



CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

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June 8, 2022 (Agenda)

Contra Costa Local Agency Formation Commission
40 Muir Road, 1st Floor
Martinez, CA 94553

**June 8, 2022
Agenda Item 14**

**Policy, Procedures, and Application Form - Fire Protection Services Contract
Government Code Section 56134**

Dear Members of the Commission:

BACKGROUND: In 2016, the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 was amended to include Government Code (GC) §56134 (Attachment 1) providing for *fire protection service by contract outside a public agency's jurisdictional boundary* in accordance with Senate Bill 239 (Hertzberg) (Attachment 2). This statute applies to fire protection agreements/contracts, which are contracts or agreements for the exercise of new or extended fire protection services outside a public agency's boundary. The statutes apply to these contracts if the contract would transfer responsibility for providing services in more than 25% of a public agency's service area to another public agency, or changes the employment status of more than 25% of the employees of a public agency affected by the contract.

Unlike GC §56133 which addresses *services by contract outside city and district boundaries*, GC §56134 requires additional information, including a fire protection contract, plan for service, independent comprehensive fiscal analysis, and a public hearing.

While Contra Costa LAFCO is well versed in processing GC §56133 out of agency service (OAS) applications, we have not yet received or processed an application to provide fire protection service by contract outside a public agency's jurisdictional boundary. However, we anticipate receiving such an application in the near future.

In order to process OAS fire service applications, Contra Costa LAFCO should adopt the following: 1) policy specific to GC §56134; 2) Procedures for Provision of Fire Protection Services by Contract; and 3) LAFCO application form specific to GC §56134.

Draft Policy - Out of Agency Fire Service Contract Service

Contra Costa LAFCO has numerous policies and procedures pertaining to LAFCO operations (e.g., powers & duties; Commissioner's role, rules & procedures; budget & finances, etc.); general policies & procedures (e.g., spheres of influence, island annexations, services plans, municipal service reviews, latent powers, agricultural & open space preservation, etc.); application processing procedures (e.g., boundary changes, incorporation, district formation, etc.); and other policies and procedures. However,

LAFCO does not currently have a policy addressing OAS fire contracts. LAFCO staff drafted a minor amendment to the Commission's OAS policy to include reference to GC §56134 (Attachment 3).

Draft Procedures for Provision of Fire Protection Services by Contract (Out of Agency Service)

Contra Costa LAFCO adopted application processing procedures for most boundary changes, out of agency service (GC §56133), activation of latent powers, and other LAFCO actions with the exception of GC §56134. In general, these procedures provide guidelines regarding initiation, application, commission proceedings, and conducting authority (protest) proceedings.

Although both GC§ 56133 and GC§ 56134 address OAS, the requirements pertaining to fire service contracts are substantially different. LAFCO staff drafted procedures specific to OAS fire protection service contracts (Attachment 4).

Draft 56134 Application/Questionnaire

Contra Costa LAFCO adopted application forms for *Annexation, Detachment or Reorganization, Sphere of Influence Amendments, Out of Agency Service* (GC §56133), *Activation of Latent Powers, District Formation, and Incorporation*. Given the complexity and uniqueness of OAS fire service contracts, it is beneficial to have an application form specific to fire service contracts. LAFCO staff drafted an application specific to fire protection contracts for the Commission's review consideration (Attachment 5).

Proposed Amendment to Contra Costa LAFCO Schedule of Processing Fees and Deposits

LAFCO staff recommends adding a new fee for processing OAS fire service contracts. LAFCO staff anticipates it will bring the new fee schedule to the Commission for adoption at the next LAFCO meeting.

RECOMMENDATIONS: 1) Approve amendment to LAFCO Commissioner Handbook Section 2.1, Policies and Standards to include a reference to GC §56134; 2) adopt procedures pertaining to OAS fire service contracts; and 3) approve a new LAFCO application/questionnaire specific to OAS fire service contracts.

Sincerely,

Lou Ann Texeira
LAFCO Executive Officer

Attachments

1. Government Code §56134
2. SB 239 (Hertzberg)
3. Proposed Amendment to LAFCO 2.1 Policies and Standards (GC §56134)
4. *Draft Procedures for Provision of Fire Protection Services by Contract (Out of Agency Service)*
5. Draft Contra Costa LAFCO Application Form – OAS Fire Protection Service Contract

Government Code Section 56134

(a)(1) For the purposes of this section, “fire protection contract” means a contract or agreement for the exercise of new or extended fire protection services outside a public agency’s jurisdictional boundaries, as authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or by Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except those contracts entered into pursuant to Sections 4143 and 4144 of the Public Resources Code, that does either of the following:

(A) Transfers responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement.

(B) Changes the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement.

(2) A contract or agreement for the exercise of new or extended fire protection services outside a public agency’s jurisdictional boundaries, as authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except those contracts entered into pursuant to Sections 4143 and 4144 of the Public Resources Code, that, in combination with other contracts or agreements, would produce the results described in subparagraph (A) or (B) of paragraph (1) shall be deemed a fire protection contract for the purposes of this section.

(3) For the purposes of this section, “jurisdictional boundaries” shall include the territory or lands protected pursuant to a fire protection contract entered into on or before December 31, 2015. An extension of a fire protection contract entered into on or before December 31, 2015, that would produce the results described in subparagraph (A) or (B) of paragraph (1) shall be deemed a fire protection contract for the purposes of this section.

(b) Notwithstanding Section 56133, a public agency may provide new or extended services pursuant to a fire protection contract only if it first requests and receives written approval from the commission in the affected county pursuant to the requirements of this section.

(c) A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

(1) In the case of a public agency that is not a state agency, the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency’s current jurisdictional boundaries.

(2) In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency’s current jurisdictional boundaries and be approved by the Director of Finance.

(3) In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

(d) The legislative body of a public agency or the director of a state agency shall not submit a resolution of application pursuant to this section unless both of the following occur:

(1) The public agency does either of the following:

(A) Obtains and submits with the resolution a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract.

(B) Provides, at least 30 days prior to the hearing held pursuant to paragraph (2), written notice to each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers of the proposed fire protection contract and submits a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract.

(2) The public agency conducts an open and public hearing on the resolution, conducted pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5) or the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), as applicable.

(e) A resolution of application submitted pursuant to this section shall be submitted with a plan which shall include all of the following information:

(1) The total estimated cost to provide the new or extended fire protection services in the affected territory.

(2) The estimated cost of the new or extended fire protection services to customers in the affected territory.

(3) An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers.

(4) A plan for financing the exercise of the new or extended fire protection services in the affected territory.

(5) Alternatives for the exercise of the new or extended fire protection services in the affected territory.

(6) An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory.

(7) The level and range of new or extended fire protection services.

(8) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory.

(9) An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed.

(10) A determination, supported by documentation, that the proposed fire protection contract meets the criteria established pursuant to subparagraph (A) or (B) of paragraph (1) or paragraph (2), as applicable, of subdivision (a).

(f) The applicant shall cause to be prepared by contract an independent fiscal analysis to be submitted with the application pursuant to this section. The analysis shall review and document all of the following:

(1) A thorough review of the plan for services submitted by the public agency pursuant to subdivision (e).

(2) How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services.

(3) Any other information and analysis needed to support the findings required by subdivision (j).

(g) The clerk of the legislative body of a public agency or the director of a state agency adopting a resolution of application pursuant to this section shall file a certified copy of the resolution with the executive officer.

(h) (1) The executive officer, within 30 days of receipt of a public agency's request for approval of a fire protection contract, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request does not comply with the requirements of subdivision (d), the executive officer shall determine that the request is incomplete. If a request is determined incomplete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete.

(2) The commission shall approve, disapprove, or approve with conditions the contract for new or extended services following the hearing at the commission meeting, as provided in paragraph (1). If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(i) (1) The commission shall not approve an application for approval of a fire protection contract unless the commission determines that the public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its jurisdictional boundaries, except as specified in paragraph (2).

(2) The commission may approve an application for approval of a fire protection contract where the commission has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions or class of services, if the commission conditions its approval on the concurrent approval of sufficient revenue sources pursuant to Section 56886. In approving a proposal, the commission shall provide that, if the revenue sources pursuant to Section 56886 are not approved, the authority of the public agency to provide new or extended fire protection services shall not be exercised.

(j) The commission shall not approve an application for approval of a fire protection contract unless the commission determines, based on the entire record, all of the following:

(1) The proposed exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001 and 56300.

(2) The commission has reviewed the fiscal analysis prepared pursuant to subdivision (f).

(3) The commission has reviewed any testimony presented at the public hearing.

(4) The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

(k) At least 21 days prior to the date of the hearing, the executive officer shall give mailed notice of that hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted and shall post the notice of the hearing on the commission's Internet Web site.

(l) The commission may continue from time to time any hearing called pursuant to this section. The commission shall hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at any hearing called and held pursuant to this section.

(m) This section shall not be construed to abrogate a public agency's obligations under the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1).
(Amended by Stats. 2016, Ch. 165, Sec. 1. (AB 2910) Effective January 1, 2017.)

Senate Bill No. 239

CHAPTER 763

An act to amend Sections 56017.2 and 56133 of, and to add Section 56134 to, the Government Code, relating to local services.

[Approved by Governor October 10, 2015. Filed with
Secretary of State October 10, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 239, Hertzberg. Local services: contracts: fire protection services.

Existing law prescribes generally the powers and duties of the local agency formation commission in each county with respect to the review approval or disapproval of proposals for changes of organization or reorganization of cities and special districts within that county. Existing law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under existing law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances.

This bill would, with certain exceptions, permit a public agency to exercise new or extended services outside the public agency's jurisdictional boundaries pursuant to a fire protection contract, as defined, only if the public agency receives written approval from the local agency formation commission in the affected county. The bill would require that the legislative body of a public agency that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided, that a proposal by a state agency be initiated by the director of the agency with the approval of the Director of Finance, and that a proposal by a local agency that is currently under contract for the provision of fire protection services be initiated by the local agency and approved by the Director of Finance. The bill would require, prior to adopting the resolution or submitting the proposal, the public agency to enter into a written agreement for the performance of new or extended services pursuant to a fire protection contract with, or provide written notice of a proposed fire protection contract to, each affected public agency and recognized employee organization representing firefighters in the affected area, and to conduct a public hearing on the resolution.

The bill would require the commission to approve or disapprove the proposal as specified. The bill would require the commission to consider, among other things, a comprehensive fiscal analysis prepared by the executive officer in accordance with specified requirements.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

This bill would incorporate additional changes to Section 56133 of the Government Code proposed by AB 402 that would become operative if this bill and AB 402 are both enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 56017.2 of the Government Code is amended to read:

56017.2. "Application" means any of the following:

(a) A resolution of application or petition initiating a change of organization or reorganization with supporting documentation as required by the commission or executive officer.

(b) A request for a sphere of influence amendment or update pursuant to Section 56425.

(c) A request by a city or district for commission approval of an extension of services outside the agency's jurisdictional boundaries pursuant to Section 56133.

(d) A request by a public agency for commission approval of an extension of services outside the agency's jurisdictional boundaries pursuant to Section 56134.

SEC. 2. Section 56133 of the Government Code is amended to read:

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public

Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) Contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) Contracts for the transfer of nonpotable or nontreated water.

(3) Contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

SEC. 2.5. Section 56133 of the Government Code is amended to read:

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service is proposed.

SEC. 3. Section 56134 is added to the Government Code, to read:

56134. (a) (1) For the purposes of this section, "fire protection contract" means a contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries, as authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or by Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except those contracts entered into pursuant to Sections 4143 and 4144 of the Public Resources Code, that does either of the following:

(A) Transfers responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement.

(B) Changes the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement.

(2) A contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries, as authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except those contracts entered into pursuant to Sections 4143 and 4144 of the Public Resources Code, that, in combination with other contracts or agreements, would produce the results described in subparagraph (A) or (B) of paragraph (1) shall be deemed a fire protection contract for the purposes of this section.

(3) For the purposes of this section, "jurisdictional boundaries" shall include the territory or lands protected pursuant to a fire protection contract entered into on or before December 31, 2015. An extension of a fire protection contract entered into on or before December 31, 2015, that would produce the results described in subparagraph (A) or (B) of paragraph (1) shall be deemed a fire protection contract for the purposes of this section.

(b) Notwithstanding Section 56133, a public agency may provide new or extended services pursuant to a fire protection contract only if it first requests and receives written approval from the commission in the affected county pursuant to the requirements of this section.

(c) A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

(1) In the case of a public agency that is not a state agency, the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.

(2) In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the Director of Finance.

(3) In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

(d) The legislative body of a public agency or the director of a state agency shall not submit a resolution of application pursuant to this section unless both of the following occur:

(1) The public agency does either of the following:

(A) Obtains and submits with the resolution a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract.

(B) Provides, at least 30 days prior to the hearing held pursuant to paragraph (2), written notice to each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers of the proposed fire protection contract and submits a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract.

(2) The public agency conducts an open and public hearing on the resolution, conducted pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5) or the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), as applicable.

(e) A resolution of application submitted pursuant to this section shall be submitted with a plan which shall include all of the following information:

(1) The total estimated cost to provide the new or extended fire protection services in the affected territory.

(2) The estimated cost of the new or extended fire protection services to customers in the affected territory.

(3) An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers.

(4) A plan for financing the exercise of the new or extended fire protection services in the affected territory.

(5) Alternatives for the exercise of the new or extended fire protection services in the affected territory.

(6) An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory.

- (7) The level and range of new or extended fire protection services.
 - (8) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory.
 - (9) An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed.
 - (10) A determination, supported by documentation, that the proposed fire protection contract meets the criteria established pursuant to subparagraph (A) or (B) of paragraph (1) or paragraph (2), as applicable, of subdivision (a).
- (f) The applicant shall cause to be prepared by contract an independent comprehensive fiscal analysis to be submitted with the application pursuant to this section. The analysis shall review and document all of the following:
- (1) A thorough review of the plan for services submitted by the public agency pursuant to subdivision (e).
 - (2) How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services.
 - (3) Any other information and analysis needed to support the findings required by subdivision (j).
- (g) The clerk of the legislative body of a public agency or the director of a state agency adopting a resolution of application pursuant to this section shall file a certified copy of the resolution with the executive officer.
- (h) (1) The executive officer, within 30 days of receipt of a public agency's request for approval of a fire protection contract, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request does not comply with the requirements of subdivision (d), the executive officer shall determine that the request is incomplete. If a request is determined incomplete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete.
- (2) The commission shall approve, disapprove, or approve with conditions the contract for new or extended services following the hearing at the commission meeting, as provided in paragraph (1). If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.
- (i) (1) The commission shall not approve an application for approval of a fire protection contract unless the commission determines that the public agency will have sufficient revenues to carry out the exercise of the new or

extended fire protection services outside its current area, except as specified in paragraph (2).

(2) The commission may approve an application for approval of a fire protection contract where the commission has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions or class of services, if the commission conditions its approval on the concurrent approval of sufficient revenue sources pursuant to Section 56886. In approving a proposal, the commission shall provide that, if the revenue sources pursuant to Section 56886 are not approved, the authority of the public agency to provide new or extended fire protection services shall not be exercised.

(j) The commission shall not approve an application for approval of a fire protection contract unless the commission determines, based on the entire record, all of the following:

(1) The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001 and 56300.

(2) The commission has reviewed the comprehensive fiscal analysis prepared pursuant to subdivision (f).

(3) The commission has reviewed any testimony presented at the public hearing.

(4) The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

(k) At least 21 days prior to the date of the hearing, the executive officer shall give mailed notice of that hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted and shall post the notice of the hearing on the commission's Internet Web site.

(l) The commission may continue from time to time any hearing called pursuant to this section. The commission shall hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at any hearing called and held pursuant to this section.

(m) This section shall not be construed to abrogate a public agency's obligations under the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1).

SEC. 4. The Legislature finds and declares that, with respect to fire protection contracts subject to this act, the provisions of this act are not intended to change, alter, or in any way affect either of the following:

(a) The existing jurisdiction of a local agency formation commission over proceedings that involve the provision of prehospital emergency medical services.

(b) Mutual aid agreements, including mutual aid agreements entered into pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 1 of the Government Code) or the Fire Protection District Law of 1987 (Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code).

SEC. 5. The Legislature finds and declares that Section 3 of this act, which adds Section 56134 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act provides for notice to the public in accordance with existing provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and will ensure that the right of public access to local agency meetings is protected.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 56133 of the Government Code proposed by both this bill and Assembly Bill 402. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 56133 of the Government Code, and (3) this bill is enacted after Assembly Bill 402, in which case Section 2 of this bill shall not become operative.

2.1. POLICIES AND STANDARDS

J. Policies for Out of Agency Service Agreements

1) Introduction

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires a city or special district to obtain written approval from LAFCO prior to providing new or extended service outside its jurisdictional boundary, with certain exceptions (Gov. Code §§56133 and 56134). ~~This section Gov. Code §56133 of the CKH~~ sets forth a two-pronged test or criteria under which requests for out of agency services may be approved: either in response to an existing or impending threat to the health or safety of the public, or in anticipation of a later change in organization (i.e., annexation) for areas within the subject agency's sphere of influence (SOI). Specific procedures for submitting an out of agency service application can be found in Contra Costa LAFCO's Commissioner Handbook, section 3.15 Provision of Services by Contract. GC §56134 applies to certain contracts or agreements for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries.

2) Purpose

The purpose of these policies is to guide the Commission in reviewing city and district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes establishing policies and procedures to ensure that the application meets one of the two criteria under which approval may be granted, and to ensure consistency with respect to form, review and consideration of requests.

3) Objective:

The objective of these policies is to ensure that the extension of services by cities and districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Contra Costa County. Out of agency service is generally not intended to support new development.

4) Out of Agency Service Policies: General Statements

- a) Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is generally preferred to out of agency service.
- b) LAFCO will consider applicable Municipal Service Reviews (MSRs) and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.
- c) Requests for out of agency service agreements are subject to the applicable provisions of the California Environmental Quality Act (CEQA).
- d) Commission approval is not required for cities or districts to provide new or extended services outside their jurisdictional boundaries if any of the exemptions apply in accordance with §56133(e) – see Section 3.15 for

exceptions. The Commission encourages cities and districts to work with the Executive Officer in determining when the statutory exemptions may apply.

5) Form of Request

a) All Requests

Requests to authorize out of agency service shall be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement (DAA) and waiver of property owner protest rights. The recorded DAA shall run with the land and be binding on all future owners of the property. An indemnification agreement will be required with each application.

All requests for out of agency service are subject to the applicable provisions of CEQA.

b) Requests Due to Health or Safety Emergency

The Commission may authorize a city or district to provide new or extended services outside their jurisdictional boundary and outside or inside their SOI in response to an existing or impending threat to public health or safety ("emergency" – e.g., failing well or septic system) with documentation from the County Environmental Health Division, and in accordance with §56133(c) and LAFCO procedures. If LAFCO approves an emergency out of agency service request, and the city or district fails to initiate the provision of services within six months of the Commission's approval, the out of agency service approval shall expire, unless otherwise specified by LAFCO.

The Commission authorizes the LAFCO Executive Officer, in consultation with the Chair or Vice Chair, to approve a city's or district's request for out of agency service if there is an existing or impending public health or safety emergency, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made if the following criteria are met:

- The property is currently developed
- The lack of service being requested constitutes an *immediate* (i.e., approval needed within two months) health and safety concern as documented by County Environmental Health
- There are physical restrictions on the property that prohibit a conventional service delivery method (i.e., septic tank, private well, etc.)

c) Requests in Anticipation of Annexation

An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the Commission if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:

- Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011
- Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable
- Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO

If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later annexation if the agency provides LAFCO with a resolution of intent to annex, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.) which demonstrate that out of agency service is an intermediate step toward eventual annexation.

6) Review of Request

The Executive Officer shall review the request in accordance with CKH and LAFCO's policies and procedures.

7) Consideration of Request

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public hearing for Commission consideration in accordance with CKH and LAFCO's policies and procedures. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following factors:

- a) The ability of the applicant to extend the subject service to the affected land without adversely affecting current service levels within the existing service boundary.
- b) If the request is to address a health or safety emergency, whether the documentation satisfactorily demonstrates compliance with CKH and LAFCO policies and procedures.
- c) If the request is in anticipation of future annexation, whether the application provides adequate assurances in furtherance of a future annexation.
- d) The application's consistency with the policies and general plans of affected local agencies.

- e) The application's effect on growth and development within and adjacent to the affected land; and whether the out of agency service extension will contribute to premature development of fringe areas or development in areas designated for non-urban uses.
- f) Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Commission and the Executive Officer, as authorized by the Commission, may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.

8) Out-of-Agency Fire Protection Service Contract – Gov. Code §56134.
LAFCO is charged with reviewing and acting on out-of-agency fire service protection contracts that provide new or extended fire protection services outside an agency's jurisdictional boundaries if the contract meets one of the following thresholds: (1) the contract transfers responsibility for providing services in more than 25% of a public agency's service area to another public agency; or (2) changes the employment status of more than 25% of the employees of a public agency (Gov. Code §56134).

These applications must include a comprehensive fiscal analysis and a plan for services.

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CONTRA COSTA LAFCO

3.16 – Provision of Service by Contract (Fire Protection Services)

Purpose

To provide guidance to Contra Costa LAFCO in reviewing fire protection contracts or agreements for the exercise of new or extended fire protection services outside a public agency's boundaries per Government Code ("GC") §56134.

Background and Authority

Senate Bill (SB) 239 (Hertzberg) which was enacted on January 1, 2016, amended GC §§56017.2 and 56133 and added GC §56134.

Per SB 239, a public agency, under specified circumstances, must receive written approval from the LAFCO in an affected county before providing new or extended fire protection services outside the agency's jurisdictional boundaries if the contract results in either of the following conditions:

(1) transfers responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or (2) changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

Initiation of Proceedings

A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

- (1) In the case of a public agency that is not a state agency, the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current jurisdictional boundaries.
- (2) In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current jurisdictional boundaries and be approved by the Director of Finance.
- (3) In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

Requirements

In addition to a resolution of application, the application must also include the following pursuant to GC §56134:

A. Plan for Services that includes the following information:

- (1) The total estimated cost to provide the new or extended fire protection services in the affected territory.
- (2) The estimated cost of the new or extended fire protection services to customers in the affected territory.
- (3) An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers.
- (4) A plan for financing the exercise of the new or extended fire protection services in the affected territory.

- (5) Alternatives for the exercise of the new or extended fire protection services in the affected territory.
- (6) An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory.
- (7) The level and range of new or extended fire protection services.
- (8) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory.
- (9) An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed.
- (10) A determination, supported by documentation, that the proposed fire protection contract meets the criteria established pursuant to subparagraph (A) or (B) of paragraph (1) or paragraph (2), as applicable, of subdivision (a).

B. Independent Fiscal Analysis that reviews and documents all of the following:

- (1) A thorough review of the plan for services submitted by the public agency pursuant to subdivision (e).
- (2) How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services.
- (3) Any other information and analysis needed to support the findings required by subdivision (j).

Procedures

Within 30 days of receipt of the application, the LAFCO executive officer shall determine whether the application is complete or incomplete. If the application is deemed incomplete, the executive officer shall notify the applicant, specifying those parts of the application that are incomplete.

Once the application is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete.

At least 21 days prior to the date of the hearing, the executive officer shall give mailed notice of that hearing to each affected public agency, and to any interested party who has filed a written request for notice with the executive officer. Also, at least 21 days prior to the date of that hearing, notice of the hearing will be published in a newspaper of general circulation and posted on the Commission's website.

Commission Proceedings

At a noticed public hearing, the Commission considers information presented by the affected public agencies, public comment, and the LAFCO staff report and recommendations.

The Commission has authority to approve, approve with condition(s), or deny a fire protection services contract. If the Commission determines the requirements pursuant to GC §56134 have been met and approves the proposal, the Commission shall adopt a resolution of approval with or without terms and conditions.

Reconsideration – Following action by LAFCO, a person or agency may file a written request for reconsideration pursuant to GC §56895, LAFCO's local policies and procedures, and required fees. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration.

CONTRA COSTA LAFCO APPLICATION FIRE PROTECTION SERVICE CONTRACT

A certified copy of the resolution of application from the public agency requesting approval of the fire protection contract must be submitted with this application form.

AFFECTED PUBLIC AGENCY (APPLICANT):

PUBLIC AGENCY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

AGENCY FUNCTION: ☐ AGENCY PROVIDING SERVICE; ☐ AGENCY (IES) RECEIVING SERVICE;

☐ OTHERS (SPECIFY) _____

AFFECTED PUBLIC AGENCY:

PUBLIC AGENCY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

AGENCY FUNCTION: ☐ AGENCY PROVIDING SERVICE; ☐ AGENCY(IES) RECEIVING SERVICE;

☐ OTHERS (SPECIFY) _____

OTHER AFFECTED PUBLIC AGENCY(IES), IF APPLICABLE:

PUBLIC AGENCY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

AGENCY FUNCTION: ☐ AGENCY PROVIDING SERVICE; ☐ AGENCY(IES) RECEIVING SERVICE;

OTHERS (SPECIFY) _____

OTHERS (SPECIFY)

*OAS Fire Protection Service
Contract Application Form*

The following questions relate to the fire protection contract to allow LAFCO Commissioners and staff to adequately assess the contract. You may include additional information which you believe is pertinent. Please use additional sheets as necessary.

1. Please provide a description of the fire protection contract and the general terms and conditions of the agreement.

2. A) Please provide a description of the services to be provided including an assessment of the level of service, whether it is anticipated to increase, remain the same, or reduce the service level.

- B) Are any of the services identified above "new" service(s) to be provided by the public agency proposed to provide the service? If yes, please provide a description of the new service(s) to be provided and explain how the affected public agency will provide and fund the service(s).

3. Please provide a description of any special arrangements related to the fire protection contract such as start-up costs, automatic or mutual aid, joint powers agreements, shared facilities and staffing, etc. if applicable.

4. Please provide a description of the assumption of assets and liabilities, if applicable.

5. Please provide a description of the use (assumption/leasing) of facilities and equipment associated with the fire protection contract, including any upgrades and/or new facilities and equipment, if applicable.

6. Please provide a description of the assumption of personnel and identify current and proposed staffing:

	Service Provider		Affected Agency	
	Current	Proposed	Current	Proposed
Safety				
Number of paid personnel				
Number of paid reserves				
Number of non-paid reserves				
Non-Safety				
Number of Admin/Support				

7. Please provide a description of retirement obligation, if applicable.

8. Please identify current data for the following:

	Service Provider	Affected Agency
District Population		
Registered Voters		
Acres/Square Miles		
Most recent ISO rating		

9. Please describe prevalent and uses in each affected agency; list predominate General Plan designations.

10. Plan for Service:

Please provide a detailed description of the plan for service pursuant to Government Code (GC) §56134(e). The plan for service should include, but not be limited to, all of the following information:

- a) The total estimated cost to provide the new or extended fire protection services in the affected territory.
- b) The estimated cost of the new or extended fire protection services to customers in the affected territory.
- c) An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers.
- d) A plan for financing the exercise of the new or extended fire protection services in the affected territory.
- e) Alternatives for the exercises of the new or extended fire protection services in the affected territory.
- f) An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory.
- g) The level and range of new or extended fire protection services.
- h) An indication of when the new or extended fire protection services can feasibly be extended to the affected territory.
- i) An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is approved.
- j) Determination supported by documentation that the proposed fire protection contract meets either of the 25% thresholds.

11. Fiscal Impact Analysis:

Pursuant to GC §56134(f) an independent fiscal impact analysis must be submitted that includes, at a minimum, a 5-year projection of revenues and expenditures. The information should include a discussion of the sufficiency of existing revenues to provide the new or extended fire protection service, costs of providing services, a comprehensive review of all retirement plans impacting the affected agencies and employees including any unfunded retirement obligations and the identification of retirement debt, if any, and the responsible agency or agencies to assume such debt. If financing is to occur, please provide any special financial arrangement between the agencies.

12. Environmental Review

What environmental review has been conducted? If exempt, please provide a copy of the agency's Notice of Exemption.

Certification: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this evaluation of service extension to the best of my ability, and that the facts, statement and information presented herein are true and correct to the best of my knowledge.

SIGNED: (Applicant)

NAME:

POSITION TITLE:

AGENCY NAME:

DATE:

SIGNED: (Other Affected Public Agency)

NAME:

POSITION TITLE:

AGENCY NAME:

DATE:

SIGNED: (Other Affected Public Agency)

NAME:

POSITION TITLE:

AGENCY NAME:

DATE:

REQUIRED EXHIBITS TO THIS APPLICATION:

1. Copy of the agreement/contract.
2. Resolution of Application including the following:
 - a. Required documentation contract transfers service responsibility of more than 25%

Fire Protection Contract
Application Form

- of an affected public agency's service area or affects more than 25% of the employees of an affected public agency pursuant to GC§ 56134(a)(1)(A) and (B)
 - b. Required written agreement from affected agency (adopted resolution) and from the employee organization (letter signed by the President of the employee organization) or proof that notice was provided or delivered to each affected agency and employee organization and all documents related to the applicants hearing on the resolution of application pursuant to GC §56134(d)
 - c. Plan for service pursuant to GC §56134(e)
 - d. Independent fiscal impact analysis pursuant to GC §56134(f)
3. Map(s) showing the jurisdictional boundaries of all affected public agencies.

Please submit the completed form and related information to:

Contra Costa Local Agency Formation Commission
40 Muir Road, 1st Floor
Martinez, CA 94553
Attn: Lou Ann Texeira,
LAFCO Executive Officer
LouAnn.Teixeira@lafco.cccounty.us
(925) 313-7133