



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

7a

AGENDA REPORT Business | Action

November 1, 2021

TO: Commissioners

FROM: Holly O. Whatley, Commission Counsel

SUBJECT: Fourth Amendment to Employment Agreement with Executive Officer

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) annually evaluates the performance of its Executive Officer under adopted policy. The Commission's evaluation follows receipt of the review and recommendation of its Executive Officer (EO) Compensation Committee, and this includes considering whether amendments to the employment agreement are merited. The EO Compensation Committee recommends amending EO Keene Simonds' employment agreement to increase his annual salary commensurate with the Committee's evaluation of performance as "outstanding." The proposed amendment is attached as Exhibit C, with the amount of the increase left open until full Commission discussion has concluded.

BACKGROUND

San Diego LAFCO appointed Keene Simonds as EO in September 2017. The employment agreement is provided as Attachment One. The Commission has proceeded to approve three amendments as part of subsequent annual reviews. These amendments are provided as Attachments Two through Four.

Administration

Keene Simonds, Executive Officer
2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
www.sdlafco.org

Vice Chair Jim Desmond
County of San Diego

Nora Vargas
County of San Diego

Joel Anderson, Alt.
County of San Diego

Paul McNamara
City of Escondido

Mary Casillas Salas
City of Chula Vista

Kristi Becker, Alt.
City of Solana Beach

Chris Cate
City of San Diego

Marni von Wilpert, Alt.
City of San Diego

Jo MacKenzie
Vista Irrigation

Barry Willis
Alpine Fire Protection

David Drake, Alt.
Rincon del Diablo

Chair Andy Vanderlaan
General Public

Harry Mathis, Alt.
General Public

DISCUSSION

The EO Compensation Committee (Vanderlaan, Desmond, and MacKenzie) met on September 3, 2021 as part of Keene Simonds' annual performance review process and recommends a salary increase commensurate with his overall performance rating level of "outstanding." The EO Compensation Committee last reviewed Keene Simonds' performance in August 2020 with the Commission proceeding to vote unanimously to increase his annual salary by 2% percent from \$182,624 to \$186,277.

ANALYSIS

San Diego LAFCO's EO Committee members will be prepared to recommend a specific increase for the full Commission's consideration commensurate with the EO's evaluation rating of outstanding at the November 1st meeting. The potential changes to salary and benefits contemplated by the Committee are within San Diego LAFCO's existing budget appropriations and shall be incorporated into Attachment Five upon Commission approval.

A listing of salaries for executive officers for Southern California LAFCO's is provided for comparisons as Attachment Six.

RECOMMENDATION

It is recommended San Diego LAFCO receive a report from its EO Compensation Committee and consider an amendment to the EO agreement accordingly. This recommendation is consistent with Alternative Action One in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO:

Alternative One (recommended):

Consider the EO Compensation Committee's report and associated recommendations and approve an amendment to the Executive Officer's employment agreement with signing authorization to the Chair.

Alternative Two:

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

Alternative Three:

Take no action.

PROCEDURES

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

- 1) Receive verbal report from the EO Compensation Committee.
- 2) Commission discussion.
- 3) Consider the Commission Counsel's recommendation.

Respectfully,

Holly O. Whatley
Commission Counsel

Attachments:

- 1 – Employment Agreement with Keene Simonds
- 2 – First Amendment
- 3 – Second Amendment
- 4 – Third Amendment
- 5 – Proposed Fourth Amendment
- 6 – Chart of EO Salaries for Southern California LAFCOs

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**EMPLOYMENT AGREEMENT
BETWEEN THE SAN DIEGO LOCAL AGENCY FORMATION COMMISSION
AND KEENE SIMONDS**

RECITAL

On August 7, 2017 the San Diego Local Agency Formation Commission selected Keene Simonds (hereafter "Executive Officer") to serve as Executive Officer of the San Diego Local Agency Formation Commission ("LAFCO"), and Executive Officer accepted such employment. Executive Officer and LAFCO are referenced in this Agreement as Parties and, individually, as a Party. Accordingly, the Parties agree as follows:

AGREEMENT

1. Effective Date

This agreement shall become effective when it has been executed by Executive Officer and duly approved by the LAFCO Commission which the Parties anticipate will be on or before September 11, 2017.

2. Term of Employment

Pursuant to the Cortese-Knox-Hertzberg Act, California Government Code sections 56000 et seq. ("CKH"), and this Agreement, Executive Officer serves at the pleasure of the LAFCO Commission and on an "at will" basis and has no vested right to his employment during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below. The term of this Agreement shall extend from its Effective Date until terminated by a Party pursuant to sections 14 – 16 of this Agreement below.

3. Duties; Hours of Work

A. Executive Officer shall perform those functions and duties specified by CKH and other applicable laws, adopted policies and procedures of LAFCO and by formal direction of the LAFCO Commission. Executive Officer shall perform such duties in accordance with the highest professional and ethical standards of the public management profession. Executive Officer shall not engage in any activity, which is, or which may become, incompatible with the office of Executive Officer, as provided for

by State law. During the term of this agreement, Executive Officer shall be exclusively employed by the LAFCO, unless prior authorization otherwise is received from the LAFCO Commission, which authorization will not be unreasonably withheld.

B. Executive Officer shall maintain a regular work schedule consistent with that approved for other Executive Service employees of the LAFCO. Executive Officer's duties may require more than eight hours per day and/or (40 hours per week, and may also include time outside normal office hours, such as attendance at LAFCO Commission meetings. Executive Officer shall not be entitled to additional compensation for such time. Commission acknowledges that Executive Officer intends to work a four-day, 10-hour work week until January 1, 2018 and consents to his doing so, provided that he is available on the last business day before Commission meetings and at other times as the work of LAFCO may require.

4. Compensation

A. The Executive Officer's annual salary shall be \$160,000 and as otherwise provided in section 6.20 of LAFCO's Personnel Rules ("Rules").

B. Executive Officer's compensation shall be reviewed at least annually in connection with the annual review required by section 11 below or at other times as may be determined by the LAFCO Commission.

C. To assist Executive Officer in relocating himself and his family from the Bay Area, Executive Officer shall receive, at his option, (i) an additional, \$1,000 in taxable compensation in each of the first six months of his employment, (ii) reimbursement of housing, travel and moving expenses up to \$6,000, or (iii) any combination of the two which does not exceed a cost to LAFCO of \$6,000 excluding employer's payroll taxes. This benefit is in addition to the moving expense allowance provided by section 6.20 of the Rules.

5. Flexible Benefits Program

LAFCO shall provide Executive Officer with the same flexible benefit program covering medical, dental and vision insurance benefits as provided to all other County of San Diego Executive Service employees and at the cost charged to those employees. At present, the monthly allowances are \$646 for an employee, \$937 for an employee with one dependent, and \$1,313.00 for an employee with two or more dependents.

6. Other Benefits

- A. LAFCO shall provide, without cost to the Executive Officer, term life insurance in the amount of his annual salary, \$2,000.00 for his spouse and dependent children up to age 26. LAFCO shall also provide accidental death and dismemberment insurance up to the amount of Executive Officer's annual salary. These coverages may be supplemented via the flexible benefit plan described above.
- B. Executive Officer may participate in the flexible spending plan on the same terms available to other County of San Diego Executive Service employees. At present the plan allows reimbursement on a pre-tax basis of eligible health care and dependent day care expenses.
- C. Executive Officer may participate in the health savings plan on the same terms available to other County of San Diego Executive Service employees.
- D. Executive Officer may participate in the limited-purpose, flexible-spending plan for otherwise unreimbursed dental and vision expenses on the same terms available to other County of San Diego Executive Service employees.
- E. Executive Officer will be afforded pension benefits under the terms established by the San Diego Employees Retirement Association on the same terms afforded other similarly qualified County of San Diego Executive Service employees.
- F. Executive Officer may participate in the County's 457 and 401A deferred compensation programs on the same terms available to other County of San Diego Executive Service employees.

7. Vacation Leave

A. Executive Officer shall be afforded vacation benefits per the Rules. At present, these afford 10 days per year for employees with one to five years' service, 15 days per year for employees with five to 10 years' service, and 20 days per year to employees with more than 10 year' service.

B. The Executive Officer may carry a balance of no more than twice his annual accrual of vacation leave.

8. Other Leaves, Holidays, and Benefits

The Executive Officer is entitled to 10 paid holidays as recognized by the LAFCO, plus two days of floating holiday time-off annually. LAFCO shall afford Executive Officer such other benefits as are provided to other Executive Service employees of the LAFCO on the same terms as provided to those employees except as otherwise expressly provided herein. These include as of the Effective Date:

- A. An initial bank of 10 days of reserve sick leave pending normal accrual during the first year of employment. Thereafter, accruals are credited on a biweekly basis (4 hours per 80-hour pay period). Employee will accrue 13 sick days per year in every subsequent year.
- B. Miscellaneous leaves including those for military service, bereavement, and jury duty.

9. Automobile Allowance

As the Executive Officer's normal duties require frequent use of his automobile, Executive Officer shall be entitled to \$600 per month as an automobile allowance. This allowance is in lieu of mileage reimbursement or other expenses that may be incurred by Executive Officer in connection with his use of his own automobile for LAFCO purposes. In consideration for said allowance, Executive Officer shall be responsible for all costs of maintenance and operation of his vehicle. Executive Officer shall at all times maintain automobile liability insurance on any vehicle him uses in the course of LAFCO employment. Such insurance shall have coverage limits acceptable in form and amounts to LAFCO. Executive Officer shall provide a certificate or other evidence of such insurance to LAFCO. Executive Officer acknowledges that this allowance will be subject to payroll taxes unless he maintains the records required by law to permit other treatment of this allowance. Executive Officer may not drive the County of San Diego vehicle provided to LAFCO staff more than three times per month under the policies and regulations adopted by the County of San Diego.

10. Professional Memberships & Meetings; Other Expenses

A. LAFCO shall maintain its membership in the California Association of LAFCOs to support Executive Officer's professional development. LAFCO shall pay for Executive Officer to attend the annual CALAFCO staff workshop and annual conference. LAFCO will pay for such other professional memberships and conference attendance as may be approved and budgeted by the LAFCO Commission.

B. LAFCO recognizes that the Executive Officer may incur certain expenses of a non-personal and job-related nature. LAFCO agrees to reimburse Executive Officer for reasonable expenses which are authorized by the LAFCO budget; submitted to the LAFCO Commission for approval; and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the LAFCO.

11. Annual Performance Evaluation

The LAFCO Commission shall evaluate Executive Officer's performance at least once annually. The LAFCO Commission and Executive Officer shall annually develop mutually agreeable performance goals and criteria which the LAFCO Commission shall use in reviewing Executive Officer's performance in the following year. It shall be Executive Officer's responsibility to initiate this review each year. Executive Officer will be afforded an adequate opportunity to discuss each evaluation with the LAFCO Commission.

12. Indemnification

LAFCO shall defend, hold harmless and indemnify Executive Officer against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Executive Officer's employment to the extent required by Government Code Sections 825 and 995.

13. Other Terms and Conditions of Employment

A. The LAFCO Commission may from time to time fix other terms and conditions of employment relating to the performance of Executive Officer, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, CKH, or other applicable law.

B. The provisions of the Rules shall apply to Executive Officer to the extent they explicitly apply to the position of Executive Officer or as provided elsewhere in this Agreement, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Executive Officer a property right in his employment or a right to be discharged only upon cause. Executive Officer is an at-will employee serving at the pleasure of the LAFCO Commission and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

14. Termination Without Cause

The LAFCO Commission may terminate Executive Officer's employment with the LAFCO at any time and without cause, upon 30 days' written notice to Executive Officer. In the event of such termination without cause, Executive Officer shall be entitled to a severance benefit, of six months of the Executive Officer's current base

salary plus payment of accumulated vacation upon termination from service. This base salary and leave pay-out shall be made on a bi-weekly basis at such time as other LAFCO employees are paid; provided, however, that the balance on any accrued leave which has not then been paid shall be payable in a lump sum upon termination of severance pay. Upon payment of such severance compensation, LAFCO shall have no further obligation to Executive Officer and Executive Officer shall have no claim for further compensation from LAFCO.

15. Termination With Cause

The LAFCO Commission may terminate Executive Officer's employment with LAFCO for cause upon 30 days' written notice to Executive Officer. In that event, LAFCO shall have no obligation to continue the employment of Executive Officer and shall have no obligation to provide any severance compensation, although Executive Officer shall be entitled to payment of the value of accrued leave. For purposes of this agreement, the term "for cause" means malfeasance or misfeasance in office or conviction of a crime involving moral turpitude, including but not limited to:

- (a) use of alcohol or drugs that impedes performance of duties;
- (b) conviction of a felony or misdemeanor involving moral turpitude (a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed a conviction for this purpose);
- (c) a proven claim of either sexual harassment or abuse of employees in violation of law or adopted LAFCO policy;
- (d) willful and repeated failure to carry out the lawful directives or policy decisions of the LAFCO Commission; or
- (e) willful abandonment of the position or continued and unexcused absence from duty.

16. Voluntary Termination; Death

A. Executive Officer may voluntarily terminate his employment, by resignation or retirement, at any time during the term of this Agreement, subject to at least 30 days' written notice by Executive Officer to LAFCO, unless the LAFCO Commission and Executive Officer agree otherwise. In such case, LAFCO shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment, other than payment of accrued leave.

B. In the event the Executive Officer dies while employed by the LAFCO, his beneficiaries or those entitled to his estate shall be paid any earned salary and accrued leave at the Executive Officer's pay rate on the date of death.

17. Compliance With Law

This Agreement is subject to all applicable provisions of CKH and other State and Federal law and LAFCO policies, rules and regulations applicable to the Executive Officer.

18. General Provisions

A. This Agreement constitutes the entire Agreement between the Parties. LAFCO and Executive Officer hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

C. Any notice to LAFCO pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

Chair and Members of the LAFCO Commission
San Diego LAFCO
9335 Hazard Way, Suite 200
San Diego, CA 92123

With a courtesy copy to the LAFCO General Counsel at the following address or the address then shown in the records of the LAFCO for the LAFCO General Counsel:

Michael G. Colantuono, Esq.
San Diego LAFCO General Counsel
420 Sierra College Drive, Ste. 140
Grass Valley, CA 95945-5091.

Any notice to Executive Officer shall be given in a like manner, and, if mailed, shall be addressed to Executive Officer at the address then shown in LAFCO's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given: (a) on the date of delivery, if served personally, or (b) on the second calendar day after mailing, if mailed.

D. Venue for any disputes arising from or relating to this Agreement shall lie in San Diego County, California. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees and costs with respect to the action.

E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either Party shall be free to enforce any term or condition of this Agreement with or without notice to the other, notwithstanding any prior waiver of that term or condition.

19. Amendments

This represents the entire agreement between the Parties as to its subject. Amendments to this Agreement may be made at such times as approved by the LAFCO Commission and Executive Officer and shall be in writing.

EXECUTIVE OFFICER

Dated: August 9, 2017


Keene Simonds

LAFCO

Dated: Aug. 15, 2017


Sam Abed, Chair

Approved as to form:


Michael G. Colantuono
LAFCO Attorney

Dated: 8/11/17

Attest:



[name] Tamaron R. Lockett
LAFCO Clerk

Dated: 8/15/2017

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FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

RECITAL

On October 3, 2018 the San Diego Local Agency Formation Commission unanimously approved amending the Employment Agreement originally entered into between the San Diego Local Agency Formation Commission (hereafter "LAFCO") and Keene Simonds ("Executive Officer") on September 11, 2017. Such approved amendments followed the Executive Officer's annual performance review and are made as permitted by Paragraph 19 of the Employment Agreement. The Parties agree as follows:

AMENDMENTS

1. Paragraph 4 ("Compensation"), subparagraph "A" is hereby amended in its entirety to read as follows:
 - A. Effective as of the first day of the first pay period following the Executive Officer's one-year anniversary date September 11, 2017, the Executive Officer's annual salary shall be \$168,000 and as otherwise provided in section 6.20 of LAFCO's Personnel Rules ("Rules").
2. Paragraph 7 ("Vacation Leave"), subparagraph "A" is hereby amended in its entirety to read as follows:
 - A. Executive Officer shall be afforded vacation benefits provided for Executive Management per San Diego County's Compensation Ordinance Section 4.2.1 – Vacation. At present, this affords 15 days per year for employees with one to four years' service, 20 days per year for employees with five to 14 years' service, and 25 days per year to employees with 15 years of service and over. Accruals are credited on a biweekly basis and available for use as it is accrued. The effective date of this vacation accrual formula is retroactive to the start date of the Executive Officer's employment with LAFCO on September 11, 2017 and is intended to adjust the Executive Officer's vacation benefits from the inception of his employment to be consistent with the executive management vacation benefits afforded County of San Diego executive management employees.
3. All other recitals, paragraphs, subparagraphs and clauses of the Agreement remain unchanged by this First Amendment to Employment Agreement.

EXECUTIVE OFFICER

Dated: 12-6-18

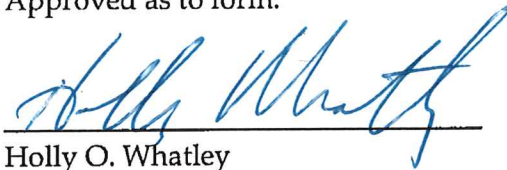

Keene Simonds

LAFCO

Dated: 12-6-18



Jo MacKenzie, Chair

Approved as to form:


Holly O. Whatley
LAFCO Attorney

Dated: 12-12-18

Attest:


Tamaron Luckett
LAFCO Clerk

Dated: 12/04/18

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

RECITAL

On October 7, 2019 the San Diego Local Agency Formation Commission approved amending the Employment Agreement Between the San Diego Local Agency Formation Commission (hereafter "LAFCO") and Keene Simonds ("Executive Officer") dated September 11, 2017 ("Employment Agreement"), attached as Exhibit A, which was originally amended pursuant to the First Amendment to Employment Agreement, attached hereto as Exhibit B. The October 7, 2019 approved amendment followed the Executive Officer's annual performance review and is made as permitted by Paragraph 19 of the Employment Agreement. The Parties agree as follows:

AMENDMENT

1. Paragraph 4 ("Compensation"), subparagraph "A" is hereby amended in its entirety to read as follows:

A. Effective as of the first day of the first pay period following the Executive Officer's second-year anniversary date of September 11, 2017, the Executive Officer's annual salary shall be \$182,624 and as otherwise provided in section 6.20 of LAFCO's Personnel Rules ("Rules").

2. All other recitals, paragraphs, subparagraphs and clauses of the Employment Agreement and the Vacation Leave amendment in the First Amendment to Employment Agreement remain unchanged by this Second Amendment to Employment Agreement.

EXECUTIVE OFFICER

Dated: 10-7-19


Keene Simonds

LAFCO

Dated: October 7, 2019


Jo MacKenzie, Chair

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THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

RECITAL

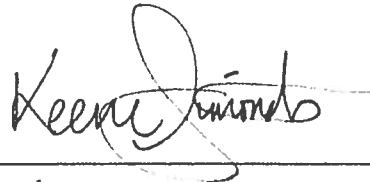
On October 5, 2020 the San Diego Local Agency Formation Commission approved amending the Employment Agreement Between the San Diego Local Agency Formation Commission (hereafter "LAFCO") and Keene Simonds ("Executive Officer") dated September 11, 2017 ("Employment Agreement"), attached as Exhibit A, which was first amended pursuant to the First Amendment to Employment Agreement, attached hereto as Exhibit B, and last amended pursuant to the Second Amendment to Employment Agreement, attached hereto as Exhibit C. The amendment approved on October 5, 2020 followed the Executive Officer's annual performance review and is made as permitted by Paragraph 19 of the Employment Agreement. The Parties agree as follows:

AMENDMENT

1. Paragraph 4 ("Compensation"), subparagraph "A" is hereby amended in its entirety to read as follows:
 - A. Effective as of the first day of the first pay period following the Executive Officer's hiring anniversary date September 11, 2020, the Executive Officer's annual salary shall be \$186,277 and as otherwise provided in section 6.20 of LAFCO's Personnel Rules ("Rules").
2. All other recitals, paragraphs, subparagraphs and clauses of the Employment Agreement and the Vacation Leave amendment in the First Amendment to Employment Agreement remain unchanged by this Third Amendment to Employment Agreement.

EXECUTIVE OFFICER

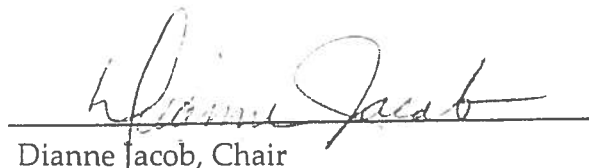
Dated: October 5, 2020



Keene Simonds

LAFCO

Dated: 11/6/2020



Dianne Jacob, Chair

Approved as to form:



Holly O. Whatley
General Counsel

Dated: 11/5/20

Attest:



Tamaron Lockett
LAFCO Clerk

Dated: 11/6/2020

FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT

RECITAL

On _____, 2021 the San Diego Local Agency Formation Commission approved amending the Employment Agreement Between the San Diego Local Agency Formation Commission (hereafter "LAFCO") and Keene Simonds ("Executive Officer") dated September 11, 2017 ("Employment Agreement"), attached as Exhibit A. The Employment Agreement has been amended three times, and the First, Second and Third Amendments are attached hereto as Exhibit B. This Fourth Amendment approved on _____, 2021 following the Executive Officer's annual performance review and is made as permitted by Paragraph 19 of the Employment Agreement. The Parties agree as follows:

AMENDMENT

1. Paragraph 4 ("Compensation"), subparagraph "A" is hereby amended in its entirety to read as follows:
 - A. Effective as of the first day of the first pay period following the Executive Officer's hiring anniversary date September 11, 2021, the Executive Officer's annual salary shall be \$_____ and as otherwise provided in section 6.20 of LAFCO's Personnel Rules ("Rules").
2. All other recitals, paragraphs, subparagraphs and clauses of the Employment Agreement and the Vacation Leave amendment in the First Amendment to Employment Agreement remain unchanged by this Forth Amendment to Employment Agreement.

EXECUTIVE OFFICER

Dated: _____

Keene Simonds

LAFCO

Dated: _____

Andy Vanderlaan, Chair

Approved as to form:

Holly O. Whatley
General Counsel

Dated: _____

Attest:

Tamaron Luckett
LAFCO Clerk

Dated: _____

**Executive Officer Salaries
Among Southern California Counties**

County	Current EO Salary	Years with LAFCO	Years with LAFCO as EO	LAFCO Employees	LAFCO FY22 Budget
Los Angeles	\$227,000	11	11	6.0	1.658 m
Orange	\$184,849	21	8	5.0	1.345 m
Riverside	\$175,000	3	3	5.0	1.190 m
San Bernardino	\$195,173	18	3	6.0	1.153 m
Ventura	\$201,690	16	8	3.0	0.857 m
San Diego	\$186,276	4	4	8.0	1.941 m

Average EO Salary

Among Other 5 LAFCOs: \$196,742

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