



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

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August 1, 2011
Agenda Item No. 5b (Consent/Action)

July 26, 2011

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer
Kathy Mabry, Secretary

SUBJECT: Approval of a Professional Services Agreement for Video and Audio Recording and Related Amendment to the Fiscal Year 2011-12 Budget
The Commission will consider approving a professional services agreement with Napa Valley Television to provide video and audio recording services for all regular and special meetings in 2011-12. The Commission will also consider making a related amendment to its fiscal year budget to increase its communication expense account by \$2,470.

Local Agency Formation Commissions (LAFCOs) are authorized under California Government Code Section 56380 to enter into agreements or contracts with public and private parties for services necessary to fulfill its regulatory and planning responsibilities.

A. Background

LAFCO of Napa County (“Commission”) currently records audio from all regular and special meetings held in the County of Napa’s Board Chambers using FortheRecord (FTR) digital software; no video is recorded. The Commission’s access to FTR is entirely dependent on utilizing the County’s license and related audio equipment. This includes accessing one of the County’s network servers to playback and reproduce FTR recordings. No direct costs are associated with the current recording system.

Beginning in January 2008, the County has been gradually phasing out its use of FTR in favor of utilizing on-demand video/recording streaming powered by Granicus software. The “phase-out” is nearly complete and the Commission is one of the few remaining boards/committees accessing the Board Chambers that continue to record with FTR. The phase-out also now means – *as of the beginning of the current fiscal year* – the County will no longer provide technical assistance to FTR users (emphasis).

Lewis Chilton, Vice Chair
Councilmember, Town of Yountville

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

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

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

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

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

B. Discussion

The County's decision to phase-out FTR highlights the need for the Commission to make alternative arrangements as it relates to recording regular and special meetings. The County has graciously invited the Commission to utilize its Granicus audio and video recording services at no direct cost in terms of equipment and licensee fees given our existing and planned use of the Board Chambers. Making use of Granicus, however, does have indirect costs to the Commission. This includes allocating resources to provide appropriate training to staff, which would be considerable since, among other things, all agenda items would need to be posted on the County website as a precondition to accessing Granicus; this would be separate and in addition to posting agenda items on the Commission's website. Using Granicus, additionally, would further "tie" the Commission to the County with regards to the recording, storage, and distribution of LAFCO records. This tie would contrast with the Commission's recent efforts to invest in stand-alone resources to reinforce its status as an independent agency. Relevant examples include investing in an independent website and electronic document management system.

With the preceding comments in mind, staff has explored others alternatives to utilizing the County's Granicus software system for recording services. This process ultimately led staff to contact the Napa County Transportation and Planning Agency (NCTPA), which contracts with Napa Valley Television to audio and video record its meetings. NCTPA's arrangement involves paying a flat hourly fee to Napa Valley Television to provide a camera operator to audio/video record all meetings along with providing post-production services as needed for broadcasting on public access Channels 27 and 28. The hourly-fee is currently \$150.00 and includes the camera operator's travel time to and from meetings as well as set-up and equipment use.¹ The hourly-fee also incorporates providing a master copy of the audio/video recording and on-line streaming at www.napavalleytv.org.

Staff has contacted Napa Valley Television to inquire about establishing a similar audio/recording system implemented for NCTPA. Napa Valley Television is agreeable and has worked with staff in preparing the attached draft professional services agreement. The professional services agreement, if approved, would commit Napa Valley Television to audio/video record all Commission meetings so long as notice is provided no less than seven business days in advance. Billing will be made quarterly and based on the current \$150.00 flat hourly fee along with any authorized post-production charges.² Post-production costs may include \$25.00 to provide a custom title for opening and closing each show for airing on public access television and \$20.00 to provide a reproduced digital video/audio disc. There is no charge to air broadcasts filmed by Napa Valley Television. However, broadcast times are scheduled on a first-request basis. The Commission's meeting time, first Monday of each month at 4:00 P.M., is currently unavailable. Napa Valley Television, alternatively, is holding two-hour blocks to

¹ The flat hourly rate of \$150.00 includes time associated with set-up and tear-down.

² It is proposed the first two hours associated with audio/video recording Commission meetings will be charged on a non pro-rated basis (e.g. a 45 minute meeting (set-up to pack-up) will be billed at \$150.00). Time expended beyond the first two hours will be billed on a pro-rated basis.

rebroadcast Commission meetings on the second and fourth Tuesday at 8:00 P.M. and the second and fourth Wednesday at 1:00 P.M.

C. Analysis

Staff believes the proposed agreement with Napa Valley Television to audio/video record Commission meetings is a superior alternative to continuing to rely on the County for recording services for reasons outlined in the preceding paragraphs. Staff also believes the agreement will help the Commission markedly improve customer service by transmitting meeting broadcasts to a currently-unreached segment of the population that relies on public access television to stay apprised on local government activities. The agreement will also allow the Commission to make available live and on-demand audio/video recordings on the agency website by establishing direct links to on-line recordings hosted by Napa Valley Television.

Staff anticipates the total annual cost of the agreement with Napa Valley Television will not exceed \$2,470. This amount has been calculated by staff based on a \$150.00 hourly flat fee and assumes the Commission will continue to meet every other month through the end of the fiscal year along with holding one special meeting in November for the biennial workshop. It is assumed each regular meeting should not take longer than two hours to record while the special meeting should not take longer than four hours to record. An additional \$70.00 charge is also included to pay an annual membership fee.

Given the associated costs, staff recommends the Commission pair its approval of the proposed agreement with Napa Valley Television to include a budget amendment to increase its communication expense account by \$2,470. Staff proposes the Commission absorb the added expense, which would increase the already-budgeted operating shortfall in 2011-2012 from (\$27,081) to \$(29,551). The net effect in absorbing this added expense to the Commission projected unreserved fund balance at the end of the fiscal year, however, is less than two percent.³

D. Alternatives for Action

The following three alternative actions are outlined for Commission consideration.

Alternative One: Approve by motion the (a) attached draft professional services agreement with Napa Valley Television with any changes and (b) amendment to the 2011-2012 budget to increase the communication expense account (52070000) by \$2,470.

Alternative Two: Continue consideration to a future meeting and provide direction to staff for more information as needed.

Alternative Three: Take no action.

³ The Commission's June 6, 2011 adopted budget for 2011-2011 anticipates the unreserved fund balance will decrease from \$161,077 to \$133,996. An updated calculation performed on July 25, 2011 projects the beginning year unreserved fund balance will actually total \$166,304; an additional savings of \$5,227.

E. Recommendation

It is recommended the Commission proceed with Alternative One as outlined in the preceding section.

Respectfully submitted,

Keene Simonds
Executive Officer

Kathy Mabry
Secretary

Attachments:

- 1) Draft Professional Services Agreement
- 2) Adopted FY 2011-2012 Budget

**LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
AGREEMENT NO. _____**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this FIRST day of AUGUST, 2011, by and between the LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "LAFCO", and NAPA VALLEY TELEVISION, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, LAFCO wishes to obtain specialized services, as authorized by Government Code section 56380, in order to AUDIO AND VIDEO RECORD REGULAR AND SPECIAL PUBLIC MEETINGS FOR PURPOSES OF ARCHIVAL AND BROADCAST, and

WHEREAS, CONTRACTOR is willing to provide such specialized services to LAFCO under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, LAFCO hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve LAFCO in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on JULY 30, 2012 unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause) or 10 (Other Termination); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to LAFCO shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention).
2. **Scope of Services.** CONTRACTOR shall provide LAFCO those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.
3. **Compensation.**
 - (a) **Rates.** In consideration of CONTRACTOR's fulfillment of the promised work, LAFCO shall pay CONTRACTOR at the rates set forth in Exhibit "B".
 - (b) **Expenses.** No travel or other expenses will be reimbursed by LAFCO.

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement shall be made only upon presentation by CONTRACTOR to LAFCO of an itemized billing invoice in a form acceptable to the LAFCO EXECUTIVE OFFICER, which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices QUARTERLY to LAFCO EXECUTIVE OFFICER who, after review and approval as to form and content, shall submit the invoice FOR PAYMENT no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that LAFCO may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the LAFCO EXECUTIVE OFFICER upon request. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not, be deemed LAFCO employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that LAFCO may monitor the work performed by CONTRACTOR. LAFCO shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, LAFCO, in addition to any other rights or remedies which LAFCO may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide LAFCO with certification of all such coverages upon request by the LAFCO EXECUTIVE OFFICER.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. [Reserved.]

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased, and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of the LAFCO EXECUTIVE OFFICER, demonstrated by other evidence of coverage acceptable to the LAFCO EXECUTIVE OFFICER, which shall be filed by CONTRACTOR prior to commencement of performance of any of CONTRACTOR's duties; shall reference this Agreement by its LAFCO number; shall be kept current during the term of this Agreement; shall provide that LAFCO shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming LAFCO, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of LAFCO shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the

insurance provided is primary coverage to LAFCO with respect to any insurance or self-insurance programs maintained by LAFCO. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by the LAFCO EXECUTIVE OFFICER, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, the LAFCO EXECUTIVE OFFICER, which approval shall not be denied unless the LAFCO EXECUTIVE OFFICER determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by the LAFCO EXECUTIVE OFFICER if the EXECUTIVE OFFICER determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects LAFCO, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify LAFCO and the officers, agents, employees, and volunteers of LAFCO from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors, and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of LAFCO or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold LAFCO and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 20 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by 5 days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The LAFCO EXECUTIVE OFFICER is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by LAFCO unless an opportunity for consultation is provided prior to the effective date of the termination. LAFCO hereby authorizes the LAFCO EXECUTIVE OFFICER to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of LAFCO for the convenience of LAFCO.

11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, INCLUDING AUDIO/VIDEO RECORDINGS, and all rights therein shall be promptly returned to LAFCO, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to LAFCO for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and LAFCO may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to LAFCO from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

LAFCO
Keene Simonds, Executive Officer
1700 Second Street, Suite 268
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(707) 259-8645
ksimonds@napa.lafco.ca.gov

CONTRACTOR
James Raymond, Executive Director
Post Office Box 4347
Napa, California 94558
(707) 257-0574
james@napavalleytv.org

14. **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of LAFCO, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for LAFCO to withhold its consent to assignment. For purposes of this subparagraph, the consent of LAFCO may be given by the LAFCO EXECUTIVE OFFICER

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

15. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties

16. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

17. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of LAFCO by the State of California pursuant to agreement between LAFCO and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form I-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to LAFCO for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

18. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold LAFCO harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that LAFCO is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish LAFCO with proof of payment of taxes or withholdings on those earnings.

19. **Access to Records/Retention.** LAFCO, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after LAFCO makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

20. **Authority to Contract.** CONTRACTOR and LAFCO each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

21. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to LAFCO and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as LAFCO may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, LAFCO may terminate this Agreement immediately upon giving written notice without further obligation by LAFCO to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that LAFCO has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the LAFCO EXECUTIVE OFFICER "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. By executing this Agreement, the

LAFCO Commission hereby determines in writing on behalf of LAFCO that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

22. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

23. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

24. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

25. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

26. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

NAPA VALLEY TELEVISION

By _____
JAMES RAYMOND, EXECUTIVE DIRECTOR

“CONTRACTOR”

LOCAL AGENCY FORMATION COMMISSION OF
NAPA COUNTY

By _____
BILL DODD, CHAIR,

“LAFCO”

<p>APPROVED AS TO FORM Commission Counsel</p> <p>By: _____</p> <p>Date: _____</p>
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EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide LAFCO with the following services:

I. DESCRIPTION OF SERVICES

CONTRACTOR will provide television/video field productions of regular meetings of the LAFCO Commission (regular meetings are typically on the first Monday of every other month, starting at 4:00 pm and usually lasting no more than two hours).

1. Basic Field Production for each meeting will be provided. This includes:

- Camera operator services.
- Camera equipment and audio cables necessary to wire into audio system in the LAFCO meeting room (the County of Napa Board of Supervisors Meeting Room located at 1195 Third Street, Napa California).
- All tape stock and expendables (including, but not limited to, tape stock, batteries, etc.)
- Travel of Napa TV staff to and from the LAFCO meeting room.
- Streaming video archive on the Napa Valley TV Granicus web streaming server.
- Basic Field Production does not include post-production.

2. Optional – Post-Production Services are available at the request of LAFCO for an additional charge. These services include:

- Development of custom title for opening and closing of each show when airing on TV.
- DVD Duplication of each show for client archive.

3. Additional Terms:

The LAFCO Executive Director, or his designee, shall submit via e-mail the dates of LAFCO meetings to be filmed by CONTRACTOR. CONTRACTOR will film only those meetings approved by e-mail. Requests for filming must be made to CONTRACTOR no later than one week before the meeting date. CONTRACTOR is unable to guarantee an available camera operator unless the request is made at least one week before the meeting date. Notice of cancellation or change of meeting dates must be provided by LAFCO to CONTRACTOR at least 72 hours before the scheduled meeting date. Failure to provide timely notice of cancellation or change of meeting dates will result in LAFCO incurring the meeting unit rate for two hours (\$300.00). CONTRACTOR will arrive 30 minutes before each meeting to allow for proper set-up time. CONTRACTOR will use standard lighting provided in the LAFCO meeting room; no additional lighting is included in the Basic Field Production services.

EXHIBIT “B”

COMPENSATION AND EXPENSE REIMBURSEMENT

Basic Field Production Services, as described in Exhibit “A”, are provided at the unit rate of \$150.00 per hour. The first two hours will be billed at a non pro-rated hourly charge of \$150.00. Any additional hour will be billed at a pro-rated hourly charge of \$150.00. Billable hours include the reasonable time needed by the CONTRACTOR to set up and pack-up auxiliary equipment.

Optional Post-Production Services, as described in Exhibit “A”, are billed as follows:

- Custom title for opening and closing of each meeting (show) when airing on TV - \$25/show
- DVD Duplication of each meeting (show) for client archive - \$20/meeting (show)

There is no reimbursement for any expenses or expendables (e.g. such as batteries or tape stock).



Local Agency Formation Commission of Napa County

Subdivision of the State of California

ATTACHMENT TWO

FY2011-12 FINAL BUDGET

Expenses

		FY2008-09		FY2009-10		FY2010-11		FY2011-12		
		Adopted FY08-09	Actual FY08-09	Adopted FY09-10	Actual FY09-10	Adopted FY10-11	Estimate FY10-11	Final FY11-12	<i>Difference</i>	
Salaries and Benefits										
<u>Account</u>	<u>Description</u>									
51100000	Regular Salaries	168,905.43	152,952.55	195,580.00	193,055.65	198,346.60	195,006.40	199,647.20	1	1,300.60
51300500	Group Health Insurance	40,148.04	21,405.57	36,471.00	29,210.94	37,953.96	37,014.89	45,648.12	2	7,694.16
51300100	Retirement: Pension	34,550.93	26,282.61	34,064.00	33,015.37	34,991.95	33,434.17	36,204.85	3	1,212.89
51200500	Commissioner Per Diems	9,600.00	4,400.00	9,600.00	5,100.00	9,600.00	5,100.00	9,600.00		-
51300120	Retirement: Non-Pension	11,295.00	11,296.00	8,706.00	8,706.00	9,138.00	9,138.00	9,341.00	4	203.00
51300300	Medicare	2,826.27	2,440.46	2,836.00	2,657.51	2,876.49	2,684.71	2,894.88		18.40
51301800	Cell Phone Allowance	840.00	845.14	840.00	843.50	840.00	840.00	840.00		-
51301200	Workers Compensation	149.00	149.00	168.00	168.00	226.00	226.00	327.00		101.00
51200100	Extra Help	26,010.00	26,283.11	-	-	-	-	-		-
51200200	Overtime	-	-	-	-	-	-	-		-
		294,324.67	246,054.44	288,265.00	272,756.97	293,973.00	283,444.17	304,503.05		10,530.05 3.6%
Services and Supplies										
<u>Account</u>	<u>Description</u>									
52240500	Property Lease	27,000.00	27,000.00	29,280.00	29,280.00	29,280.00	29,280.00	29,280.00		-
52180500	Legal Services	26,320.00	19,129.61	24,990.00	17,938.31	26,010.00	16,000.00	22,540.00	5	(3,470.00)
52180200	Information Technology Services	17,768.00	17,768.04	22,438.00	19,182.50	18,438.91	17,138.90	24,630.83	6	6,191.91
52170000	Office Expenses	15,000.00	10,916.66	15,000.00	9,697.20	15,000.00	10,500.00	12,000.00	7	(3,000.00)
52180510	Audit and Accounting Services	7,507.00	6,182.37	7,883.00	7,819.33	8,277.15	9,000.00	8,691.01	8	413.86
52250800	Training	4,000.00	2,530.53	4,000.00	5,475.00	4,000.00	5,000.00	4,000.00		-
52250000	Transportation and Travel	4,000.00	1,716.91	3,500.00	4,510.88	3,500.00	4,500.00	3,500.00		-
52070000	Communications	3,500.00	1,720.96	3,500.00	1,205.16	3,500.00	1,600.00	2,000.00	9	(1,500.00)
52150000	Memberships	2,200.00	2,200.00	2,275.00	2,200.00	2,275.00	2,200.00	2,275.00		-
52190000	Publications and Notices	1,500.00	2,490.22	1,500.00	1,112.17	1,500.00	850.00	1,500.00		-
52235000	Special Departmental Purchases	56,000.00	50,081.73	1,000.00	1,095.25	1,000.00	482.50	1,000.00		-
52251200	Private Mileage	1,000.00	1,051.07	1,000.00	533.60	1,000.00	2,500.00	1,000.00		-
52243900	Filing Fees	850.00	300.00	850.00	250.00	850.00	500.00	850.00		-
52250700	Meals Reimbursement - Taxable	-	-	500.00	588.92	500.00	300.00	500.00		-
52100300	Insurance: Liability	546.00	545.00	347.00	347.00	444.00	444.00	321.00		(123.00)
53980200	Capital Replacement*	-	-	-	3,931.30	3,931.40	3,931.40	3,931.40		-
		167,191.00	143,633.10	118,063.00	105,166.62	119,506.46	104,226.80	118,019.23		(1,487.23) -1.2%
Contingencies and Reserves										
<u>Account</u>	<u>Description</u>									
54000900	Operating Reserve	40,651.57	-	40,632.80	-	-	-	-		-
54001000	Consultant Contingency	50,000.00	-	50,000.00	-	-	-	-		-
		90,651.57	-	90,632.80	-	-	-	-		-
EXPENSE TOTALS		552,167.24	389,687.54	496,960.80	377,923.59	413,479.46	387,670.97	422,522.28		9,042.82 2.2%

Revenues

		FY2008-09		FY2009-10		FY2010-11		FY2011-12	
		Adopted FY08-09	Actual FY08-09	Adopted FY09-10	Actual FY09-10	Adopted FY10-11	Estimate FY10-11	Final FY11-12	
Intergovernmental Contributions									
<u>Account</u>	<u>Description</u>								
45080600	County of Napa	-	176,382.73	-	153,965.70	178,009.77	178,010.00	191,550.46	¹⁰ 13,540.68
45082200	City of Napa	-	119,820.40	-	105,428.75	119,646.81	119,647.00	126,330.35	¹¹ 6,683.54
45082400	City of American Canyon	-	27,179.61	-	22,010.54	27,468.37	27,468.00	32,912.03	¹² 5,443.65
45082300	City of St. Helena	-	12,134.39	-	11,135.35	12,656.54	12,657.00	12,997.37	¹³ 340.83
45082100	City of Calistoga	-	9,714.01	-	8,742.73	10,642.45	10,642.00	11,393.34	¹⁴ 750.89
45082500	Town of Yountville	-	7,534.31	-	6,648.33	7,595.60	7,596.00	7,917.37	¹⁵ 321.77
		-	352,765.45	-	307,931.40	356,019.55	356,020.00	383,100.91	¹⁵ 27,081.37 7.6%
Service Charges									
<u>Account</u>	<u>Description</u>								
46003400	Standard Applications Fees	-	16,155.00	-	18,437.00	10,000.00	18,632.30	10,000.00	-
46003300	Special Application Fees	-	120.00	-	625.00	-	2,936.50	-	-
48040000	Miscellaneous	-	-	-	156.30	-	-	-	-
		-	16,275.00	-	19,218.30	10,000.00	21,568.80	10,000.00	- 0.0%
Investments									
<u>Account</u>	<u>Description</u>								
44000300	Interest	-	10,458.70	-	3,791.48	5,000.00	2,340.00	2,340.00	(2,660.00)
		-	10,458.70	-	3,791.48	5,000.00	2,340.00	2,340.00	(2,660.00) -53.2%
	REVENUE TOTALS	-	379,499.15	-	330,941.18	371,019.55	379,928.80	395,440.91	24,421.37 6.6%
DIFFERENCE		-	(10,188.39)	-	(43,051)	-	(7,742)	(27,081.37)	
FUND BALANCE									
Beginning:			222,059.00		211,870.61		168,819.50		161,077.33
Ending:			211,870.61		168,819.50		161,077.33		133,995.96
Minimum Three Month Operating Balance:			138,041.81		124,240.20		103,369.87		105,630.57

NOTES

- This account budgets one-part time (Secretary) and two fulltime (Executive Officer and Analyst) employees. The budgeted increase reflects a scheduled merit raise for Analyst Freeman. No cost-of-living adjustments are budgeted in 2011-2012 consistent with the County of Napa's current contract with its bargaining units.
- This account funds the Commission's monthly contribution for employee healthcare and dental insurance costs provided by Kaiser and Delta Dental, respectively. The budgeted increase reflects higher provider premiums with the largest percentage raise tied to an addition to the Executive Officer's health coverage plan.
- This account funds the Commission's monthly contribution for employee retirement benefits managed by CalPers. The budgeted increase is tied to the scheduled merit increase for Analyst Freeman.
- This account funds the Commission's apportionment for post employment benefits, such as retiree health care insurance. These costs are calculated by the County of Napa.
- It is expected the Commission's need for County Counsel in 2011-12 will decrease from 170 to 140 total hours based on recent usage. An approximate 5.0% raise in the hourly rate from \$153 to \$161 is budgeted.
- This account primarily funds network services provided by the County of Napa's Information Technology Services (ITS) Department. This portion of the account is budgeted to increase by 35% as part of countywide increases in ITS expenses tied to software updates. A prior year reporting error also has been identified with respect to increasing the number of LAFCO computers from three to four. Other funds tied to this account remain stagnant and support website hosting and electronic document management costs with contacted vendors.
- This account funds the Commission's regular office supply purchases. A decrease from \$15,000 to \$12,000 is budgeted based on actual recent expenses in this account.
- The budgeted amount anticipates a 5.0% across-the-board increase in hourly rates for the County of Napa Auditor's Office in 2011-12.