



P.O. Box 942709 Sacramento, CA 94229-2709  
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TTY: (877) 249-7442 | Fax: (916) 795-4166  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

California Public Employees' Retirement System

April 23, 2018

Shasta Local Agency Formation Commission  
Attn: Kathy Bull  
1225 EAST ST # 201  
REDDING, CA 96001-0820

Refer To: 5202731527

Dear Ms. Bull:

Thank you for your response to our letter dated March 2<sup>nd</sup>, 2018. In your response, you indicated that currently two contract employees are working for Shasta LAFCO (Agency). The California Public Employees' Retirement System (CalPERS) would like to conduct a common-law employment review for those individuals contracted through a third party.

The Public Employees' Retirement Law (PERL), Government (Gov.) Code section 20125 provides: "The Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system."

Please see the attached Common Law Employer Checklist and Employment Relationship Questionnaire for completion, by providing all applicable documents and complete responses. We will need information for both individuals hired through a contract indicated in your response.

CalPERS Requires Information Sought to Administer the System

CalPERS formally demands that the Agency comply with this request for information. The requested information is necessary to administer the System insofar as it seeks information regarding the membership status of the Agency's employees so that CalPERS can confirm that participation, enrollment, and membership in this System comply with contract terms, the PERL and other applicable laws.

Duty to Provide Information

The Agency has a statutory and contractual duty to cooperate with CalPERS. Under the Public Employees' Retirement Law (PERL), the Agency is required to provide CalPERS with any

information needed in the administration of this system. Specifically, Gov. Code section 20221 provides:

Each state agency, school employer and the chief administrative officer of a contracting agency or any other person who its governing body may designate shall furnish the following:

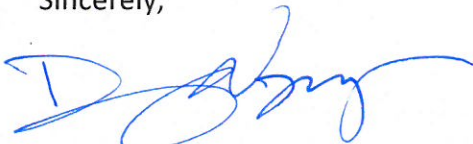
- (a) Immediate notice to the board, in the manner prescribed by the system, of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.
- (b) Any additional information concerning any member that the board may require in the administration of this system.
- (c) The services of its officer and departments that the board may request in connection with claims by members against this system.

Please provide this information to us **no later than 30 days from the date of this letter**. You can email the information to [Membership\\_Reporting@calpers.ca.gov](mailto:Membership_Reporting@calpers.ca.gov). Your anticipated cooperation in providing a prompt response is appreciated.

This correspondence also serves as notice of the Agency's duty to preserve all records related to this request for information and records, including electronically stored information (ESI), on an ongoing basis. The request to preserve records applies to Agency and all employees who have possession, custody and/or control of records and/or information responsive to CalPERS' request. In the event this request for information results in litigation between Agency and CalPERS, failure to comply with this request to preserve records and information could result in discovery sanctions or other penalties against Agency.

Additionally, you are advised that if you have any questions regarding this matter, please call the customer contact center at (888) 225-7377 or email us at [Membership\\_Reporting@calpers.ca.gov](mailto:Membership_Reporting@calpers.ca.gov).

Sincerely,



Dan Nguyen, Manager  
Membership and Post-Retirement Employment Determinations Team  
Employer Account Management Division



California Public Employees' Retirement System  
Employer Account Management Division  
P.O. Box 942704  
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## Worker/Independent Contractor Checklist

Please provide these documents, if applicable, for CalPERS review. Please note that these documents are not the sole determining factors used in the determination of the employment relationship.

- Contracts to which the individual is subject, including but not limited to
  - Collective bargaining agreements
  - Memoranda of understanding
  - Employment contracts
  - Service agreements
- Evidence of the individual's reporting relationships, including but not limited to
  - Organization charts
- Individual's duty statement(s)/job description(s)
- Payroll information, including but not limited to
  - Mem-1344 (CalPERS payroll information form)
  - Paystubs
  - Invoices
  - W-2s
  - 1099s
  - Employer withholding information
  - Documentation evidencing whether the employer is reimbursed for payment of the individual's salary
- Personnel information, including but not limited to
  - Offer letters
  - Leave requests
  - Documents related to hiring/firing/discipline/termination/salary adjustments
  - Documents related to benefits provided to the individual
  - Performance appraisals
  - Training materials/information
  - Travel expense reimbursements
  - Leave requests and approvals
  - Documents evidencing who reviews/supervises the individual

- Documents evidencing who sets/approves schedule worked by the individual
  - Documents evidencing whether the individual may work for other entities
  - Documents evidencing whether the individual is working in a civil service position
  - Any other documents that record personnel transactions
- Correspondence related to (insert topic) between individual and all affiliated entities, including but not limited to
  - Emails
  - Letters
  - Memoranda
- Individual's salary schedule/class specifications
- Employment rules/protocols/policies to which the individual is subject
- Evidence of any bonds or insurance held by the employer and related to the individual's position
- Employment Relationship Questionnaire and Supporting Documentation
- Other Supporting Information or Documents



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## EMPLOYMENT RELATIONSHIP QUESTIONNAIRE (Employer)

The term "Agency" refers to:

\_\_\_\_\_  
Name of agency

"Individual" refers to:

\_\_\_\_\_  
Name of occupant of position

How was individual hired? (ex: by agency, Independent Contractor, 3<sup>rd</sup> Party Contractor, Temporary/Staffing agency)

\_\_\_\_\_

1. (a) By whom was the individual appointed/hired? Please include name(s) and title(s).

\_\_\_\_\_

*Please attach a copy of the offer letter or hire document(s)*

- (b) What date did the individual first occupy the position?

\_\_\_\_\_

- (c) Does the individual still occupy the position?

\_\_\_\_\_

- i. If not, please indicate the date the individual vacated the position:

\_\_\_\_\_

- (d) To whom does the individual report? Please include the name(s) and title(s).



\_\_\_\_\_  
\_\_\_\_\_

(e) Does anyone report to the individual? Please include the name(s) and title(s).

\_\_\_\_\_  
\_\_\_\_\_

(f) Did the individual occupy any other position(s) at the agency during the audit period?

\_\_\_\_\_

i. If so, please indicate the position and time period:

\_\_\_\_\_

2. Describe the services performed by the individual:

\_\_\_\_\_  
\_\_\_\_\_

3. Does the individual perform services pursuant to a formal job description or duty statement?

\_\_\_\_\_

*(a) If so, please attach a copy of the job description or duty statement.*

4. How many other individuals perform the same services for the agency?

\_\_\_\_\_

5. Are the services performed under written or oral agreement?

\_\_\_\_\_

*(a) If written agreement, please attach a copy of the original agreement.*

*(b) If oral agreement, attach a statement of terms of the agreement*

6. Where are the services performed (individual's office, home, agency premises, etc.)?

\_\_\_\_\_

7. Does the individual have his/her own place of business or work for a third party?

\_\_\_\_\_

8. For the services in question, does the individual operate under his/her own name, agency's name or 3<sup>rd</sup> Party (ex: temporary agency, consulting company)

\_\_\_\_\_

9. For the services in question, did the agency provide the individual with any training?

\_\_\_\_\_

(a) If so, please describe the training provided:

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10. Does the individual offer the same type of services performed for the agency to the general public or to other agencies? If yes, what agencies?

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11. If the answer to #10 is yes, is the individual performing services as an employee or independent contractor?

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12. Does the agency have first call on his/her time or services?

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13. Is the individual required to attend agency meetings?

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14. Who determines the individual's hours of work? Please include name(s) and title(s).

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15. Is the individual required to do the work personally or may he/she subcontract any part of the work to a 3<sup>rd</sup> Party? \_\_\_\_\_

16. Does the agency have the right to control how the individual does his/her work?

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17. Is the individual permitted to perform services for entities other than the agency either as an independent contractor?

---

18. Is the individual's work directed, supervised or reviewed by anyone?

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(a) If so, what particulars of the job are supervised?

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(b) If so, what is the name and title of supervisor?

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19. Is the individual subject to performance appraisals for services performed for the agency?

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(a) If so, who completes the performance appraisals? Please include name(s) and title(s).

---

\_\_\_\_\_

(b) If so, please attach copies of all performance appraisals completed for the individual during the audit period.

20. Who determines whether the individual should be promoted? Please include name(s) and title(s).

\_\_\_\_\_  
\_\_\_\_\_

21. Who determines whether the individual's salary should be adjusted? Please include name(s) and title(s).

\_\_\_\_\_

22. Who determines whether the individual should be disciplined or terminated? Please include name(s) and title(s).

\_\_\_\_\_  
\_\_\_\_\_

23. Please check facilities or equipment furnished by your agency the individual uses in performing services for the agency.

_____ Office	_____ Machinery
_____ Office Equipment	_____ Tools
_____ Stationery	_____ Badge
_____ Business Cards	_____ Email address provided by agency
_____ Automobile	
_____ Other, please explain: _____	

24. Does the individual or 3<sup>rd</sup> Party issue a statement or invoice to the agency for services rendered? \_\_\_\_\_

25. Please check basis on which the individual is paid.

_____ Flat salary	_____ Hourly rate
_____ Lump sum	_____ By project
_____ Other, please explain: _____	

26. Does the agency reimburse the individual for any of his or her business and/or traveling expenses?

\_\_\_\_\_

(a) If so, who authorizes such reimbursements? Please include the name(s) and title(s).

\_\_\_\_\_



27. Check the following benefits the individual received:

\_\_\_\_\_ Workers Compensation                      \_\_\_\_\_ Retirement  
\_\_\_\_\_ Vacation    \_\_\_\_\_ Health  
\_\_\_\_\_ Other, please explain: \_\_\_\_\_  
\_\_\_\_\_

(a) Who pays the cost of the individual's benefits?

\_\_\_\_\_

(b) Who approves the individual's leave (vacation, sick, etc.) requests? Please include the name(s) and title(s)

\_\_\_\_\_

28. Is the individual's pay subject to employer withholdings? \_\_\_\_\_

(a) If so, please list all employer withholdings:

\_\_\_\_\_  
\_\_\_\_\_

29. Can the agency terminate the relationship at any time?

\_\_\_\_\_

30. Can the individual quit at any time without liability to the agency?

\_\_\_\_\_

31. Was this position previously held by an agency employee? \_\_\_\_\_

(a) If so, what was the title of the position?

\_\_\_\_\_

32. What is the title and rate of pay/salary for an employee working in a comparable position?

\_\_\_\_\_

33. Is the individual subject to a collective bargaining agreement or memorandum of understanding?

\_\_\_\_\_

(a) *If so, please attach a copy of the collective bargaining agreement and/or memorandum of understanding*

34. Is the individual subject to a class specification and/or salary schedule?

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*(a) If so, please attach a copy of the class specification and/or salary schedule.*

35. Who pays the individual?

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36. Is any entity reimbursed for payment of the individual's salary?

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37. Does the individual hold a civil service position?

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38. Is the individual subject to the agency's employee manual and/or employment policies?  
*(Please attach a copy of the agency's employee manual and/or employment policies)*

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39. Does the agency bear any or all the cost of any fidelity insurance or any bonds required by law for the position?

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40. Does the agency bear the cost to defend and indemnify the individual to the extent required by law?

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41. Does the individual have the authority to sign documents on behalf of the Agency? What title does the individual utilize as signatory authority?

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42. In your opinion, is the individual an employee of the agency?

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*(a) If not, please explain:*

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43. Please submit all documentation, in addition to that already requested herein, that evidences or supports the agency's responses to the above questions.

PLEASE ANSWER THE QUESTIONS BELOW IF YOU HAVE ANY WORKERS THAT ARE EMPLOYED THROUGH A STAFFING ("TEMP") AGENCY

1. What is the name of the staffing agency worker was hired from?

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2. How long has the worker provided services for your agency?

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3. Did worker have prior CalPERS membership before hired by your agency?

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4. Is worker providing services in a position established and on pay schedule for agency? If yes, what is the position?

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5. What is the expected duration of services to be provided by worker?

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6. What will happen to the position/duties once worker's services are complete?

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COMMENTS:

Prepared by \_\_\_\_\_ Title \_\_\_\_\_

Name of Agency \_\_\_\_\_ Date: \_\_\_\_\_

# UNDERWOOD & WETZEL LAW OFFICES, P.C.

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May 23, 2018

**DELIVERED VIA U.S. MAIL AND FACSIMILE**

**(FAX NO. 916-795-4166)**

Dan Nguyen, Manager  
Membership and Post-Retirement Employment Determinations Team  
Employer Account Management Division  
PO Box 942709  
Sacramento, CA 94229-2709

Re: Shasta LAFCO Agency Formation Commission – Employment Relationship Questionnaire,  
Etc. (Reference No. 5202731527)

Dear Mr. Nguyen:

I serve as general counsel to the Shasta Local Agency Formation Commission (Shasta LAFCo). The Shasta LAFCo governing board meets on alternating months, and has not met since receipt of your April 23, 2018, letter requesting stated employment relationship information. I have been asked to facilitate a response notwithstanding that the agency governing board has not yet met to discuss your request.

The supporting documents and requested questionnaire to be provided will provide all related details. But, having served as general counsel for the past approximately five years, I can tell you that Shasta LAFCo has not had any employees for the conduct of its operations since the employment of an executive officer for the agency whose employment terminated in July 2013. Since that time administrative support services have been provided through a staffing agency, the executive officer has been retained on an independent contract basis, and my role as general counsel has also been obtained on an independent contract basis. The Cortez-Knox-Hertzberg Act (Government Code Sections 56000 et seq.) allows agencies such as Shasta LAFCo to engage services on an independent contract basis.

Again, because Shasta LAFCo has not met, and has therefore been unable to give direction to contract staff concerning how to proceed, the agency has been unable to complete and return the requested questionnaire and related documentation. However, be assured that this will be forthcoming at the earliest possible time.

Please don't hesitate to contact me in the event that you have any questions. Otherwise you can expect to receive a more substantive reply to your request for questionnaire completion and additional information in upcoming weeks.

Sincerely,

  
JAMES M. UNDERWOOD

JMU/rs

cc: George Williamson, Executive Officer, Shasta LAFCo