

CONTRA COSTA LAFCO

3.15 Provision of Services by Contract (Out of Agency Service)

Effective January 1, 1994, 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 LAFCO (Gov. Code §56133). The definition of city and special district services can be found in Gov. Code §56074. In accordance with these definitions, services include the public facilities necessary to perform the service function. Requirements, procedures and exemptions are described below.

REQUIREMENTS

General Statements:

LAFCO may approve, with conditions, a request for out-of-agency service in one of two situations: 1) in response to an existing or impending threat to the health or safety of the public (inside or outside the agency's SOI), or 2) if the affected territory is within the agency's sphere of influence (SOI) and is in anticipation of a later annexation

Out of agency service requests must 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) that includes waiver of property owner protest rights. An indemnification agreement will be required with each application. The recorded DAA shall run with the land and be binding on all future owners of the property. All requests for outside of agency service agreements are subject to the applicable provisions of CEQA.

Requests Due to Health or Safety Emergency:

Requests due to health or safety emergencies must be accompanied by documentation from the County Environmental Health Division, pursuant to §56133 and Contra Costa LAFCO policies. The Commission shall notify any alternative service provider in accordance with §56133. Emergency situations may occur within or outside the agency's SOI.

Requests in Anticipation of an Annexation:

Out of agency service applications must be accompanied by a change of organization (e.g., annexation) or reorganization application, including an approved tax sharing agreement. This dual application requirement may be waived in certain situations by the Commission in accordance with LAFCO policies (Section 2.1, subsection J).

The proponent will be charged the applicable change of organization fee prior to LAFCO's consideration of the out of agency service agreement, plus a 30% surcharge fee in conjunction with the out of agency service proposal. For applications where the dual application requirement is waived, the applicant will be charged the standard out of agency processing fee.

PROCEDURES

Review of Request: The Executive Officer shall review and determine within 30 days of receipt whether the request to authorize out of agency service is complete. If a request is deemed incomplete, the Executive Officer shall immediately notify the applicant and identify the information needed to accept the request for filing.

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. The public hearing will be scheduled for the next regular meeting of the Commission for which adequate notice can be given but no later than 90 days from the date the request is deemed complete. 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 factors in accordance with the Government Code and LAFCO policies.

LAFCO 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.

Consideration of Emergency Request: The Commission authorizes the Executive Officer, in consultation with the Chair or Vice Chair, to approve an emergency request (e.g., failing well or septic system) for out of agency service, 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 in accordance with LAFCO policies (Section 2.1, subsection J).

EXEMPTIONS

LAFCO authority over out-of-agency services does not apply to 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 non-potable or non-treated water; and
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 conservations purposes, or directly support agricultural industries. However, prior to extending surplus water that will support or induce development, the agency must receive written approval from LAFCO.
4. An extended service that a city or district was providing on or before January 1, 2001.
5. A local publicly owned electric utility providing electric services, which 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.