



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

September 23, 2013
Agenda Item No. 6b (Action)

September 20, 2013

TO: Local Agency Formation Commission
FROM: Jacqueline M. Gong, Commission Counsel
SUBJECT: Approval of Contract for Interim Executive Officer Services for LAFCO

The Commission will consider approval of a contract for interim executive officer services pending the recruitment of the Executive Officer position vacant as of September 6, 2013.

Discussion

On September 6, 2013, the position of Executive Officer for LAFCO of Napa County became vacant. The Commission gave direction to the recruitment committee to search for an individual to provide interim executive officer services until a replacement is hired. The advisory recruitment committee has explored interim options and through Commission Counsel has negotiated a proposed agreement for such services with Mr. Peter Banning who formerly served as the Marin LAFCO executive officer and has over 25 years of LAFCO experience.

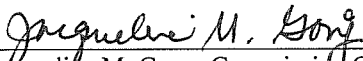
Effective September 24, 2013, Mr. Banning will perform interim executive officer duties for a four month period. He will be paid \$100 per hour and provide services on average of 24 hours per week. The contract maximum is \$45,000.

Recommendation

Consider approval of the following actions:

- 1) The approval of a contract with Peter Banning to provide executive officer services from September 24, 2013 to January 31, 2014 at the rate of \$100 per hour and not to exceed a total compensation of \$45,000; and
- 2) Appoint Peter Banning to be Interim Executive Officer of the Local Agency Formation Commission of Napa County, effective September 23, 2013.

Respectfully submitted,


Jacqueline M. Gong, Commission Counsel

Attachment: Management Services Agreement

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Brad Wagenknecht, Chair
County of Napa Supervisor, 1st District

Brian J. Kelly, Vice Chair
Representative of the General Public

Gregory Pitts, Commissioner
Councilmember, City of St. Helena

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Meliana Inman, Alternate Commissioner
Councilmember, City of Napa

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Executive Officer

Local Agency Formation Commission of Napa County
AGREEMENT NO. _____

MANAGEMENT SERVICES AGREEMENT
(Acting LAFCO Executive Officer)

THIS AGREEMENT is made and entered into as of this 23rd day of September, 2013, by and between the Local Agency Formation Commission of Napa County, a public agency that operates pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000 et seq.), hereinafter referred to as “LAFCO” or “Commission”, and Peter Banning whose mailing address is 219 Rhonda Way, Mill Valley, California, 94941, hereinafter referred to as “Contractor.”

RECITALS

WHEREAS, Government Code Sections 56375 and 56384 provide the Commission shall appoint an Executive Officer and may contract for professional and consulting services to carry out and affect the functions of the Commission; and

WHEREAS, the Commission is conducting a recruitment for a new Executive Officer and the Commission has a critical need to engage the services of Contractor on an interim basis until such time as the recruitment is completed; and

WHEREAS, Contractor is willing to serve on an interim basis as the LAFCO Executive Officer under the terms and conditions set forth below.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. **Scope of Services.** Contractor hereby agrees to perform the functions and duties of the LAFCO Executive Director as specified in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended from time to time, any other applicable statutes, and as authorized by the Commission. Contractor also agrees to oversee the day-to-day operations of LAFCO and be responsible for the executive implementation of the actions of the Commission. Contractor will complete the following projects:

- Complete and present phase 1 of the Central County Regional Municipal Service Review (City of Napa); develop timeline and direct actions for completion of phase 2.
- Conduct and present to the Commission a study evaluating Commission policies and processes for outside service agreement review and approvals, together with recommended changes and alternative approaches.
- Evaluate and prepare a report to the Commission on ways to enhance municipal service reviews, including recommendations on alternative policies and procedures.

1.1 **Retention to Provide Services.** Contractor agrees to devote such time as may be needed to carry out his services and represents he has the necessary expertise to perform such

services and is uniquely qualified. Contractor estimates an average of 24 hours per week to provide the services for which he is engaged.

1.2 Non-exclusive Contract. Nothing in this Agreement shall be construed to restrict Contractor's right to enter into other agreements and provide services for others, provided such agreements or services do not interfere with the timely performance of the services to be provided under this Agreement, create a conflict of interest, or be detrimental to the interests of the Commission; provided, however, Contractor shall not work for any special district or city located within Napa County or Napa County during the term of this Agreement.

2. **Term of the Agreement.**

2.1 Term. Contractor's term of engagement shall be for the period of September 24, 2013 through January 31, 2014, unless terminated earlier in accordance with Paragraphs 6 (Termination) or 9 (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 5 (Insurance), 7 (Indemnification) and 3.6 (Taxes) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring during the term of the Agreement.

3. **Payment.**

3.1 Payment. In fulfillment of the promised work, LAFCO agrees to pay Contractor at the hourly rate of One Hundred dollars (\$100) per hour for services rendered, in an amount not to exceed a total of Forty-five thousand dollars (\$45,000.00) during the term of this Agreement.

3.1.1 Method of Payment. All payments for compensation and expenses shall be made only upon presentation by Contractor to LAFCO's Secretary of a form acceptable to the Napa County Auditor which indicates, at a minimum, Contractor's name, address, Social Security or Taxpayer Identification Number, and itemization of the hours worked by Contractor and the approved hourly rate. Contractor shall submit an itemized form not more often than twice per month to LAFCO's Counsel who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than ten (10) calendar days following receipt. LAFCO shall pay submitted invoices within 15 days of receipt of the correct and complete invoice.

3.2 Travel and Related Expenses and Other Expenses. Contractor shall be reimbursed for necessary business travel at the current IRS mileage reimbursement rate, including travel to Napa County as needed to conduct business for LAFCO.

3.3 Contractor shall abide by the provisions of policies relating to Phones, Computers, and Other Electronic Equipment as agreed to pursuant to the Support Services Agreement between LAFCO and Napa County, and as may be amended. Contractor is subject to LAFCO's Information Technology and Security policy and required protocols to protect the security, integrity and availability of its communications network.

3.4 Records. Contractor shall keep receipts and accurate records of all expenses and charges claimed to be reimbursable under this Agreement, which records shall be suitable in form and content both for LAFCO's records and for Internal Revenue Service purposes.

3.6 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.

4. **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.

5. **Insurance to be Provided by Contractor.**

5.1 Contractor shall obtain and maintain, at his sole cost and non-reimbursable expense, 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 liability insurance coverage, issued by a company licensed (admitted) to transact business in the State of California and/or having an A.M. Best rating of A VII or better:

5.1.1 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 employment of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

5.1.2 Workers' Compensation/Employee Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the California Labor Code, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers providing services on behalf of Contractor and all risks to such persons under this Agreement. By executing this Agreement, Contractor hereby certifies to LAFCO under penalty of perjury under the laws of California that Contractor does not currently have, nor will be engaging during the term of this Agreement, any employees or individuals who are defined as "employees" under the Labor Code. Based upon this certification, the Commission waives the requirement for Workers' Compensation coverage.

5.1.3 General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage), or other form of general liability insurance acceptable to

LAFCO's Counsel, 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.

5.2 Certificates. All insurance coverages referenced in Paragraph 5.1, above, shall be evidenced by one or more certificates of coverage or, with the consent of LAFCO's Counsel, demonstrated by other evidence of coverage acceptable to LAFCO's Counsel, which shall be filed by Contractor with LAFCO prior to commencement of performance of any of Contractor's duties; shall be kept current during the term of this Agreement; shall provide that LAFCO shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium. For the general liability coverage, Contractor shall also file with the evidence of coverage an endorsement from the insurance provider naming LAFCO as an additional insured and waiving subrogation. For the Workers Compensation insurance coverage, Contractor shall file an endorsement waiving subrogation.

5.3 Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, LAFCO's Counsel, which approval shall not be unreasonably denied.

6. **Termination.**

This Agreement may be terminated by either party without cause by giving no less than thirty (30) days prior written notice of such termination to the other party subject to payment by LAFCO of compensation and charges accumulated prior to the effective date of such termination. LAFCO hereby authorizes the Commission Chair to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for the convenience of LAFCO.

7. **Indemnification.** 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 any negligent or reckless acts or omissions or willful misconduct 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 or volunteers. 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. **Return of Property.** On the Termination Date, regardless of how or why this Agreement is terminated, or whenever otherwise reasonably requested by LAFCO, Contractor shall immediately return to LAFCO any or all of LAFCO's property, tangible or intangible, real, personal or mixed, including, but not limited to, any such property that is in Contractor's possession or under Contractor's control or which is used, produced or created by Contractor in rendering services under this Agreement or otherwise, all of which Contractor hereby acknowledges and agrees is and shall be the property of LAFCO. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by Contractor while functioning as the LAFCO Executive Director 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.

9. **Conflict of Interest/ Covenant of No Undisclosed Conflict.** Contractor acknowledges that Contractor is aware of the provisions of Government Code sections 1090, et seq. and sections 1125 et seq., and sections 87100 et seq., relating to conflicts of interest, interests in contracts, incompatible activities and financial conflicts of interest of public officers and employees. Contractor further acknowledges that Contractor is aware of the common law doctrine of incompatibility of offices. Contractor hereby covenants that Contractor presently has no interest that is known to Contractor, or should be known to Contractor, and which has not been disclosed to LAFCO. Contractor further covenants that Contractor shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of Contractor's services hereunder, except to the extent the LAFCO may consent to in writing prior to the acquisition by Contractor of such interest and such acquisition is permitted by law. Contractor further warrants that Contractor is unaware of any financial or economic interest that any public officer, or employee of any public entity, may have in the execution of this Agreement.

10. **Statement of Economic Interest.** Contractor acknowledges that Contractor is aware of the provisions of Government Code sections 87100, et seq. Contractor further acknowledges and understands that LAFCO has developed and approved a Conflict of Interest Code which will require Contractor to file "assuming office", "annual", and "leaving office" Statements of Economic Interest. Contractor agrees to timely comply with all Statements of Economic Interest filing obligations required by California law and by LAFCO's Conflict of Interest Code during the duration of Contractor's engagement with the LAFCO.

11. **Non-Discrimination.** Contractor shall comply with all laws and regulations regarding unlawful discrimination in the performance of this Agreement. Contractor agrees not to discriminate on the ground of, or because of, sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or any condition related thereto, or the use of family care leave.

12. **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, expressed through its Commission Chair. Upon cancellation or expiration of this Agreement, Contractor shall return to LAFCO all written and descriptive matter which contains any such confidential information, except that Contractor may retain for his files a copy of Contractor's work product if such product has been made available to the public by LAFCO.

13. **General Provisions.**

13.1 LAFCO Policies. To the extent not inconsistent with the Agreement, Contractor acknowledges and agrees that Contractor is bound by all of LAFCO's policies as they may be adopted and/or modified by LAFCO from time to time in its sole discretion. In the event of an inconsistency between LAFCO's policies as may be adopted and/or modified, and any provision of this Agreement, the terms of this Agreement shall control.

13.2 Binding Nature of Agreement; Assignment; 3rd Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and permitted assigns. Contractor acknowledges that the services to be rendered by LAFCO pursuant to this Agreement are unique and personal. Accordingly, Contractor may not assign or transfer any of Contractor's rights or obligations under this Agreement without the prior written consent of LAFCO (which consent shall not be unreasonably withheld by LAFCO) and any purported assignment of Contractor's rights or obligations without such written consent shall be void and of no force or effect.

13.3 Amendment. Except as specifically provided herein, this Agreement may be modified or amended only in writing signed by both parties.

13.4 Governing Law; Choice of Forum. This Agreement is executed, delivered and will be performed in the State of California, and the substantive laws of the State of California (without reference to choice of law or conflicts of laws principles) shall govern its interpretation and enforcement. 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 Napa, a unified court, and each of the parties irrevocably consents to jurisdiction and venue in such Court for such purposes. 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. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration of any dispute arising under this Agreement.

13.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

13.6 Construction. It is agreed and understood by LAFCO and Contractor that this Agreement has been arrived at through negotiations, and that within the meaning of Civil Code Section 1654 neither party is to be deemed to be the party which prepared this Agreement.

13.7 Costs and Expenses. Each Party shall bear its own costs, including counsel fees and accounting fees, incurred in connection with the negotiation, drafting and consummation of this Agreement and all matters incident to this Agreement.

13.8 Notice. All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Alternatively, any notice required or desired to be given may be personally served in the same manner as is applicable to civil judicial practice as of the date such notice is given. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Any notice personally served shall be deemed given as of the date of personal service. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

LAFCO
Brad Wagenknecht
Chair
1030 Seminary Drive
Napa CA 94559

CONTRACTOR
Peter Banning
219 Rhonda Way
Mill Valley CA 94941

Any Party may alter the address or addresses to which communications or copies are to be sent to such Party by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

13.9 Counterparts. This Agreement may be executed simultaneously in two (2) counterparts and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Chair, as duly authorized by the Commission and on behalf of Commission, has signed and executed this Agreement and Contractor has signed and executed this Agreement, both in duplicate as of the date hereinabove first written.

By _____

“CONTRACTOR”

Local Agency Formation Commission of Napa
County

By _____
Brad Wagenknecht, Commission Chair

“LAFCO”

Attest: LAFCO Secretary

Approved as to Form: LAFCO Counsel
