



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

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AGENDA REPORT Business | Action

April 5, 2021

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Holly O. Whatley, Commission Counsel

SUBJECT: Voluntary Separation Incentive Program

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider approving a one-time program to monetarily incentivize eligible employees to voluntarily separate and end their employment with the Commission. As proposed, the Voluntary Separation Incentive Program (VSIP) would be available to employees with 60 months or more of consecutive employment on an application basis and if approved receive a lump sum payment based on the total number of years of employment. The VSIP responds to budget considerations under COVID-19 and delegates responsibility to the Executive Officer to administer to ensure both a net savings to the Commission as well as critical positions and/or associated functions are adequately maintained. It is recommended the Commission approve the proposed VSIP with any changes as specified.

BACKGROUND

2021-2022 Budget Considerations

On March 1, 2021, San Diego LAFCO held a noticed public hearing to consider adopting a draft workplan and budget for 2021-2022. Specific consideration on the budget involved maintaining existing service levels while pursuing cost-savings wherever possible given cost impacts on the Commission's funding agencies due to the COVID-19 pandemic. This included

Administration Keene Simonds, Executive Officer County Operations Center 9335 Hazard Way, Suite 200 San Diego, California 92123 T 858.614.7755 F 858.614.7766 www.sdlafco.org	Vice Chair Jim Desmond County of San Diego	Mary Casillas Salas City of Chula Vista	Chris Cate City of San Diego	Jo MacKenzie Vista Irrigation	Chair Andy Vanderlaan General Public
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	Joel Anderson, Alt. County of San Diego	Paul McNamara, Alt. City of Escondido		Vacant, Alt. Special District	

the Commission approving a recommendation by the Executive Officer to pursue short and long-term savings by developing an early separation program for eligible employees for formal consideration at a future meeting.

DISCUSSION

This item is for San Diego LAFCO to consider approving a proposed VSIP developed by the Executive Officer and Commission Counsel consistent with the direction provided at the March 2021 meeting. The following key provisions follow and detailed as Attachment One:

- Eligibility
The program is available to all employees with at least 60 months of continued service with LAFCO and determined to be in good standing by the Executive Officer.
- Limitation
The program is open to no more than three eligible employees and applications would be reviewed/approved by the Executive Officer on a first-come basis.
- Application Process
All eligible employees would be invited to file an application in a form provided by the Executive Officer between April 7th and May 5th. The Executive Officer would be authorized to approve the application provided it meets the program requirements.
- Payment
The program would provide each eligible and approved employee a lump sum payment of \$2,000 for every year of service time with San Diego County Employees Retirement Association – which covers both LAFCO and any prior County employment.

ANALYSIS

The proposed VSIP provides San Diego LAFCO a new resource to generate costs savings by creating vacancies in filled positions on a volunteer basis with interested employees. Anyone of the four eligible employees choosing to proceed with the program and approved by the Executive Officer would generate savings to the Commission ranging in Year One (2021-2022) from \$0.064 to \$0.169 million after one-time separation payments are made. The estimated savings would increase in Year Two (2022-2023) between \$0.097 to \$0.206 million and presumably hold going forward. The estimated savings would only decrease in proportion to the cost of new hires if those became necessary and subsequently pursued.¹

¹ No new hires would be expected in Year One due to the current economic conditions. It is possible new hires – albeit not necessarily to fill any vacated positions tied to the VSIP – would be considered once economic conditions improve and in conjunction with the Executive Officer's task to make appropriate position changes within the agency to help maximize organizational efficiencies.

RECOMMENDATION

It is recommended San Diego LAFCO approve the proposed VSIP as presented. This recommendation is consistent with Alternative Action One in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO through a single motion:

Alternative One (recommended):

Approve the proposed VSIP provided as Attachment One with any desired changes.

Alternative Two:

Continue consideration to a future meeting and provide direction as needed.

Alternative Three:

Take no action.

PROCEDURES

This item has been placed on San Diego LAFCO's agenda for action as part of the business calendar. The following procedures, accordingly, apply:

- 1) Receive verbal presentation from staff unless waived.
- 2) Initial questions or clarifications from the Commission.
- 3) Invite comments from the public.
- 4) Consider the staff recommendation or alternatives.

Respectfully,



Keene Simonds
Executive Officer

Attachments:

- 1) Proposed Voluntary Separation Incentive Program

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Voluntary Separation Incentive Program

Section 1. Program Objective

To achieve budget savings, San Diego LAFCO adopts this Voluntary Separation Incentive Program (“VSIP”) to enable the Executive Officer to offer incentives to eligible staff who voluntarily elect to leave their employment with LAFCO. The VSIP’s goal is to achieve savings via potential staff reductions in light of the economic strain imposed by the COVID-19 Pandemic.

To ensure adequate staffing for LAFCO to carry out its statutory duties, the number of VSIP participants will be capped at three participants and the Executive Officer shall have the discretion to deem certain positions critical and ineligible to participate. The discretion to deem certain positions critical and ineligible to participate is exclusively delegated to the Executive Officer and there are no appeals of such designation.

In accepting a VSIP application, the Executive Officer must be able to document and demonstrate mid- to long-term budget savings that justify the payment of the Incentive. In evaluating these costs, the Executive Officer may consider such options as:

- Process improvements to gain organizational efficiencies;
- Redistribution of work among other staff; and,
- Staff reorganization that results in net salary savings at a level to support the Incentive payment(s)

The decision to accept a VSIP application is exclusively delegated to the Executive Officer and there are no appeals.

Section 2. Employee Eligibility

- a. An Eligible Employee is defined as one who meets the qualifications in subsection (b) below.
- b. Employees meeting the following criteria are eligible to submit the required paperwork during the Application Period:
 - i. Full-time employees that have been on active payroll status with LAFCO for 60 consecutive Months preceding the closing date of the VSIP Application Period;
 - ii. Employees who continue to perform as a satisfactory employee until the selected date of separation; and,
 - iii. Employees in all classifications, unless the Executive Officer declares an exemption for critical or hard-to-fill positions.

Section 3. Application Period and Submittal Process

- a. Application Period means 8:00 a.m. on April 7, 2021 to 5:00 p.m. on May 5, 2021 which is the term during which the VSIP will remain active and accept applications. The Executive Officer, in his sole discretion, has the authority to extend the Application Period by up to two weeks if the maximum number of Applications (3) has not been reached by the end of the Application Period. The Executive Officer's decision to extend or not extend the Application Period is final and not appealable.
- b. An Eligible Employee desiring to participate in the VSIP must complete the Voluntary Separation Employment Agreement during the Application Period or any extension thereof. The Voluntary Separation Employment Agreement is attached as Attachment A.
- c. The signed and dated Voluntary Separation Employment Agreement must be electronically mailed to Keene Simonds at keene.simonds@sdcountry.ca.gov.
- d. An Eligible Employee has the right to revoke his or her submission up to seven days after the signature date of the Voluntary Separation Employment Agreement as set forth in Section 5.
- e. Late applications will not be accepted.
- f. The VSIP is open to no more than three Eligible Employees on a first-come, first-served basis.
- g. The VSIP will terminate upon the earlier of the close of the Application Period and any extension thereof or the acceptance of an application by a third Eligible Employee. However, if an Eligible Employee timely revokes their Voluntary Separation Employment Agreement, the Executive Officer retains discretion to accept an application that was timely submitted during the Application Period notwithstanding that such application was not among the first three submitted.
- h. An Eligible Employee whose timely application is accepted before the cap is reached is deemed an Electing Participant.

Section 4. Incentive Provisions

- a. An "Incentive" shall be a one-time lump-sum payment of \$2,000 for each year of accrued San Diego County Employees Retirement Association credit (e.g. 15 years of accrued SDCERA credit equals \$30,000).
- b. An Electing Participant who receives an Incentive will be paid any accrued vacation leave immediately prior to their date of separation.

- c. An Electing Participant who accepts an Incentive will not be eligible to receive unemployment benefits based upon the employee's written acknowledgement that their decision to separate from LAFCO is entirely voluntary.
- d. An Electing Participant may choose to defer a percentage of the Incentive as part of a deferred compensation program up to the annual limit of that program.
- e. An Electing Participant will cease working for LAFCO upon the separation date provided in the Voluntary Separation Employment Agreement.
- f. An Electing Participant who accepts an Incentive is not eligible to be rehired by LAFCO for a period of not less than two years from the date of separation.
- g. An Electing Participant who is rehired sooner will be required to repay LAFCO the cash value of the Incentive received.

Section 5. Release of Claims

- a. To receive the Incentive, the Electing Participant must terminate employment and sign a release of claims.
- b. An Electing Participant who is under 40 years of age shall be given two weeks to consider and sign the release of claims form to receive the Incentive after separation from employment. The Incentive is to be paid after receipt of the signed release of claim and after expiration of the seven-calendar day revocation period or the Election Participant's separation date, whichever is later.
- c. An Electing Participant who is 40 years of age or older at the date of separation shall have 45 days to consider and sign the release of claims, including claims under the Age Discrimination in Employment Act, and accept the offer of the Incentive. The Electing Participant may sign the release of claims form at any time before the end of the 45-calendar day period. The Electing Participant shall be given seven calendar days after signing the release of claims form to revoke the release and refuse acceptance of the Incentive. The Incentive is to be paid at the end of the seven-calendar day revocation period or the Election Participant's separation date, whichever is later.

Section 6. Miscellaneous

- a. Tax Considerations
 - i. An Electing Participant's Incentive is taxable in the calendar year in which it is paid and is subject to withholding taxes.
 - ii. Because the tax consequences of accepting an Incentive vary with each individual, Eligible Employees are encouraged to consult with their tax advisor or financial planner for the specific impact on their situation.

- b. Eligible Employees who are considering applying for the VSIP should understand how terminating employment may impact their SDCERA retirement benefits, including healthcare benefits. Before making a final decision, it is strongly recommended that Eligible Employees speak to an SDCERA retirement benefits specialist to discuss their unique situation.

Appendix:

- 1) Voluntary Separation Employee Agreement

APPENDIX ONE

VOLUNTARY SEPARATION EMPLOYMENT AGREEMENT

This Voluntary Separation Employment Agreement (“Agreement”) is entered into on [DATE] (“Effective Date”) by and between the San Diego County Local Agency Formation Commission, a California public agency (“LAFCO”) and [NAME], an individual (“Employee”). LAFCO and Employee may be referred to a “Parties” collectively or “Party” individually.

RECITALS

WHEREAS, to achieve budget savings, San Diego LAFCO adopted a Voluntary Separation Incentive Program (“VSIP”) to enable the Executive Officer to offer incentives to eligible staff who voluntarily elect to leave their employment with LAFCO.

WHEREAS, the VSIP’s goal is to achieve savings via potential staff reductions in light of the economic strain imposed by the COVID-19 Pandemic.

WHEREAS, Employee is employed with LAFCO full-time and accrued over 60 consecutive months of San Diego County Employees Retirement Association (“SDCERA”) credit.

WHEREAS, Employee expressed interest in participating in VSIP.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Date of Separation. The Parties agree that Employee voluntarily resigns and separates from employment with LAFCO effective [DATE].
2. Incentive. In consideration for signing this Agreement, LAFCO agrees to pay Employee a one-time lump-sum payment of [AMOUNT] (“Incentive”), calculated as \$2,000 for each year of accrued SDCERA credit.
3. Other Payments. In addition to the Incentive, LAFCO agrees to pay Employee [AMOUNT] in accrued vacation leave.
4. Method of Payment. LAFCO will pay Employee the Other Payments on the Date of Separation. LAFCO will credit the Incentive to Employee’s direct deposit account within 30 days of the end of the Rescission Period, as described below. If Employee elects to receive the Incentive and Other Payments in one, lump-sum payment, LAFCO will make all applicable federal, state, and local deductions. Employee may choose to defer a percentage of the Incentive or Other Payments as part of a deferred compensation program up to the annual limit of that program.
5. Rescission Period. Employee has seven calendar days from the Effective Date to rescind this Agreement by providing written notice to LAFCO’s Executive Officer. The Rescission Period terminates on [DATE]. Upon timely submission of written notice of rescission, Employee’s status will revert to that immediately preceding the Effective Date.

6. Release and Waiver. In consideration of LAFCO's payment of the Incentive and Other Payments, Employee and Employee's heirs, executors, administrators, assigns, and successors, hereby fully and forever, irrevocably and unconditionally release and discharge LAFCO and its governing body, officials, employees, and agents (collectively "Releasees") from any and all claims, actions, causes of action, judgments, liens indebtedness, damages, obligations, losses, liabilities, costs, claims for attorneys' fees or costs, arising out of or related to Employee's employment with LAFCO or this Agreement.
7. Waiver of Civil Code Section 1542. Employee acknowledges that California Civil Code section 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Employee expressly waives the provisions of California Civil Code section 1542 and further waives any rights Employee might have to invoke said provisions now or in the future with respect to the releases set out in this Agreement.

8. [FOR EMPLOYEES OVER 40 YEARS OF AGE] Release of Age Discrimination in Employment Act Claims. Employee waives any claim or right to challenge this Agreement on age discrimination or other grounds under the Age Discrimination in Employment Act of 1967 ("ADEA"). Employee is advised to consult with an attorney of Employee's own choosing before signing this release of ADEA claims.
9. Returning to Work. Employee is ineligible to be rehired by LAFCO for a period of not less than two years from the Date of Separation. If Employee is rehired sooner, Employee will be required to repay LAFCO the cash value of the Incentive.
10. Entire Agreement. This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties. This Agreement shall supersede, and render void any prior agreements between the Parties, concerning the subject matter of this Agreement.
11. Severability. In the event that any term, condition, or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, that term, condition, or provision shall be deemed to be deleted, and the remaining terms, conditions and provisions shall continue in force and effect.
12. Counterparts. This Agreement will be executed in counterparts. First, the Employee must execute this Agreement and electronically mail it to Keene Simonds at Keene.Simonds@sdcounty.ca.gov. Provided the Employee meets the eligibility requirements and the cap on program participants has not been exceeded, upon receipt, LAFCO's Executive Director will execute the Agreement and return a copy by physical and electronic mail to Employee at [EMAIL] and [ADDRESS].

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Agreement as of the dates below.

LAFCO

EMPLOYEE

Keene Simonds, Executive Officer

[EMPLOYEE NAME]

Date signed: _____

Date signed: _____

APPROVED AS TO FORM:

Holly O. Whatley, General Counsel

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