access and examine such records, without charge, upon reasonable advance notice. Commission shall further have the right to audit such records, to make transcripts therefrom and to inspect all data, documents, proceedings, and activities, also upon reasonable advance notice.

**7. Independent Contractor.** No employment relationship is created by this Agreement. The Contractor shall, for all purposes, be an independent contractor to the Commission pursuant to relevant State rules and regulations of oversight agencies and departments and the California Labor Code (esp., Divisions 2 & 3); and also relevant Federal rules and regulations of oversight agencies and departments and statutes (esp. Treas. Reg. 31.3401 (c)-(1) (b) and Rev. Rule 87-41, 1987-1 C.B 296, esp., section 530 of Revenue Act of 1978). *(Requested to reference relevant codes so they could look them up.)*

**8. Nondiscrimination.** In the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, medical condition, or any other unlawful basis.

**9. Assignment and Delegation.** This Agreement contemplates the unique personal professional services of the Contractor. With the exception of the Contractor's engagement of assistants or consultants as provided herein, neither this Agreement nor any portion thereof shall be assigned or delegated without the prior written consent of the Commission. Delegation to other consultants shall be limited to those situations in which the Contractor is disqualified by virtue of a conflict of interest, or where the Contractor determines to engage the services of a third-party with special expertise in order to provide the services contemplated hereunder. Delegation shall not be made without the prior written approval of the Commission. The Contractor shall supervise delegated work, except where precluded from doing so by virtue of a previously-established conflict of interest.

**10. Nonexclusive Agreement.** Nothing in this Agreement shall be construed to restrict Contractor's right to enter into other Agreements or services to provide services for others, provided such Agreements or services are outside the purview of the Commission's

responsibilities or the duties of this contract and do not interfere with Contractor's timely performance of services to Shasta LAFCO pursuant to the terms of this Agreement or create a conflict of interest.

**11. Insurance.**

A. The Contractor shall maintain in full force and effect a commercial general liability insurance policy that names the Commission members as an additional insured. Contractor shall procure and maintain, at Contractor's own expense during the term here of, liability Insurance with minimum coverage of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate.

B. The Contractor agrees to comply with the Workers Compensation Law if it should have employees involved in the services required by this Agreement.

C. Contractor shall procure and maintain, at Contractor's own expense during the term here of, automobile liability insurance with minimum coverage of not less than one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the aggregate applicable to any personal vehicle used in the provision of services under this Agreement, which policy names the Commission members as an additional insured.

D. The Contractor agrees to notify Commission in the event the limits of its herein required insurance should fall below the coverage stated in paragraph A or C, or if the insurance policies required herein are allowed to lapse and adequate substitute insurance is not obtained.

**12. Indemnification.**

A. Contractor shall indemnify and defend the Commission members, and its officers, employees, and agents against and hold them harmless from any and all claims losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by the Commission, whether for damage to or loss of property, or injury to or death of person, including properties of the Commission and injury to or death of the Commission members officials, employees or agents, arising out of or connected with Contractor's negligence or willful misconduct in or related to the performance of the work described herein.

B. Commission shall indemnify and defend the Contractor and her engaged employees and agents, against and hold them harmless from any and all claims and losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by the Contractor, whether for damage to or loss of property, or injury to or death of person, including properties of the Contractor and injury to or death of the Contractor's employees or agents, arising out of or connected with the Commission's negligence or willful misconduct in or related to the performance of the Contractor's work described herein.

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**13. Conflicts of Interest.** The Contractor shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq. and Section 56384).

**14. Permits and Approvals.** The Contractor shall obtain, at the Contractor's sole cost and expense, personal business permits, or licenses, if any, that may be necessary to the performance of this Agreement.

**15. Severability.** If any term or provision of this Agreement 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 Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

**16. Entire Agreement; Amendments; Headings.**

A. This Agreement supersedes all previous Agreements relating to the subject of this Agreement and constitutes the entire understanding of the parties hereto. Contractor shall be entitled to no other benefits other than those specified herein. Contractor specifically acknowledges that in entering into and executing this Agreement, Contractor relies solely upon the provisions contained in this Agreement and no others.

B. No changes, amendments or alterations to this Agreement shall be effective unless in writing and signed by both parties.

C. The headings that appear in this Agreement are for reference purposes only and shall not affect the meaning or construction of this Agreement.

**17. Notice.** Notice to be given pursuant to this Agreement shall be deemed properly delivered if mailed as follows:

If to the Commission:	2515 Goodwater Ave., Suite A Redding, CA 96002
If to the Contractor:	P.O. Box 374 Igo, CA 96047

**18. Attorney's Fees.** In the event either party commences a lawsuit to enforce or interpret the terms of this Agreement the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs incurred.

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**19. Governing Laws.** This Agreement shall be construed in accordance with the laws of the State of California.

**20. Validity.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

**21. Waiver.** No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision or any other provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

**22. Drafting and Interpretation.** Both parties have had an opportunity to have this Agreement reviewed by their legal counsel of choice, and shall be deemed to have jointly drafted this Agreement. This Agreement shall be therefore be interpreted as though it was jointly drafted.

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**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have caused this Agreement to be executed as of February \_\_\_\_, 2015.

SHASTA LOCAL AGENCY COMMISSION

By: \_\_\_\_\_  
Stephen Morgan, Chairman

Approved as to form:

By: \_\_\_\_\_  
James M. Underwood, General Counsel

JAN LOPEZ, Contractor

By: \_\_\_\_\_  
Jan Lopez

**EXHIBIT A**

**SCOPE OF SERVICES**

- A. STANDARD SERVICES** Contractor shall be authorized to provide the following independent contract services to the Commission (the “Standard Services”):
- 1. General Duties of the Executive Officer:** The Contractor shall perform all general duties and responsibilities as the appointed Executive Officer, as required by statute (GC 56384(a); GC 56010), and as may otherwise be directed by the Commission. Examples of statutory duties include:
    - i. Prepare and present draft and final annual budgets for Commission consideration and approval.
    - ii. Prepare and present, along with the budgets, an annual plan of work for Commission consideration and approval, as may be amended by the Commission from time to time.
    - iii. Prepare and present quarterly fiscal reports to the Commission on the financial health of the agency.
    - iv. Coordinate and manage the regular election of Special District members to the Commission as directed by law.
    - v. Coordinate and budget for the development and presentation of a regular audit of the agency financial records on a cycle determined by the Commission.
    - vi. Maintain financial and official records as directed by statute and Commission policies.
    - vii. Coordinate activities when the Commission requests outside consultant services for special projects or applications as may be required from time to time.
    - viii. Provide liaison services between affected local agencies, LAFCO, and state and federal agencies, as needed.
    - ix. Completion of any remaining municipal services review/sphere of influence study work as may be required.

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- 2. Other Specific Services:** Contractor shall, to the extent agency revenues permit, provide the following additional services in a manner and with a target timing that Contractor determines appropriate, such that each are accomplished within the term of this Agreement, except for those actions of an unusual or extraordinary nature that interfere with Contractor's production of these work tasks.
- i. Provide pre-application services to local agencies and the public as part of their regular executive officer duties.
  - ii. Conduct a review of current established LAFCO fees and submit recommendations for adjustments that match actual work involved. This may result in a reduction or increase of certain select fees for identified services. Final proposal will be reviewed and approved, as appropriate, by the Commission
  - iii. Coordinate and conduct two "LAFCO 101" type workshops for local agencies and the public on LAFCO processes and requirements, one during each fiscal year of the contract (2015 and 2016). Workshops will be tailored to local needs and concerns.
  - iv. Ongoing review and evaluation of agency administrative functions, providing the Commission with recommendations concerning the Commission's administrative and management functions, including financial management and internal controls.
  - v. Review and present for Commission approval an updated Policies and Procedures manual to comply with current codes in such areas as LAFCO processes (56000 *et seq.*), Shasta LAFCO Organization and Operations, CEQA (Public Resources Code), Public Meetings Act, etc.
  - vi. Review and make recommendations concerning a records management policy and procedure for Commission records, including consideration of establishing an electronic tracking program for all projects to follow both time and expenses related to each, and to update electronic files. Currently paper records are kept in files, and a number of un-scanned paper files have been misplaced or lost in the past 20 years.
  - vii. Facilitate completion of negotiations with existing building landlord for an extension of the lease Agreement at the current LAFCO office

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location, while continuing review of and recommendations for future office lease options for conducting Commission business.

viii. Update and properly maintain the Shasta LAFCO agency website as required by GC Section 56150.

**3. Fee-Based Services:** Contractor shall provide application processing services following receipt of local agency Resolutions of Application and private citizen Applications by Petition as may be submitted from time to time. (Note: Hourly rates for this service shall be funded by the application fee deposits and any associated additional fees as may be required and/or requested of applicants, as noted in Exhibit B of this Agreement.)

**4. Availability Expectation:** Contractor shall perform services under this Agreement without limitation as to the hours of performance, or how the services are performed. Contractor shall arrange to be personally available in-office to interested agencies and the general public. As used here, "in-office" refers to both actual use of the LAFCO office and the attendance of LAFCO business while working outside of that office.

**B. EXTRAORDINARY SERVICES:** The Contractor shall also perform additional services for the Commission beyond those stated in "Standard Services" above, as may be requested and agreed upon by both parties. All such proposed additional extraordinary services shall be authorized by the Commission on a case-by-case basis. A separate budget estimate of costs for the proposed services, a potential funding source, and an estimate of the Contractor's time and costs expected for each proposed service(s), in addition to a request for approval of the proposed service or project, shall be presented to the Commission for the purpose of obtaining advance authorization to proceed.

(Note: Contractor reimbursement for time spent on authorized extraordinary services shall be presented in a statement and paid in accordance with Exhibit B of this Agreement, attached hereto and incorporated by reference. Expenses associated with extraordinary services approved by the Commission shall be accommodated within the Commission's adopted budget, as it may be amended from time to time.

**C. PROFESSIONAL CONDUCT & COORDINATION:**

1. The Contractor's performance under this Agreement shall occur in a manner that reflects a professional demeanor, and shall be conducted consistent with the Commission's adopted Policies & Procedures as they may be revised from time to time,

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and in a manner that is in the best interests of the Commission and the local agencies it represents.

2. The contractor shall seek advice from, coordinate with, and cooperate with the opinions of the Commission's General Legal Counsel, with regard to all significant existing and potential legal issues and options that may affect the Commission and present in the course of Contractor's services pursuant to this Agreement. In the interests of presenting an alternate view to the Commission should a conflict of opinions arise between General Legal Counsel and Contractor, Contractor reserves the right to confer with and present to the Commission any alternate legal opinion on matters relating to LAFCO laws, codes, and/or statutory procedures.

**EXHIBIT B**

**COMPENSATION**

- A. **GENERAL.** The Contractor shall provide the independent services stated on Exhibit A, attached or as may be amended from time to time, for the compensation as stated herein.
- B. **STANDARD SERVICES.** The Contractor shall be paid an amount not to exceed \$108,000 for the Standard Services contemplated in this Agreement, exclusive of authorized related reimbursable expenses, as may be added from time to time, and as further provided below.
- i. Contractor shall be paid a flat rate of \$6,000 per month for all Standard Services rendered on behalf of the Commission between March 1, 2015 and August 31, 2016, on or before the first of each month.
  - ii. Except as expressly provided for in this Exhibit B, Contractor's general consulting business operating expenses and Consultant's in-county mileage expenses incurred on behalf of Commission business, shall be borne solely by the Consultant.
  - iii. Out-of-county travel, preauthorized registrations, lodging, and related travel costs incurred while conducting Commission business (i.e., attendance at CALAFCO conferences or workshops), shall be separately reimbursed.
- C. **FEE-BASED SERVICES.** Contractor application processing services related to the processing of applications and proposals submitted to Shasta LAFCO by local agency resolutions or private citizen petitions of applications, as defined in the Cortese-Knox-Hertzberg Local Government Act of 2000, Government Code Section 56000 *et seq.*, and described in Exhibit A of this Agreement, will be funded from applicant fee deposits submitted with said applications, and as may be additionally required from time to time. Contractor hourly rate for this service shall be \$75.00 per hour.

Should projected costs for processing an application exceed Shasta LAFCO's adopted and posted fee or deposit schedule, a written Contractor staff report stating the estimated amount of extra work and justification for requesting additional funds be deposited by the affected applicant(s) for the project will be presented to both the applicant(s) and the Commission for review and approval.

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D. **EXTRAORDINARY SERVICES** The Contractor shall be separately compensated for all extraordinary Commission initiated services (i.e., special studies, reorganization studies, reorganization proposals, etc.) performed on behalf of the Commission as follows:

- i. Contractor shall be compensated for other than Standard Services that have been approved by the Commission at the rate of \$75.00 per hour for services actually performed.
- ii. Any extraordinary expenses incurred by Contractor for which reimbursement is permitted pursuant to Exhibit B shall be billed at cost, without markup, with appropriate supporting documentation, and in a manner consistent, where applicable, with a proper accounting of expenses.