

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

CONSENT AGENDA ITEM No. 10

DATE: October 14, 2015

TO: Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer 

SUBJECT: Consider Approval: Renewal of Professional Services Agreement by and between the County of Fresno and the Fresno LAFCO

RECOMMENDATION: Authorize Commission Chair to execute Professional Services Agreement

Background

Over the past ten-plus years, under Commission direction, staff has been in the process of taking the necessary steps towards operational independence. On June 15, 2004, the Commission entered into the original Professional Services Agreement (PSA) with the County Board of Supervisors, whereby the Commission agreed to pay the County for staff and various services.

On March 2, 2010, the Third Amendment to the PSA between LAFCo and Fresno County was approved. Section 5.1 established the "Initial Term" of the agreement to begin on March 2, 2010, and end on December 31, 2013. The PSA included two automatic successive one-year terms after the Initial Term, unless the agreement was terminated sooner by one or both parties. The end of the second one-year term will be December 31, 2015.

Discussion

To date the PSA has provided LAFCo with essential services by Fresno County ranging from telephone and computers to timely responses to LAFCo inquiries from various County departments. The PSA was instrumental in 2014 when a nearby construction project accidentally severed a critical fiber optic line near LAFCo's office, effectively cutting off telephone and computer service. Within a few hours, County ITSD staff had relocated LAFCo staff to fully-equipped County offices, ensuring almost no break in the work of the Commission.

Staff recommends that the Commission authorize the chair to execute this agreement in order for LAFCo to continue receiving the identified services by contract with Fresno County. This agreement merely extends the current agreement. There are no other material revisions to the document. The term of the draft PSA is from the day of execution to December 31, 2017 and includes two one-year extensions.

The Fresno County Board of Supervisors will consider this PSA at a meeting prior to the end of calendar 2015.

If the Commission desires to revise, modify, or terminate the PSA, staff recommends that the Commission provide direction.

DEF:cf

**Professional Services Agreement
by and between the County of Fresno and the
Fresno Local Agency Formation Commission**

This Professional Services Agreement ("Agreement") is made and entered into this ____ day of _____, 2015 by and between the COUNTY OF FRESNO, a political subdivision of the State of California (the "COUNTY") and the FRESNO LOCAL AGENCY FORMATION COMMISSION, a State mandated independent agency (the "COMMISSION").

RECITALS

WHEREAS, Division 3 of Title 5 of the California Government Code (commencing with Government Code § 56000), which is also commonly known as the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000 (the "Act"), gives the COMMISSION the power and duty to appoint and assign personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the COMMISSION; and

WHEREAS, The COUNTY and the COMMISSION desire to enter into an agreement whereby the COUNTY, among other things, shall provide certain services to the COMMISSION; and

WHEREAS, the parties intend that this Agreement shall replace and supersede in its entirety that certain Third Amendment and Restated Professional Services Agreement entered into between the parties hereto on the 2nd day of March, 2010.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, the receipt and adequacy of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1.0 COMMISSION'S AUTHORITY AND OBLIGATIONS.

1.1 Control. COMMISSION, acting through its commissioners and alternate commissioners, when applicable, shall exercise control over the assets and operation of the COMMISSION, and shall exercise day-to-day oversight of COMMISSION staff. COMMISSION shall retain the authority over the powers of and the responsibility for performing the duties vested in COMMISSION by law, including the Act, provided however, nothing contained in this Section 1 shall relieve the COUNTY of, or alter COUNTY's responsibility to perform its professional services and to provide resources herein according to the terms and conditions hereof.

1.2 Obligations relating to County Personnel. COMMISSION shall compensate COUNTY, pursuant to Section 3 of this Agreement, for all

professional services and resources that COUNTY provides to COMMISSION hereunder.

2. COUNTY'S OBLIGATIONS.

2.1 Provision of Services. COUNTY shall perform those professional services for the COMMISSION and provide those resources to the COMMISSION that are described in this Agreement. In performing such services for COMMISSION, COUNTY personnel shall exercise the same degree of care that they would in performing the same or similar tasks for the COUNTY, consistent with the COUNTY's general employment policies and practices.

2.2.1 Fiscal Services. The parties hereto acknowledge that the COUNTY's Auditor-Controller/Treasurer-Tax Collector shall annually apportion the net operation expenses of the COMMISSION, seek payment thereof from the appropriate agencies, and recover his or her administrative costs for performing such functions pursuant to Government Code section 56381, as it may be amended and supplemented from time to time, or pursuant to any successor statute that covers the subject of this Section 2.2.1. The provisions of this Section 2.2.1 are declaratory of the COUNTY Auditor-Controller/Treasurer-Tax Collector's authority and duties under the law, as it may be amended and supplemented from time to time, with respect to such functions, and neither limit nor expand such authority or duties under such laws.

2.2.2 COUNTY's Auditor-Controller/Treasurer-Tax Collector also may provide certain auditing and financial services to the COMMISSION upon COMMISSION's request, provided, however, provision of such additional services are at the discretion of the COUNTY's Auditor-Controller/Treasurer-Tax Collector and will only be performed upon written request by the COMMISSION, and written confirmation thereof by the COUNTY's Auditor-Controller/Treasurer-Tax Collector, subject in all instances to the terms and conditions of this Agreement.

2.3.1 Miscellaneous Professional Services. For any other professional services, functions or duties that COUNTY departments normally provide to or perform for the COUNTY, COUNTY, through the relevant COUNTY department, shall provide the same to COMMISSION in the same fashion and at the same level as for COUNTY departments, upon COMMISSION's request and with the COUNTY'S consent to provide such services. Without limiting the generality of the foregoing, the following services are examples:

2.3.1.1 Assessor-Recorder services (e.g., to review maps and legal descriptions for maps and to record documents with the Office of the County Recorder);

2.3.1.2 Computer and Information Technology services (e.g., provision and maintenance of computer hardware, software, and related services, including e-mail, internet, and telephone services);

2.3.1.3 Election Office services (e.g., determining whether individuals are registered voters);

2.3.1.4 Planning services (e.g., electronic land information mapping, preparing mailing lists of property owners and registered voters);

2.3.1.5 Personnel services related to the participation in health insurance benefits plans by COMMISSION employees and as stipulated in Agreement No. 13-764 (MOU between COUNTY and COMMISSION regarding health benefits).

2.3.1.6 Clerk to the Board of Supervisors services relating to the provision of audio/visual support and the provision of an electronic recording of COMMISSION meetings held within the Board of Supervisors chambers.

2.3.1.7 Parking passes to be provided to COMMISSION members and staff allowing for parking during COMMISSION meetings in the COUNTY's designated location for Boards and Commissions parking.

3. COMPENSATION.

COMMISSION shall compensate COUNTY for services performed under this Agreement and shall reimburse COUNTY for any out of pocket expenses or other expenses directly attributable to providing such services, except for non-chargeable expenses and taxes specifically noted hereinbelow.

COUNTY's charges for services to be performed shall be deemed to include the cost of any and all expenses incidental to the performance of services herein, including, but not limited to, office overhead, equipment, supplies and any other indirect costs and expenses. Compensation for any services or reimbursement for expenses shall include any applicable taxes that would otherwise be payable by COMMISSION.

Nothing herein shall be interpreted to mean that COMMISSION shall pay COUNTY for any charge, cost, fee, tax, payment or expense from which COMMISSION would be exempt under the law.

For services performed, COUNTY shall charge COMMISSION at COUNTY's then-current rates for providing the same services to non-COUNTY local governmental entities, which include all of COUNTY's costs for salaries paid and COUNTY benefits provided to COUNTY employees performing such services, provided that the costs of such services charged to COMMISSION shall not exceed the COUNTY's costs of performing such services. Such rates will vary depending on the COUNTY department and staff member(s) providing the

services. Such rates and charges will be in accordance with the Master Schedule of Fees as adopted by the COUNTY Board of Supervisors from time to time. In addition, the parties acknowledge that the COUNTY may change any of its rates from time to time without being required to give COMMISSION prior notice of such changes.

4. INVOICING.

COUNTY, through the relevant COUNTY department, shall invoice COMMISSION, to the attention of COMMISSION's Executive Officer, for services performed and expenses incurred on a monthly basis at the address provided in Section 16 hereinbelow.

Payment shall be made by COMMISSION to the relevant COUNTY department addresses specified in the invoice within thirty (30) days of receipt of a properly completed invoice. Invoices shall be itemized to include the name or initials of the key COUNTY personnel performing the service (if applicable), work performed, date the work was performed, and the rate of payment.

5. TERM.

This Agreement shall become effective on the date executed by COUNTY and shall continue in effect until December 31, 2017 (the "Initial Term"), unless sooner terminated as provided herein. This Agreement shall automatically renew for two successive one-year terms after the Initial Term, unless sooner terminated as provided herein.

6. TERMINATION.

6.1 Non-Allocation of Funds. The terms and conditions of this Agreement, and the services to be provided hereunder, are contingent upon the approval of funds by the appropriating government agencies. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated at any time by either party giving the other party sixty (60) days advance written notice of such non-allocation of funds.

6.2 Material Breach. If either party materially breaches any covenants, terms or conditions of this Agreement in any manner, the breaching party shall have a period of thirty (30) days in which to cure the breach after written notice thereof is given to the breaching party specifying the nature of the breach and requesting that it be cured. In the event the breach remains uncured at the end of the thirty (30) day period after written notice is given, this Agreement may be terminated by the non-breaching party by giving an additional thirty (30) days written notice of termination to the breaching party.

6.3 Without Cause. Either party may terminate this Agreement without cause by giving a minimum of ninety (90) days written notice of termination to the other.

6.4 Mutual Agreement. This Agreement may be terminated at any time by the mutual agreement of the parties hereto.

6.5 Reimbursement Upon Termination. Notwithstanding the above, COUNTY shall be compensated by COMMISSION for services actually provided by COUNTY to COMMISSION, and shall be reimbursed for allowable expenses incurred, up to the termination date of this Agreement.

7. INDEPENDENT CONTRACTOR.

In performance of the work, duties, and obligations assumed by COUNTY under this Agreement, it is mutually understood and agreed that COUNTY, including any and all of COUNTY's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the COMMISSION. COUNTY and COMMISSION shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters of the subject thereof. Because of its status as an independent contractor, COUNTY shall have absolutely no right to employment rights and benefits available to COMMISSION employees. COUNTY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, COUNTY shall be solely responsible and save COMMISSION harmless from all matters related to payment of COUNTY's employees, including compliance with social security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, COUNTY may be providing services to others unrelated to the COMMISSION or to this Agreement.

8. ASSIGNMENT AND DELEGATION.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Neither party shall in any manner assign, transfer, or subcontract or otherwise delegate its obligations under this Agreement without the prior written consent of the other party.

9. SATISFACTORY REPORTS

All reports and documents produced and submitted by COUNTY pursuant to this Agreement must meet with and shall be made to the COMMISSION's reasonable satisfaction.

10. INDEMNIFICATION.

10.1 Each party to this Agreement shall be solely liable for negligent or wrongful acts or omissions of its board, board members, commission, commissioners, alternate commissioners, officers, agents, and employees occurring in the performance hereof, and if either party becomes liable for any loss, cost, expense, claim or damage as a result of the acts or omissions of its board, board members, commission, commissioners, alternate commissioners, officers, agents, or employees, it shall pay such loss, cost, expense, claim, or damage without contribution of the other party.

10.2 Each party to this Agreement agrees to hold harmless, indemnify, and defend (at the request of the other party) the other party, its board, board members, commission, commissioners, alternate commissioners, officers, agents, and employees from any and all losses, costs, expenses, claims, damages, suits, and any other liability for bodily or personal injury to or death of any person or loss of any property resulting from or arising out of or in any way connected with any negligent or wrongful acts or omissions of the respective party, its board, board members, commission, commissioners, alternate commissioners, officers, agents, or employees in performing or failing to perform any work services, or function provided for or referred to or in any way connected with any work, services, or functions under this Agreement.

11. MODIFICATION.

Any matters of this Agreement may be modified from time to time without, in any way, affecting the remainder, but only by the written consent of the parties.

12. PARTIAL INVALIDITY.

Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first place.

13. NO WAIVER.

No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach, or such provision. Failure of COUNTY or COMMISSION to enforce, at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

14. SIGNATURE AUTHORITY.

Each individual executing this Agreement on behalf of COMMISSION and COUNTY warrants that he or she is duly authorized to execute the Agreement on behalf of COMMISSION or COUNTY, as applicable, and will be bound by the terms and conditions contained herein.

15. AUDITS AND INSPECTIONS.

15.1 At any time during normal business hours, upon reasonable notice, and as often as either party or any appropriate state agency, or duly authorized representative thereof may deem necessary, either party shall make available to the other party for examination all of its records and data with respect to all matters covered by this Agreement. Either party shall, upon request by the other party, permit the other party to audit and inspect all such records and data necessary to ensure the other party's compliance with the terms and conditions of this Agreement.

15.2 If this Agreement exceeds Ten Thousand and no/100 (\$10,000.00), both parties shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under contract. (Government Code section 8546.7)

15.3 Such records shall be retained and access to the facilities and premises of either party shall be made available during the period of performance of this Agreement, and for three (3) years after the COMMISSION makes final payment under this Agreement.

16. NOTICES.

The persons having authority to give and receive notices under this Amended and Restated Agreement include the following:

COUNTY:

County Administrative Officer
Hall of Records, Room 304
2281 Tulare Street
Fresno, CA 93721

COMMISSION:

LAFCo Executive Officer
2607 Fresno Street, Suite B
Fresno, CA 93721

Any and all notices between the COUNTY and COMMISSION provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties at the above addresses, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party, provided however, notices of termination of this Agreement that are provided via United States Mail

shall be deemed to have been served when the party to such notice is the addressee of the notice actually receives the notice.

17. VENUE/GOVERNING LAW.

Venue for any action arising out of or relating to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California. Any references in this Agreement to such laws shall mean the laws of the State of California, which are in effect on the Effective Date, and thereafter amended and supplemented from time to time.

18. NO THIRD PARTY BENEFICIARIES.

Notwithstanding anything to the contrary in this Agreement, it is understood between the parties that the COUNTY is providing services herein only to and for the benefit of the COMMISSION and that there shall not be any included third party beneficiaries of this Agreement.

19. NO PERSONAL LIABILITY OF COUNTY PERSONNEL.

COUNTY personnel performing services under this Agreement shall not be personally liable to the COMMISSION for performing or failing to perform his or her services under this Agreement.

20. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the COMMISSION and COUNTY with respect to the subject matter hereof and supersedes all previous agreements, agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

21. COUNTERPARTS.

This Agreement may be executed by the parties hereto in one or more original counterparts, all of which together will constitute one and the same agreement.

Signatures on the following page(s)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

ATTEST:

BERNICE SEIDEL, Clerk,
Board of Supervisors

COUNTY OF FRESNO

By: _____
Deputy

By: _____
Deborah A. Poochigian
Chairman, Board of Supervisors

APPROVED AS TO LEGAL FORM
DANIEL C. CEDERBORG
COUNTY COUNSEL

REVIEWED AND RECOMMENDED
FOR APPROVAL

By: _____
Deputy

By: _____
County Administrative Officer

APPROVED AS TO ACCOUNTING
FORM
VICKI CROW, CPA, AUDITOR-
CONTROLLER/TREASURER-
TAX COLLECTOR

FRESNO LOCAL AGENCY
FORMATION COMMISSION

By: _____

By: _____
Chairman

REVIEWED AND RECOMMENDED
FOR APPROVAL

By: _____
Executive Officer

REVIEWED AS TO LEGAL FORM
KENNETH J. PRICE

By: _____
LAFCo Counsel