



Solano Local Agency Formation Commission

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DATE: August 11, 2014
TO: Local Agency Formation Commission
FROM: Harry Price, Commissioner
Jim Spering, Commissioner
Nancy Shopay, Alternate Commissioner

SUBJECT: CONTRACT FOR EXECUTIVE OFFICER SERVICES

RECOMMENDATION:

Pursuant to direction received in closed session discussions of public employee appointment, it is recommended that the Commission approves the contract for Executive Officer and directs the Chair to sign on behalf of the Commission.

BACKGROUND:

The LAFCo Executive Officer position became vacant in December 2012. The Commission originally hired through contracted services an interim Executive Officer. The Commission, as part of its closed session discussions of public employee appointment, gave direction to continue its contracted services for Executive Officer and provided direction to the Commission subcommittee to finalize the contract negotiations with E Mulberg & Associates.

DISCUSSION

LAFCo has contracted with E Mulberg & Associates for interim Executive Officer services since December 2012. The key features of the contract were that the consultant would be paid on an hourly rate of \$100 per hour not to exceed \$9,400 per month; however, the consultant agreed to put in any additional time at no expense to LAFCo. The contract was signed by the consultant and Chair Saunderson, with the consultant beginning work on December 17, 2012. The Commission ratified the contract at its next regularly scheduled meeting, which was February 11, 2013.

The Commission, having deliberated on whether to maintain its independent contractor relationship with E Mulberg & Associates or to hire an employee as Executive Officer has provided direction to maintain its independent contractor relationship. The attached contract is for a two year term.

Attachments:

- Consulting Services Agreement for Executive Officer

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 4th^b day of August, 2014, by and between the Solano County Local Agency Formation Commission, hereinafter referred to as "LAFCO" and E Mulberg & Associates hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, LAFCO wishes to have CONTRACTOR serve as the Executive Officer of LAFCO; and

WHEREAS, CONTRACTOR designates Elliot Mulberg, Principal, is willing to serve as the Executive Officer of LAFCO.

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. **Scope of Services:** CONTRACTOR shall provide LAFCO those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.
2. **Term of Agreement:** CONTRACTOR shall serve as the Executive Officer of LAFCO beginning August 17, 2014, through August 16, 2016, for a period of two (2) years. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of LAFCO or CONTRACTOR to terminate this Agreement at any time.
3. **Compensation:**
 - (a) **Rate.** In consideration of CONTRACTOR's fulfillment of the promised work, LAFCO shall pay CONTRACTOR at the rate of \$100 per hour, not to exceed \$10,000 per month.
 - (b) Contractor assumes the risk that satisfactory completion of the scope of work may exceed 100 hours per month. Work performed in excess of 100 hours per month is not payable from LAFCO to Contractor.
 - (c) **Expenses.** CONTRACTOR shall be provided mileage reimbursement at the current IRS rate for all business related travel. No non-business related travel or other expenses will be reimbursed by LAFCO.
4. **Method of Payment.**
 - (a) **Invoices.** All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to the Chair of LAFCO of an itemized billing invoice 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 and a description of the tasks completed during the billing period.

CONTRACTOR shall submit invoices monthly to the Chair who, after review and approval as to form and content, shall return the invoice to the CONTRACTOR within seven (7) calendar days of receipt. The CONTRACTOR shall then submit the invoice to the Solano County Auditor for payment.

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. **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 the Chairman of LAFCO.

(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 (b), above, shall be evidenced

by one or more certificates of coverage or, with the consent of LAFCO's Chairman, demonstrated by other evidence of coverage acceptable to LAFCO, which shall be filed by CONTRACTOR prior to commencement of performance of any of CONTRACTOR's duties.

7. 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.

8. Payment for Work upon Expiration or Termination.

(a) Upon expiration or termination of this Agreement, 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. 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 otherwise terminated, 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.

9. 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.

10. 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. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to LAFCO all written and descriptive matter which contains any such confidential information.

11. **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, through its Commission in the form of an amendment of this Agreement, may authorize extra and/or change 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.

12. **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 Solano 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 Solano. 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.

13. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes

14. **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.'

15. **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.

16. **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.

17. **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.

18. **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, each party shall bear its own attorneys' fees.

19. **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.

20. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, 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.

LAFCO

By _____
John Saunderson
Chair, LAFCO

CONTRACTOR

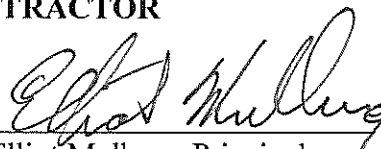
By 
Elliot Mulberg, Principal
E Mulberg & Associates

EXHIBIT A

SCOPE OF WORK

CONTRACTOR shall provide LAFCO with the following services:

I. DESCRIPTION OF SERVICES

CONTRACTOR shall serve as the Executive Officer of LAFCO, which includes but is not limited to the following:

Under policy direction of the Solano Local Agency Formation Commission (LAFCO), organizes, coordinates, and directs all LAFCO functions and activities, provides leadership, policy guidance, strategic direction and day-to-day management of LAFCO; fosters cooperative working relationships with the Commission, the County of Solano, cities and special districts, the public and other agencies; performs related work as assigned.

The LAFCO Executive Officer reports directly to the Commission and performs all duties necessary for the proper and efficient management of LAFCO as determined by the Commission and State law.

The following is used as a partial description and is not restrictive to duties required.

- Plans, organizes and directs the activities of the Solano LAFCO; develops goals, policies and work programs for LAFCO subject to Commission review, directs implementation of policies and procedures; evaluates programs, procedures and systems for overall effectiveness.
- Receives and analyzes applications and petitions for LAFCO action; determines legal acceptability for filings; checks and certifies petitions; conducts complex analysis and prepares written reports and recommendations; attends all LAFCO meetings.
- Represents LAFCO in various negotiations with other governmental agencies, property owners and consultants regarding the authority and functions of LAFCO and the policies, procedures and funding of the Solano LAFCO.
- Prepares and administers LAFCO's annual budget; serves as the LAFCO fiscal officer.
- Works closely with and advises the Commission, staff, the County of Solano, cities, special districts, the public and other agencies to implement LAFCO programs and to ensure compliance with laws and local policies.
- Reviews and authorizes personnel actions; evaluates the work of subordinate personnel; reviews work plans and progress reports and confers with staff to define and solve problems. Responsible for the efficient and effective performance of all contractors.