Received by Shasta LAFCO: 12/29/2014

LEGAL SERVICES AGREEMENT BETWEEN THE SHASTA LOCAL AGENCY FORMATION COMMISSION AND UNDERWOOD & WETZEL LAW OFFICES

This Agreement is entered into between the Shasta Local Agency Formation Commission (LAFCO) and Underwood & Wetzel Law Offices, P.C. ("FIRM"), a professional law corporation, for the purpose of legal services.

1. PERIOD OF PERFORMANCE

This Agreement shall begin January 1, 2015, and shall continue until December 31, 2016 or until the completion of the matter(s) and case(s) identified in this Agreement in Attachment A (and any other matter(s) or cases LAFCO, assigns to FIRM as provided in this Agreement), whichever is later, or until this Agreement is terminated pursuant to the provisions of paragraph 6 or paragraph 7.

2. FIRM'S SERVICES AND RESPONSIBILITIES

FIRM shall act as general counsel to LAFCO and its officers and employees in matters or cases assigned to FIRM. This contract does not contemplate that FIRM shall provide litigation services.

FIRM shall make every effort to provide the most cost-effective services possible to LAFCO and shall suggest options and techniques to dispose of cases without unnecessary pleadings or discovery. In this regard, FIRM'S attendance at meetings of the Commission shall be optional, and shall be by telephone when feasible. LAFCO shall, through its Executive Officer, notify FIRM in advance of any meeting when personal attendance of FIRM's representative is needed, or specify when telephone attendance is preferred.

FIRM shall provide LAFCO with the necessary representation by and through services performed by James M. Underwood with support as needed from the FIRM's paralegal staff and other attorneys at no additional charge.

FIRM shall coordinate with LAFCO in performing services under this Agreement and shall report to LAFCO's Commission, or to the Executive Officer of LAFCO ("Executive Officer"), as requested, regarding the matters it is handling.

In the event of litigation to be handled by the FIRM, the following shall apply:

(a) FIRM shall obtain LAFCO Executive Officer's written approval before retaining any consultant or expert witness.

(b) FIRM shall assist LAFCO Executive Officer in settlement evaluations and negotiations, and shall obtain LAFCO Executive Officer's authority before making any settlement proposal on LAFCO's behalf or to the Court or to any other party to the case(s).

(c) FIRM shall immediately notify Executive Officer verbally and in writing when a judgment, verdict or other award is rendered.

(d) FIRM shall provide to LAFCO copies of all substantive pleadings and motions filed with the court or other administrative body, including those submitted by another party. FIRM shall also submit copies of all court rulings.

FIRM shall compile and maintain all backup documentation to support all entries

included in its billings.

3. **REPORTING REQUIREMENTS**

In order to contain costs, many of FIRM's communications with LAFCO will be by way of electronic mail or telephone to LAFCO, which shall be attorney-client privileged and copies of which shall be kept in confidential electronic files by LAFCO and by FIRM. However, certain information must be provided in writing.

FIRM shall provide LAFCO with the following reports for litigation cases, if any:

A. **Case Evaluation, Plan and Budget**

(i) The *Case Evaluation, Plan and Budget* is a confidential independent evaluation of the case that will serve as the basis for developing LAFCO's legal position and strategy and for controlling litigation costs. It will include a budget of foreseeable defense costs and the other information set forth in Attachment B.

(ii) The *Case Evaluation, Plan and Budget* shall be submitted to LAFCO as soon as possible after FIRM's initial analysis of the case, but no later than 60 days after FIRM first appears in the case.

B. **Case Status Reports**

(i) A *Case Status Report* is a summary of the significant actions and developments in the case since the last report or since the submission of the *Case Evaluation, Plan and Budget*, as applicable.

(ii) The *Case Status Report* shall contain the information set forth in Attachment C.

(iii) FIRM shall ordinarily provide *Case Status Reports* approximately every six months. Between reports, FIRM shall telephonically advise LAFCO of important case developments or re-assessment of LAFCO's exposure and, if requested, prepare a *Case Status Report*.

4. **COMPENSATION**

FIRM shall be paid at the hourly rate for the hours actually expended and for expenses actually incurred as identified in this Section of the Agreement for General Counsel services. Costs and fees for litigation shall be handled by separate agreement.

A. **Fees**

FIRM shall provide general counsel legal services at the following billing rates:

James M. Underwood - $145 per hour

B. **Expenses**

LAFCO shall reimburse FIRM for its actual out-of-pocket expenses but without any additional costs for having advanced the funds. Such expenses include but are not limited to the cost of transcripts, service fees, expedited postage or delivery charges, electronic legal research fees, etc.

Non-reimbursable expenses shall include, but not be limited to:

(i) Staff time or overtime for performing secretarial, clerical, or word processing functions.

(ii) Charges for travel time.

5. **BILLINGS AND PAYMENTS**

A. **Billings**

1. FIRM shall submit its itemized billing statement monthly to LAFCO.

2. The original billing statement(s) and one copy shall be submitted to:

Executive Officer
Shasta LAFCO
2516 Goodwater Avenue, Suite A
Redding, California 96002

3. Each billing statement shall be itemized in a time reporting format acceptable to LAFCO and shall include original or genuine copies of invoices for reimbursement of expenses.

4. FIRM shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. FIRM shall make such documentation available to auditors upon request and in accordance with paragraph 11E.

B. **Payments**

1. LAFCO's staff shall review all billing statements.

2. LAFCO shall make its best effort to process payments promptly after receiving FIRM's monthly billing statement, and shall be due within 30 days of receipt. LAFCO shall not pay interest or finance charges on any outstanding balance(s).

6. **TERMINATION**

This Agreement may be terminated in whole or in part at any time that LAFCO, in its sole discretion, deems termination to be in its best interest. LAFCO shall terminate services by delivering to FIRM a written Termination Notice specifying the extent to which services are terminated and the effective termination date. FIRM may terminate on sixty (60) days' written notice. During the sixty (60) day notice period, FIRM shall at LAFCO's request, transfer pending files or complete specified services, which may include a final report.

7. **TERMINATION DUE TO CONFLICT OF INTEREST**

If either FIRM or LAFCO determines a matter of professional conflict has arisen which should not or could not be postponed until the conclusion of the litigation, FIRM or LAFCO may give written notice of immediate termination of this Agreement subject to FIRM's duty to provide adequate representation until the appropriate substitutions can be made.

8. **CLOSING REPORT UPON TERMINATION**

Upon LAFCO's request, FIRM shall deliver a *Closing Report* to LAFCO in the format required by LAFCO, after termination of this Agreement.

9. **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. FIRM shall be entitled to no other benefits other than those specified herein. FIRM specifically acknowledges that in entering into and executing this Agreement, FIRM 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. However, minor amendments that do not result in a substantial or functional change to the original intent of this Agreement and do not cause an increase to the maximum amount payable under this Agreement may be agreed to in writing between FIRM and the LAFCO Executive Officer.

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

10. **NOTICES**

All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to LAFCO or FIRM at the addresses below, or at any other address LAFCO or FIRM shall provide in writing to each other:

If to LAFCO: Executive Officer
Shasta LAFCO
2516 Goodwater Avenue, Suite A

Redding, CA 96002

If to FIRM: James M. Underwood
Underwood & Wetzel Law Offices, P.C.
P.O. Box 2428
Weaverville, CA 96093

11. **ASSIGNMENT**

A. No part of this Agreement or any right or obligation arising from it is assignable without LAFCO's written consent.

B. However, FIRM may retain FIRMs and experts as FIRM deems appropriate after receiving LAFCO's written approval.

12. **STANDARD TERMS AND CONDITIONS**

A. **Indemnification**

FIRM shall indemnify, defend, and save harmless LAFCO, its agents, officers and employees from and against any and all liability expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to losses resulting from FIRM's errors or omissions or any bodily injury, death, personal injury, or property damage (including FIRM's property), in connection with FIRM'S operations or its services, including any workers' compensation suits, liability or expense, arising from or connected with services performed under this Agreement.

B. **Insurance**

FIRM shall indemnify, defend, and save harmless LAFCO, its agents, officers and employees from and against any and all liability (including defense costs and reasonable attorney fees) and claims for damages of any nature whatsoever, including, but not limited to FIRM's negligent acts or omissions, arising out of the performance of this Agreement, except liabilities and claims for damages (including reasonable attorneys fees) resulting from FIRM's professional negligence which may be covered by FIRM's professional liability insurance and except for any liabilities and claims for damages (including reasonable attorneys fees) caused by LAFCO's negligence or willful misconduct.

Such insurance shall be primary to and not contributing with any other insurance maintained by LAFCO, and shall include, but not be limited to:

1. Comprehensive General Liability Insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than $500,000 per occurrence.

   If the above insurance is written on a Claims Made Form, the insurance shall be endorsed to provide an extended reporting period of not less than five years following termination of this Agreement.

2. Professional liability insurance with a liability limit of at least $1,000,000 per claim.

C. **Independent Contractor Status**

1. This Agreement is between the LAFCO and FIRM and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between LAFCO and FIRM.

2. FIRM understands and agrees that all FIRM personnel furnishing services to LAFCO under this Agreement are employees solely of FIRM and not of LAFCO for purposes of workers' compensation liability.

3. FIRM shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any FIRM personnel for injuries arising from services performed under this Agreement.

D. **Governing Laws**

This Agreement shall be construed in accordance with the laws of the State of California.

E. **Record Retention and Inspection**

Within ten (10) days of LAFCO's written request, FIRM shall allow LAFCO or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this Agreement. FIRM shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of five (5) years after termination or completion of this Agreement unless LAFCO's written permission is given to dispose of material prior to the end of such period or until such time as all audits are complete, whichever is later.

F. **Communications with LAFCO**

FIRM understands that the LAFCO is the legally empowered representative of the LAFCO and its officers and employees and FIRM shall not without specific direction from the LAFCO communicate with, advise or represent the LAFCO, its Commission or any other officers or employees.

G. **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.

H. **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.

I. **Confidentiality**

During the term of this Agreement, both parties may have access to information that is confidential or proprietary in nature. Both parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other party or as required by law. This provision shall survive the termination, expiration, or cancellation of the Agreement.

13. **CONTRACT DOCUMENTS**

A. Attachments A through C are attached and incorporated as part of this Agreement. The attachments are titled as follows:

1. Attachment A - List of Assigned Matters and Cases

2. Attachment B - Information required for *Case Evaluation, Plan and Budget*

3. Attachment C - Information required for *Case Status Report*

B. This Agreement shall constitute the complete and exclusive statement of understanding between LAFCO and FIRM and it supersedes all previous written or oral agreements, and all prior communications between the LAFCO and FIRM relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the LAFCO and FIRM have executed this Agreement on the day and year set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this Agreement and to bind the party on whose behalf his/her execution is made.

Shasta LAFCO

Date: _____ _____

STEPHEN MORGAN, Chairman

Underwood & Wetzel Law Offices, P.C.

Date: _____ _____

JAMES M. UNDERWOOD

TAX I.D.#

ATTACHMENT A

TO THE LEGAL SERVICES AGREEMENT BETWEEN THE SHASTA LOCAL AGENCY FORMATION COMMISSION AND UNDERWOOD & WETZEL LAW OFFICES

LIST OF MATTERS AND CASES ASSIGNED TO FIRM

DATE ASSIGNED TO FIRM	MATTER OR CASE NAME	FILING DATE
PRIOR TO AGREEMENT	GENERAL COUNSEL SERVICES	N/A
(ONGOING)		

ATTACHMENT B

TO THE LEGAL SERVICES AGREEMENT BETWEEN THE SHASTA LOCAL AGENGY FORMATION COMMISSION AND UNDERWOOD & WETZEL LAW OFFICES

CASE EVALUATION, PLAN AND BUDGET

OTHER THAN FOR GENERAL COUNSEL SERVICES, this report shall provide a thorough evaluation of the case based on the information then available to FIRM, within 60 days of FIRM's first appearance in the case.

The evaluation shall contain a brief summary of the relevant allegations. It shall also contain a succinct evaluation of LAFCO's legal position, with citations to the controlling legal authorities, but without unnecessary detail.

The evaluation shall include a case plan explaining FIRM's recommended case strategy, including FIRM's suggestions for motions to limit issues or dispose of the case in its entirety, as well as necessary discovery.

The report shall include a budget which indicates the projected cost of each major case activity, including trial.

The report shall contain suggestions to contain costs, with the potential benefits and disadvantages of each cost-saving technique.

FIRM shall also give its recommendations regarding settlement.

Reports for cases with complex fact patterns, multiple parties, or numerous causes of action will be lengthier and more detailed than the reports for simpler cases.

ATTACHMENT C

TO THE LEGAL SERVICES AGREEMENT BETWEEN THE SHASTA LOCAL AGENCY FORMATION COMMISSION AND UNDERWOOD & WETZEL LAW OFFICES

CASE STATUS REPORT

The *Case Status Report* is intended to update LAFCO on major case developments and to modify, when necessary, FIRM's budget or its recommendations regarding case strategy.

A summary of the controlling facts and authorities is sufficient.

The report should indicate FIRM's charges to date and state whether its billings for its activities remain within the previously-established budget.

The report should also state the FIRM's estimate of the LAFCO's exposure in the case and the likely dollar ranges for settlement and verdict, if applicable.