

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: JUNE 6, 2018 
FROM: ROBERT ALDRICH, Consultant
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM # 10– Review and Approval of Contract with Samuel Martinez as Executive Officer for the Local Agency Formation Commission for San Bernardino County effective July 1, 2018

RECOMMENDATION:

Staff recommends that the Commission approve the Executive Officer contract.

BACKGROUND:

On May 16, 2018, the Commission appointed Samuel Martinez as the San Bernardino LAFCO Executive Officer subject to acceptance of employment contract terms with LAFCO. The LAFCO Executive Officer position is an at-will, full-time position subject to Human Resources policies which identify the range of benefits for this position.

LAFCO Legal Counsel Clark Alsop, acting as the Commission's labor negotiator, entered into discussions with Mr. Martinez following his appointment regarding starting salary, contract term, and other provisions which all have been incorporated into the draft employment contract (**Attachment 1** to this report).

Salary

The adopted salary range for the Executive Officer position includes a 14-step range. Mr. Martinez has agreed to begin at Step 1, or \$162,448.00 annually.

Contract Term

The initial contract term is for five years commencing July 1, 2018, and continuing through June 20, 2023. Unless LAFCO provides the Executive Officer with written notice that the agreement will not renew, an additional year will be added to the term of the Agreement after each full year of employment.

Attachment

1. Draft Executive Officer Contract

EMPLOYMENT AGREEMENT BETWEEN THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY AND THE EXECUTIVE OFFICER

This AGREEMENT (“Agreement”) is made and entered into between Samuel Martinez (“Executive Officer”) and THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY (“LAFCO”), in order to provide, in writing, the terms and conditions of employment for management services by the Executive Officer of LAFCO. Sometimes the parties hereinafter may be referred to individually as “Party” or collectively as “Parties.”

NOW, THEREFORE, the Parties hereto agree as follows:

1. Employment

LAFCO hereby agrees to employ Executive Officer, and Executive Officer agrees and does accept employment upon the terms and conditions set forth herein.

2. Duties and Obligations of Executive Officer

The duties and obligations of the Executive Officer shall be as set forth in the applicable job description and LAFCO rules and policies, as amended by LAFCO from time to time at its discretion.

3. Salary

A. Executive Officer’s initial salary shall be set at Level A, Step 1 of the Executive Officer Salary Schedule. On July 1, 2018, this salary shall be One Hundred Sixty-Two Thousand Four Hundred and Forty-Eight Dollars and Zero Cents (\$162,448.00) per year. On July 21, 2018, this salary shall increase through a cost of living adjustment to One Hundred Sixty-Nine Thousand Five Hundred Sixty-One Dollars and Sixty Cents (\$169,561.60) per year. On July 20, 2019, the salary shall further increase through another cost of living adjustment to One Hundred Seventy-Four Thousand Six Hundred Fifty-Seven Dollars and Sixty Cents (\$174,657.60) per year. Salary shall be payable in installments at the same time as other employees of LAFCO are paid, pursuant to the procedures regularly established, and as they may be amended by LAFCO from time to time.

B. Other than as set forth in Section 3.A above, Executive Officer shall not be eligible for any other cost of living adjustment during the first two years of this Agreement. Thereafter, LAFCO may grant the Executive Officer an annual cost-of-living adjustment at its sole discretion, in accordance with LAFCO’s policies and practices. LAFCO may also grant Executive Officer a step advancement or merit increase annually at its sole discretion, also in accordance with LAFCO’s policies and practices.

4. Benefits. Executive Officer shall be entitled to all of the benefits defined for that position in the adopted San Bernardino LAFCO Policy and Procedures Manual.

5. Term

LAFCO hereby agrees and does employ Executive Officer for an initial term of five (5) years commencing on July 1, 2018, and continuing through June 30, 2023 (“Term Date”). Unless LAFCO provides Executive Officer with written notice that the agreement shall not renew, an additional year shall be added to the term of this Agreement after each full year of employment, with the new Term Date then becoming the last day of each successive additional year. Such notice of non-renewal must be received by Executive Officer prior to the end of each full year of employment.

6. Termination of Agreement and Severance Pay

A. At-Will Employment. The Parties hereby expressly agree that the employment relationship created by this Agreement is “at will” and that Executive Officer serves at the will and pleasure of LAFCO. Except as provided hereinafter, nothing in this Agreement, any statute, ordinance, or rule shall prevent, limit, or otherwise interfere with the right of LAFCO to terminate, without cause or right of appeal or grievance, the services of Executive Officer at any time. Accordingly, Executive Officer agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment and that he hereby waives any rights he/she would otherwise have thereunder.

B. By LAFCO Not For Cause. Except as provided hereinafter, at any time, LAFCO may terminate Executive Officer for any reason, without cause, by providing written notice. Upon termination under this subsection, Executive Officer shall be entitled to (1) all compensation due and owing through the effective date of termination, as specified in the written notice, (2) a severance payment equal to six (6) months of Executive Officer’s salary or the amount of salary Executive Officer would have earned through the Term Date of this Agreement, whichever is less, and (3) continuation of any health benefits for six (6) months, until Executive Officer obtains other employment, or until the Term Date of this Agreement, whichever occurs sooner. However, the severance payment and continuation of health benefits are contingent upon Executive Officer signing a severance agreement that fully releases LAFCO from any and all claims he may have against it and/or its board members, officers, agents, and employees, arising out of his employment with LAFCO or the termination thereof. The severance payment shall be made on the eighth day after Executive Officer signs the severance agreement. Upon payment of all compensation due and owing and, in the event Executive Officer signs the severance agreement, payment of severance and continuation of health benefits as set forth above, all of LAFCO’s obligations under this Agreement shall cease. LAFCO may discipline or demote Executive Officer with or without cause and with or without prior notice.

C. By LAFCO For Cause. At any time, and without prior notice, LAFCO may terminate Executive Officer for Cause (as defined below). LAFCO shall pay Executive Officer all compensation then due and owing through the last day worked; thereafter, all of LAFCO’s obligations under this Agreement shall cease. Termination shall be for “cause” if Executive Officer: (1) acts in bad faith and to the detriment of LAFCO; (2) refuses or fails to act in accordance with any specific direction or order of LAFCO; (3) exhibits in regard to his employment unfitness or unavailability for service, unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence; (4) is convicted of a crime involving dishonesty,

breach of trust, or physical or emotional harm to any person, or which attracts unreasonable adverse publicity to LAFCO; or (5) breaches any material term of this Agreement.

D. By Death or Disability. The employment of Executive Officer, and this Agreement, shall automatically terminate upon the death of Executive Officer or upon the separation of his employment because of disability, which prevents Executive Officer from performing the essential functions of his job even with reasonable accommodations. As used herein, disability shall have the same meaning as provided under the laws governing a disability retirement through SBCERA. Neither Executive Officer nor his heirs, administrators, or assigns shall have any right under this Agreement to salary or a severance payment after such death or disability, but they shall have such rights and benefits as may be provided by law.

E. Resignation. At any time, Executive Officer may resign from his employment for any reason, with or without cause, by providing LAFCO with thirty (30) days' advance written notice. LAFCO shall have the option, in its complete and sole discretion, to make Executive Officer's termination effective at any time prior to the end of such notice period, provided (1) LAFCO pays Executive Officer all compensation due and owing through the last day actually worked, plus an amount equal to the compensation Executive Officer would have earned through the balance of the above notice period, and (2) LAFCO continues Executive Officer's health benefits under this Agreement for the balance of the above period. Thereafter, all of LAFCO's obligations under this Agreement shall cease. In the event Executive Officer fails to provide the thirty (30) days written notice of his resignation (e.g., notice of less than thirty days), LAFCO may terminate this Agreement and Executive Officer's employment at any time without any further obligations to Executive Officer other than paying all compensation due and owing through the last day actually worked.

F. Benefits Upon Termination. All benefits to which Executive Officer is entitled shall cease upon Executive Officer's termination, unless explicitly continued either under this Agreement, under any specific written policy or benefit plan of LAFCO, as it exists from time to time, or unless otherwise required by law.

G. Government Code Section 53260. In no event shall the cash payment that Executive Officer may receive in the event of the termination of this Agreement, as set forth in Sections 6(B) and 6(D) above, exceed an amount equal to the monthly base salary of Executive Officer multiplied by the number of months left on the unexpired term of this Agreement.

H. Abuse of Office. Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if Executive Officer is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Executive Officer is provided with administrative leave pay pending an investigation, Executive Officer shall be required to fully reimburse LAFCO such amounts paid; (2) if LAFCO pays for the criminal legal defense of Executive Officer (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Executive Officer shall be required to fully reimburse LAFCO such amounts paid; and (3) if this Agreement is terminated, any severance or cash settlement related to the termination that Executive Officer may receive from LAFCO shall be fully reimbursed to LAFCO or void if not yet paid to Employee. For this Section, abuse of office or position means

either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

I. Termination Obligations. Executive Officer agrees that all property, including, without limitation, all equipment, tangible proprietary information, documents, records, notes, contracts, and computer generated materials furnished to or prepared by Executive Officer incident to his employment belongs to LAFCO and shall be returned promptly to LAFCO upon termination of Executive Officer's employment. Executive Officer's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

7. Performance Review. During the first year of employment, Executive Officer shall provide LAFCO with quarterly updates of his accomplishments, goals, and significant projects. LAFCO may conduct an annual performance review of Executive Officer on the anniversary date of this Agreement, including a salary review discussion. LAFCO's decision to conduct or failure to conduct, an annual performance review under this section shall not affect any other term of this Agreement. LAFCO may also evaluate Executive Officer's performance at other times as it deems appropriate.

8. Action by LAFCO. All actions required or permitted to be taken under this Agreement by LAFCO, including, without limitation, exercise of discretion, consents, waivers, and amendments to this Agreement, shall be made and authorized only by the Commission through its Chairperson, or a designated representative specifically authorized in writing to fulfill these obligations under this Agreement.

9. Notices. Any notice or other communication under this Agreement must be in writing and shall be effective upon delivery by hand, upon facsimile transmission to LAFCO (but only upon receipt of a written confirmation of receipt), or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to LAFCO at the addresses or fax numbers below. Executive Officer shall be obligated to notify LAFCO in writing of any changes of his/her address. Notice of change of address shall be effective only when done in accordance with this Section.

James Ramos, Chairman
Local Agency Formation Commission for San Bernardino County
1170 W. Third Street, Unit 150
San Bernardino, CA 92415-0490
Fax Number: (909) 388-0481

Samuel Martinez

[REDACTED]

[REDACTED]

Phone Number: [REDACTED]

10. Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Executive Officer's employment by LAFCO. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Executive Officer, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of LAFCO, now or in the future, apply to Executive Officer and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

11. Amendments. This Agreement may not be amended or modified except by a writing signed by both Parties. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

12. Assignment. Neither this Agreement, nor any right, privilege, or obligation of Executive Officer hereunder shall be assigned or transferred by him without the prior written consent of LAFCO. Any attempt at assignment or transfer in violation of this provision shall, at the option of LAFCO, be null and void and may be considered a material breach of this Agreement.

13. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

14. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall neither be construed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. Furthermore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

17. Conflict of Interest. The Executive Officer agrees that he will abide with all applicable local, California, and federal rules on conflicts of interest and receipt of gifts, including, without limitation, those rules found in the Political Reform Act, California Government Code section 1090 *et. seq.* and the regulations promulgated by the Fair Political Practices Commission, Title 2 of the California Code of Regulations section 18109 *et. seq.*

18. Executive Officer Acknowledgment. Executive Officer acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the _____ day of _____, 2018.

LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY

By: _____
James Ramos, Chairman

Samuel Martinez