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Executive Officer

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Special District Member

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Special District Member

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County Member

Don Tatzin
City Member

July 9, 2008 (Agenda)

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

**Service and Fee Agreements – Initial Study – Sphere of Influence Amendments
Contra Costa Water District and Delta Diablo Sanitation District**

Dear Members of the Commission:

RECOMMENDATION

1. Review draft service and fee agreements and provide input as desired,
2. Authorize LAFCO staff to enter into the service contract, with any changes as desired, with PMC to prepare the Initial Study, and
3. Authorize LAFCO staff to enter into the fee agreement, with any changes as desired, with the City of Pittsburg for costs associated with preparing the Initial Study.

DISCUSSION

At the LAFCO meeting on June 11, the Commission discussed Sphere of Influence (SOI) amendments for Contra Costa Water District (CCWD) and Delta Diablo Sanitation District (DDSD).

The Commission directed LAFCO staff to draft a service agreement with a qualified environmental consultant to prepare an Initial Study relating to the proposed expansion of the SOIs of CCWD and DDSD so that the SOIs correspond to City of Antioch and City of Pittsburg voter approved urban limit lines. Further, the Commission directed staff to prepare a fee agreement between LAFCO and the funding parties.

LAFCO staff has discussed the proposed scope of work and funding arrangements with the affected parties. The City of Pittsburg has agreed to serve as the funding agency for the purposes of the fee agreement and will coordinate payments from the respective funding parties (DDSD and Discovery Builders, Inc).

The recommended consulting firm – PMC – is on LAFCO’s current list of qualified planning firms, and was recently retained by LAFCO to prepare the Initial Study for the proposed incorporation of Alamo. PMC is recommended for a number of reasons, including, but not limited to, the following:

- PMC provides planning, environmental and municipal services to public agencies, and has provided services to over 200 cities, counties and special districts in the State.
- The firm has experience preparing CEQA and NEPA documentation for a range of municipal projects including General Plan updates and amendments, Specific Plans, and LAFCO annexations and sphere of influence amendments.
- PMC has served more than a dozen LAFCO clients throughout California, and possesses a thorough understanding of the Cortese-Knox-Hertzberg Local Government Reorganization Act and local LAFCO policies and procedures.

Attached for the Commission’s consideration are the draft service and fee agreements.

FINANCING

The cost associated with preparing the Initial Study is approximately \$47,000 and will be borne by other parties, including Delta Diablo Sanitation District and Discovery Builders, Inc. The City of Pittsburg has agreed to enter into a fee agreement relating to the Initial Study on behalf of the funding parties.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachments:

- 1- Draft Service Agreement
- 2- Draft Fee Agreement

c: Jerry Brown, CCWD
Gary Darling, DDSD
Marc Grisham, City of Pittsburg
Jim Jakel, City of Antioch
Louis Parsons, Discovery Builders, Inc.

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (“Agreement”) is entered into on _____ (“Effective Date”) by and between the Contra Costa Local Agency Formation Commission (“LAFCO”) and Pacific Municipal Consultants, a California corporation (“Consultant”). LAFCO and Consultant may hereafter be collectively referred to as the “Parties” and individually as a “Party.”

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. Authority. LAFCO is a public agency that operates pursuant to the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000. (Gov. Code, §56000 et seq.) Section 56375 provides that LAFCO may contract for professional and consulting services to carry out and effect the functions of the Commission.

2. Purpose. LAFCO desires to retain Consultant to prepare an initial study (“Initial Study”) and related documents, pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.) and the CEQA Guidelines. (14 Cal. Code Regs., §15000 et seq.) relating to the proposed expansions of the sphere of influence (SOIs) of the Contra Costa Water District (CCWD) and the Delta Diablo Sanitation District (DDSD) to correspond to City of Antioch and City of Pittsburg voter approved urban limit lines (ULLs) as depicted on the attached maps. Consultant has the necessary expertise to perform such services and is willing to perform these services for LAFCO.

3. Services by Consultant. Consultant shall provide those services and carry out that work described in the Service Plan attached hereto as Exhibit A and incorporated herein by reference, in accordance with the Project Timeline attached hereto as Exhibit B and incorporated herein by reference, within the term of this Agreement and subject to all the terms and conditions contained herein. All services will be performed by the personnel/positions identified below:

Tad Stearn, Principal
Michael McCormick, Project Manager/Senior Planner
Traffic and Air Quality Review Manager
Cultural Resources Manager
Architectural Historian
Cultural Resources Analyst
Conservation and Resource Manager
Senior Biologist
Assistant Biologist
Associate Planner
Assistant Planner
GIS Manager
Other Graphics Staff
Other Administrative Assistance

4. Compensation by LAFCO. LAFCO shall pay Consultant the amount set forth in Exhibit C, attached hereto and incorporated herein by reference, subject to all the terms and conditions contained herein.

5. Term. The term of this Agreement will be from the Effective Date through December 31, 2008, unless terminated sooner as provided herein. The obligations contained in Section 12 shall survive termination of this Agreement.
6. Independent Contractor. This Agreement is by and between two independent contractors and is not intended to and may not be construed to create the relationship between the Parties of agent, servant, employee, partnership, joint venture or association.
7. Conflicts of Interest. Consultant, its officers, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by this Agreement to influence any governmental decision in which they know or have reason to know they have a financial interest under Government Code §87100, et seq., or otherwise.
8. Assignments. This Agreement binds the heirs, successors, assigns and representatives of Consultant. Consultant may not assign its rights or delegate its duties under this Agreement without the prior written consent of LAFCO.
9. Non-Exclusive Agreement. Nothing in this Agreement shall be construed to restrict Consultant'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 deleterious to the interests of LAFCO.
10. Compliance with Law. Consultant shall be subject to and comply with all applicable federal, state and local laws and regulations with respect to its performance under this Agreement, including but not limited to, licensing, employment and purchasing practices; and wages, hours and conditions of employment, including nondiscrimination. In the event that Consultant alleges a conflict exists between applicable laws or regulations, Consultant will provide written notice of the alleged conflict to the LAFCO Executive Officer and work with the LAFCO Executive Officer to resolve any conflict.
11. Insurance Coverage. During the entire term of this Agreement, and any extension or modification thereof, Consultant shall keep in effect insurance policies meeting the following insurance requirements:
 - a. Liability Insurance. Throughout the term of this Agreement, and for a minimum of six months following completion by Consultant and acceptance by LAFCO of all services under this Agreement, Consultant shall at its sole cost and non-reimbursable expense, keep in full force and effect (1) comprehensive general liability insurance, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence; (2) personal automobile liability insurance for owned, non-owned and hired automobiles, with a minimum combined single limit coverage of \$500,000 per occurrence; employer's liability insurance, with minimum coverage of \$100,000 per employee; and (3) professional liability insurance, with minimum coverage of \$1,000,000 per claim and \$1,000,000 aggregate. The comprehensive general liability insurance policy will be endorsed to include LAFCO and its officers and employees as additional insureds as to all services performed by Consultant under this Agreement. Said policies will constitute primary insurance as to LAFCO and its officers and employees, so that other insurance policies held by LAFCO or its self-insurance program(s) will not be required to contribute to any loss covered under Consultant's insurance policy or policies unless otherwise noted in this Agreement.

- b. Workers' Compensation. Consultant shall provide workers' compensation insurance coverage for its employees at statutory limits.
 - c. Certificate of Insurance. Before commencing any services under this Agreement, Consultant shall provide LAFCO with certificates of insurance and copies of all applicable endorsements evidencing compliance with the above insurance requirements. If Consultant should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Agreement, then Consultant shall provide (a) current certificate(s) of insurance and copies of the amended endorsements.
 - d. Additional Insurance Provisions. The insurance policies provided by Consultant will include a provision requiring the insurer to provide thirty (30) days' written notice to LAFCO before cancellation or material change of the above specified coverage.
12. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify, save, and hold harmless LAFCO and its governing body, officers, agents and employees ("Indemnitees") from and against any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, sickness, death, or injury to person(s) or property ("Liability") arising from or connected with the services provided hereunder to the extent that such Liability is caused, or claimed or alleged to be caused, by the negligence or willful misconduct of Consultant or its agents, servants, employees, subconsultants or any person under its direction or control. Consultant will reimburse LAFCO for any expenditures, including reasonable attorneys' fees, LAFCO may make by reason of matters that are subject to this indemnification. If requested by LAFCO, Consultant will defend any such claims or litigation at the sole cost and expense of Consultant. Consultant's obligations under this Section shall exist regardless of concurrent negligence or willful misconduct on the part of LAFCO or any other person; provided, however, that Consultant will not be required to indemnify LAFCO for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of LAFCO, its governing body, officers, agents or employees.
13. Inspection. Consultant's performance, place of business and records pertaining to this Agreement are subject to monitoring, inspection, review and audit by authorized representatives of LAFCO, the State of California and the United States Government.
14. Records. Consultant shall keep and make available for inspection and copying by authorized representatives of LAFCO the Consultant's regular business records and such additional records pertaining to this Agreement as may be required by LAFCO. Consultant shall retain all documents pertaining to this Agreement for five years from the date of submission of Consultant's final invoice, for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for the period of this Agreement. Upon request, Consultant shall make these records available to authorized representatives of LAFCO, the State of California, and the United States Government.
15. Reporting Requirements. Pursuant to Government Code section 7550, Consultant shall include in all documents or written reports completed and submitted to LAFCO in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report.
16. Copyrights and Rights in Data. Consultant shall not publish or transfer any materials produced or resulting from services provided under this Agreement without the express written consent of LAFCO. If any material is subject to copyright, LAFCO reserves the right to copyright, and

Consultant agrees not to copyright, such material. If the material is copyrighted, LAFCO reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. If any of the written materials prepared by Consultant pursuant to this Agreement are used or modified for use for any purpose unrelated to the proposed SOI expansions, such use or modification will be at the sole risk of the user.

17. Notices. All notices and other communications required or permitted hereunder to be effective will be in writing and will be deemed to have been duly given and received when delivered by hand, or if mailed, three (3) business days after deposit in the mail, with postage prepaid for registered or certified mail. Written notice to each party will be addressed to:

LAFCO:
Lou Ann Texeira, Executive Officer
Contra Costa LAFCO
651 Pine Street, 6th Floor
Martinez, CA 94553

CONSULTANT:
Philip O. Carter, President
Pacific Municipal Consultants
2729 Prospect Park Drive
Rancho Cordova, CA 95670

18. Termination.

- a. Written Notice. This Agreement may be terminated by LAFCO, in its sole discretion, at any time upon written notice to Consultant, whether or not Consultant is then in default. If LAFCO is in default, Consultant may terminate this Agreement in its sole discretion upon 30-days advance written notice to LAFCO. This Agreement may be canceled immediately by written mutual consent. Upon any such termination or cancellation, Consultant shall, without delay, deliver to LAFCO all materials and records prepared or obtained in the performance of this Agreement.
- b. Failure to Perform; Abandonment. LAFCO, upon written notice to Consultant, may immediately terminate this Agreement should Consultant cease to perform, fail to perform properly or abandon its obligations hereunder. In the event of such termination, Consultant shall, without delay, deliver to LAFCO all materials and records prepared or obtained in the performance of this Agreement, and LAFCO may proceed with the services described in the Service Plan in any reasonable manner it chooses. The cost to LAFCO of completing Consultant's performance will be deducted from any sum due Consultant under this Agreement, without prejudice to LAFCO's rights to recover damages.

19. Entire Agreement; Interpretation. This Agreement contains all the terms and conditions agreed upon by the Parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the Parties. It is further understood that 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.

20. Amendments. This Agreement may be amended only by a written document executed by Consultant and LAFCO.

21. Choice of Law; Venue.

- a. This Agreement is made in Contra Costa County and will be governed and construed in accordance with the laws of the State of California.

b. Any action relating to this Agreement will be instituted and prosecuted in the courts of Contra Costa County, State of California.

22. No Waiver by LAFCO. Inspections or approvals, or statements by any officer, agent or employee of LAFCO indicating Consultant's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said performance, or payments therefore, or any combination of these acts, will not relieve Consultant's obligation to fulfill this Agreement as prescribed; nor will LAFCO be thereby estopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.

23. No Third-Party Beneficiaries. Notwithstanding mutual recognition that services under this Agreement may provide some aid or assistance to third parties, it is not the intention of either LAFCO or Consultant that any such individuals occupy the position of intended third-party beneficiaries of the obligations assumed by either Party.

24. Authorization. Consultant, or the representative(s) signing this Agreement on behalf of Consultant, represents and warrants that it has full power and authority to enter into this Agreement and perform the obligations herein.

25. Signatures.

LAFCO

PACIFIC MUNICIPAL CONSULTANTS

By: _____
Executive Officer

By: _____
Print Name: _____
Print Title: _____

Approved as to Form:

Silvano B. Marchesi
Legal Counsel

By: _____
Print Name: _____
Print Title: _____

[Note: If Consultant is a corporation, two officers must sign. The first must be the chairman of the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code, § 313; Civ. Code, § 1190.) If Consultant is a limited liability company, Consultant shall sign in the manner required of corporations, or by two managers, or by one manager, pursuant to the articles of organization (see Corp. Code, §§ 17151, 17154, 17157.) If Consultant is a partnership, any authorized partner may sign. Signatures by Consultant must be notarized.]

EXHIBIT A SCOPE OF SERVICES

Consultant will prepare an Initial Study in accordance with §15063 of the CEQA Guidelines relating to the proposed expansion of the Spheres of Influence (SOIs) of the Contra Costa Water District (CCWD) and the Delta Diablo Sanitation District (DDSD) so that the SOIs correspond to City of Antioch and City of Pittsburg voter approved urban limit lines (ULLs) as depicted on the attached maps. The Initial Study will conform to and provide analysis and responses to the questions set forth in the Environmental Checklist as contained in the most recent CEQA Guidelines and will conform to all applicable legal authorities and standards of practice. The Initial Study will also include an analysis of impacts of the proposed SOI expansions pertaining to environmental justice and global climate change.

The Initial Study will serve as the basis for the LAFCO Executive Officer, who also serves as the Commission's Environmental Coordinator, to make the Environmental Determination as to whether the Initial Study supports a Negative Declaration (or Mitigated Negative Declaration), or whether an Environmental Impact Report (EIR) is required. The Consultant shall confer with the LAFCO Executive Officer in making the Environmental Determination.

Should the findings of the Initial Study support a Negative Declaration (or Mitigated Negative Declaration), Consultant will also prepare a Negative Declaration or Mitigated Negative Declaration, in compliance with all applicable requirements of CEQA, the CEQA Guidelines and standards of practice.

However, in the event that the Environmental Determination is that an EIR be prepared, further consideration and approval by the Commission will be required.

Consultant's specific tasks are as follows:

TASK 1: Project Initiation/Background Document Collection and Review/Preparation of Project Description

- Attend one kick-off meeting with LAFCO staff to review the scope of services and project timeline under this Agreement and make adjustments as needed.
- At the kick-off meeting, the LAFCO Executive Officer will provide to the Consultant all relevant information and policy documents concerning the proposed SOI expansions, including but not limited to the City of Antioch General Plan and General Plan EIR, City of Pittsburg General Plan and General Plan EIR, Contra Costa County General Plan and General Plan EIR, CCWD's water supply and management plans, and DDSD's conveyance system, wastewater treatment and capital plans, the recently completed LAFCO East and Central County Water and Wastewater Municipal Service Review reports, and LAFCO policies and procedures relating to SOIs. Consultant shall review these documents.

- Within two weeks following the kick-off meeting, Consultant shall prepare and submit to the LAFCO Executive Officer a draft Project Description to be used as the subject of the environmental evaluation in the Initial Study.
- Within one week of receipt of the draft project description, the LAFCO Executive Officer shall provide Consultant with comments and/or changes to the Project Description. Consultant shall incorporate these comments.

TASK 2: Prepare Initial Study and Any Related Documents

- Consultant shall prepare an Administrative Draft Initial Study in accordance with §15063 and the Environmental Checklist found in the most recent CEQA Guidelines.
- Deliver a copy of the Administrative Draft Initial Study to the LAFCO Executive Officer for review of accuracy and adequacy. Upon receipt of comments by the LAFCO Executive Officer, prepare a Final Initial Study, incorporating revisions in response to such comments.
- Based on the Consultant's Environmental Determination, complete either Subtask A or Subtask B, as appropriate.

SUBTASK A:

- If the Consultant determines, based on the Initial Study, that an Environmental Impact Report is required pursuant to CEQA Guidelines Section 15063, deliver one electronic copy and one hard copy of the Final Initial Study to the LAFCO Executive Officer.
- Present the Final Initial Study to LAFCO at one public hearing.

SUBTASK B:

- If the Consultant determines that the Initial Study supports a Negative Declaration (or Mitigated Negative Declaration), Consultant shall prepare a proposed Negative Declaration (or Mitigated Negative Declaration).
- Deliver one electronic copy of the proposed Negative Declaration (or Mitigated Negative Declaration), to the LAFCO Executive Officer. Consultant shall not provide copies of the Administrative Draft or proposed Negative Declaration (or Mitigated Negative Declaration) to any other person without express authorization of the LAFCO Executive Officer.
- Upon receipt of comments by the LAFCO Executive Officer, prepare a proposed Negative Declaration (or proposed Mitigated Negative Declaration), incorporating revisions in response to such comments.
- Deliver one electronic copy and one hard copy of the proposed Negative Declaration (or proposed Mitigated Negative Declaration) to the LAFCO Executive Officer. At the direction of the LAFCO Executive Officer, Consultant will deliver up to 25 additional copies of the subject CEQA Documents.

- At the direction of the LAFCO Executive Officer, work with LAFCO staff to compile the appropriate mailing and distribution lists for documents and notices.
- At the direction of the LAFCO Executive Officer, prepare and distribute a Notice of Intent and proposed Negative Declaration (or proposed Mitigated Negative Declaration) pursuant to CEQA and the CEQA Guidelines.
- Following the public review period, develop and deliver to the LAFCO Executive Officer one copy of the “Response to Comments” document, which sets forth responses to all comments received on the proposed Negative Declaration (or proposed Mitigated Negative Declaration).
- Revise the proposed Negative Declaration (or proposed Mitigated Negative Declaration) as appropriate.
- Deliver one electronic copy and 25 hard copies of the Final proposed Negative Declaration (or proposed Mitigated Negative Declaration) to the LAFCO Executive Officer prior to any public hearing referenced in Task 3.

TASK 3: Public Hearings; Final Revisions; Noticing

- At the direction of the LAFCO Executive Officer, present the Final proposed Negative Declaration (or proposed Mitigated Negative Declaration) to LAFCO at up to two scheduled public hearings.
- At the direction of LAFCO, prepare revised Final Negative Declaration (or Final Mitigated Negative Declaration), incorporating changes requested by LAFCO following the public hearing(s).
- Deliver one electronic copy and one hard copy of the Revised Final Negative Declaration (or Final Mitigated Negative Declaration) to the LAFCO Executive Officer.

EXHIBIT B

PROJECT TIMELINE

Consultant shall perform the services required under this Agreement in accordance with the following timeline. The schedule is subject to modification from time to time by mutual agreement of the Consultant and the LAFCO Executive Officer.

Mid-July 2008	Kick off meeting
July-Aug 2008	Collect and review data; deliver project description
Early Sept 2008	Deliver Administrative Draft Initial Study
Mid Sept 2008	Deliver Public Review Proposed CEQA Documents
Mid Oct 2008	Receipt of comments on Public Review Proposed CEQA Documents
Mid-Nov 2008	Present Final proposed CEQA Documents at LAFCO hearing(s)
Late Nov 2008	Deliver Revised Final CEQA Documents

EXHIBIT C

PAYMENT

1. Payment Limit. Consultant shall complete the services under this Agreement for a fee not to exceed \$47,000 (the "Payment Limit").
2. Payments. Subject to the Payment Limit and as further set forth herein, LAFCO shall pay Consultant for actual time spent by the Project Team performing the activities set forth in the Service Plan at the rates and within task payment limits shown below. LAFCO shall also reimburse Consultant for allowable costs incurred in the performance of those services. Office overhead, preparation of invoices, travel time by the Consultant and incidental expenses other than the allowable costs set forth below will not be compensated.
 - a. Payment for services will be based on the following hourly rates:
 - Tad Stearn, Principal - \$190
 - Michael McCormick, Project Manager - \$120
 - Traffic and Air Quality Review Manager - \$160
 - Cultural Resources Manager - \$140
 - Architectural Historian - \$110
 - Cultural Resources Analyst - \$85
 - Conservation and Resource Manager - \$140
 - Senior Biologist - \$115
 - Assistant Biologist - \$85
 - Associate Planner - \$105
 - Assistant Planner - \$85
 - GIS Manager - \$110
 - Other Graphics Staff - \$85
 - Other Administrative Assistance - \$65
 - b. The payment limits for each task are as follows:
 - (1) Task 1: up to \$3,000 plus associated allowable reimbursable costs
 - (2) Task 2:
 - a) following submittal of draft Initial Study and/or proposed Negative Declaration (or proposed Mitigated Negative Declaration) - up to \$27,000 plus associated allowable reimbursable costs
 - b) following release of Public Review Proposed Initial Study and proposed Negative Declaration (or proposed Mitigated Negative Declaration) respond to comments on Public Review Draft Initial Study – up to \$6,000
 - (3) Task 3: up to \$6,000 plus associated allowable reimbursable costs
 - c. Allowable costs are as follows:
 - (1) Automobile mileage at the then-applicable I.R.S. rate.
 - (2) Direct expenses including document printing, photocopying and map reproduction at the actual cost incurred.

3. Payment Demands.

- a. Except as otherwise set forth in this Agreement, payment for services and reimbursement of allowable costs will be made by LAFCO within 30 days of Consultant's submission of detailed and accurate invoices, which will identify the task completed and payment due for such task, and provide an itemization of allowable costs incurred, accompanied by receipts for all expenditures and an explanation of any mileage costs, including the dates, distance, origin and destination, and purpose of all travel related to this Agreement. Consultant will submit up to four (4) invoices, at the following intervals: (a) Within 30 days of completion of Task 1; (b) within 30 days of completion of Task 2 - Subtask A; (c) within 30 days of completion of Task 2 - Subtask B, and (d) within 30 days of completion of Task 3 and all remaining services required under this Agreement.
 - b. In the event that this Agreement is terminated by LAFCO for any reason other than the Consultant's default, and such termination occurs after Consultant has commenced a task but not yet completed that task, LAFCO will pay Consultant for all services performed up to the date of termination. Such payment is conditioned upon Consultant's submission of a final invoice that sets forth line item descriptions of activities performed, the individual(s) performing the activities and their respective job titles, time spent on each activity (rounded to the nearest one-tenth of an hour), and an itemization of allowable costs incurred, accompanied by the documentation outlined in Section 3.a. above.
4. Right to Withhold. LAFCO has the right to withhold payment to Consultant when, in the opinion of LAFCO expressed in writing to Consultant, (a) Consultant's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) Consultant has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records; or (c) Consultant has failed to sufficiently itemize or document its demand(s) for payment.

PAYMENT AGREEMENT

This Payment Agreement (“Agreement”) is entered into on _____ (“Effective Date”) by and between the Contra Costa Local Agency Formation Commission (“LAFCO”) and the City of Pittsburg, a municipal corporation (“City”). LAFCO and City may hereafter be collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

- A. Government Code §56425 requires that every five years, the Commission shall, as necessary, review and update the sphere of influence (SOI) for each local agency.
- B. Government Code §56430 provides that in conjunction with the SOI updates, the Commission shall prepare a corresponding Municipal Service Review (MSR).
- C. On December 19, 2007, the Commission accepted the East County Water/Wastewater Municipal Service Review (MSR); and on April 9, 2008, the Commission accepted the Central County Water/Wastewater MSR.
- D. The MSR reports identified a number of SOI options and recommendations. Included among these were options to expand the SOIs of Contra Costa Water District (CCWD) and Delta Diablo Sanitation (DDSD) to correspond to the City of Antioch and City of Pittsburg voter approved urban limit lines (ULLs).
- E. SOI expansions are subject to the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”) (Gov. Code, §56000 et seq.).
- F. The subject SOI expansions are a project under the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.) and require environmental review.
- G. Pursuant to Government Code §56383, LAFCO has adopted a schedule of fees (“LAFCO Fee Schedule”) that requires the payment of various fees and deposits associated with processing applications, including a deposit and fees associated with preparation of various environmental review documents under CEQA.
- H. LAFCO has selected a consulting firm, Pacific Municipal Consultants (“Consultant”), to prepare an initial study relating to the proposed SOI expansions (“Initial Study”), pursuant to Section 15063 of the CEQA Guidelines. (14 Cal. Code Regs., §15000 et seq.).
- I. The Commission has authorized the LAFCO Executive Officer to negotiate and execute an agreement with the City to pay the costs associated with the Initial Study.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above recitals are hereby incorporated in and made a part of this Agreement as if fully set forth herein.
2. Term. The term of this Agreement will be from the Effective Date through December 31, 2008, unless terminated sooner as provided herein. The obligations contained in Section 12 shall survive termination of this Agreement.
3. Payment of Consultant Fees and Expenses. In consideration of LAFCO's approval of the Consulting Services Agreement, attached hereto as Exhibit A, and authorization to Consultant to proceed with services under the Consulting Services Agreement, City shall pay LAFCO the total of all fees and expenses due to Consultant for preparation of the Initial Study pursuant to the Consulting Services Agreement and any amendments thereto. Payments will be made in accordance with the following procedures:
 - a. Advance Deposits. City shall make a minimum of three (3) advance deposits with LAFCO. The deposits shall be made in such amounts and no later than the dates set forth in the following schedule:

<u>Deposit Amount</u>	<u>Due Date</u>
First Deposit \$8,000	Within 10 days of receipt of written notice by LAFCO
Second Deposit \$33,000	Within 10 days of receipt of written notice by LAFCO
Third Deposit \$6,000	Within 10 days of receipt of written notice by LAFCO

The First Deposit of \$8,000 is the estimated cost of completion of Tasks 1 plus the estimated cost of all allowable reimbursables. The Second Deposit of \$33,000 is the estimated cost of completion of Task 2 (Subtasks A and B). The Third Deposit of \$6,000 is the estimated cost of completion of Task 3.

- b. Invoicing; Additional Payments. LAFCO will provide a total of three invoices to City. The first invoice will be provided after Consultant has completed Task 1. The second invoice will be provided after Consultant has completed Task 2. The third and final invoice will be provided after the completion of all of the services under the Consulting Services Agreement. The invoices will (1) set forth the amount of payments due to Consultant for the completed tasks; (2) apply the appropriate deposit(s) as a credit against payments due; and (3) attach a copy of the invoice(s) from Consultant for services performed to complete the tasks. In the event that the payments owed to Consultant exceed the funds deposited by City for the tasks for which the payments are due, a balance due from City will be indicated on the invoice. City shall pay the balance due no later than ten (10) days) after receipt of the invoice from LAFCO.

- c. Refund to City. Upon termination of the Consulting Services Agreement, any funds deposited by City in excess of amounts owed to Consultant will be refunded by LAFCO to City.
- d. Form of Payment. Deposits and other payments due from City under this Agreement may be made by City issued check or warrant, made payable to “Contra Costa LAFCO.”__
- e. Late Payments; Nonpayment. LAFCO intends to use the deposits made by City to pay Consultant for services rendered under the Consulting Services Agreement. City acknowledges and agrees that in the event of late payment or nonpayment of one or more deposits, the preparation of the Initial Study by Consultant may be suspended or terminated, in LAFCO’s sole discretion.
4. Relationship to Other Charges. City and LAFCO agree that the payments required under this Agreement are in addition to any other fees applicable to the project set forth on the LAFCO Fee Schedule.
5. Notices. All notices and other communications required or permitted hereunder to be effective will be in writing and will be deemed to have been duly given and received when delivered by hand, or if mailed, three (3) business days after deposit in the mail, with postage prepaid for registered or certified mail. Written notice to each party will be addressed to:
- | | |
|--|---|
| LAFCO: | CITY: |
| Lou Ann Texeira, Executive Officer
Contra Costa LAFCO
651 Pine Street, 6th Floor
Martinez, CA 94553 | Marc Grisham, City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565 |
6. Termination. This Agreement may be terminated by either Party, in its sole discretion, upon thirty (30)-day advance written notice thereof to the other, and may be canceled immediately by written mutual consent. In the event of termination, any excess funds deposited in accordance with this Agreement and not required to pay for any services already performed by Consultant shall be returned to City.
7. Entire Agreement; Interpretation. This Agreement contains all the terms and conditions agreed upon by the Parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the Parties. It is further understood that 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.
8. Amendments. This Agreement may be amended only by a written document executed by LAFCO and City.
9. No Waiver by LAFCO. Inspections or approvals, or statements by any officer, agent or employee of LAFCO indicating City’s performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said performance, or payments therefore, or any combination of these acts, will not relieve City’s obligation to fulfill this Agreement as prescribed; nor will LAFCO be thereby estopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.

10. No Third-Party Beneficiaries. Notwithstanding mutual recognition that this Agreement may provide some aid or assistance to third parties, it is not the intention of either LAFCO or City that any such individuals occupy the position of intended third-party beneficiaries of the obligations assumed by either Party.

11. Choice of Law; Venue.

- a. This Agreement is made in Contra Costa County and will be governed and construed in accordance with the laws of the State of California.
- b. Any action relating to this Agreement will be instituted and prosecuted in the courts of Contra Costa County, State of California.

12. Indemnification. City shall defend, indemnify, save, and hold harmless LAFCO and its officers and employees from any and all claims, costs and liability for any damages, sickness, death, or injury to person(s) or property, including without limitation all consequential damages, from any cause whatsoever arising directly or indirectly from any late payment or nonpayment by City hereunder (including but not limited to the suspension or termination of services to prepare the Initial Study), save and except claims or litigation arising through the sole negligence or sole willful misconduct of LAFCO or its officers or employees.

13. Attorney's Fees. Should LAFCO sue to compel payment(s) by City under this Agreement, City agrees to pay all attorneys' fees, staff costs and all other expenses of litigation incurred by LAFCO in connection therewith, even if City subsequently proceeds to make the payment(s) owed.

14. Authorization. City, or the representative(s) signing this Agreement on behalf of City, represents and warrants that it has full power and authority to enter into this Agreement and perform the obligations herein.

15. Signatures.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by the authorized representatives of the Parties as of the dates shown below.

LAFCO

CITY OF PITTSBURG

By: _____
Executive Officer

By: _____
City Manager

Approved as to Form:

Approved as to Form:

Silvano B. Marchesi
Legal Counsel

City Attorney

By: _____

By: _____