



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

8d

AGENDA REPORT
 Business | Action

October 7, 2024

TO: Commissioners

FROM: Holly O. Whatley, Commission Counsel

SUBJECT: Consideration and Possible Approval of Seventh Amendment to Executive Officer’s Employment Contract, Including Salary Adjustment

SUMMARY

The Commission conducts an annual performance evaluation of its Executive Officer, Keene Simonds and typically during its October meeting. As part of this evaluation, the Commission may propose amendments to the Executive Officer’s employment contract. The Executive Officer Compensation Committee recommends an amendment to increase the Executive Officer’s annual salary. Please find the proposed amendment attached as Exhibit A.

DISCUSSION

Section 11 of the Employment Agreement Between the San Diego Local Agency Formation Commission and Keene Simonds, dated September 11, 2017 (“Agreement”) requires the Commission to evaluate the Executive Officer’s (“EO”) performance at least once annually. The Agreement is an attachment to Exhibit A, the proposed amendment.

Under Section 6.20 of the LAFCO Personnel Rules, the Commission may consider an adjustment of the Executive Director’s current salary dependent on the EO Compensation Committee’s performance evaluation and recommendation.

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103-6624 T 619.321.3380 www.sdlafco.org lafco@sdcountry.ca.gov</p>	<p>Joel Anderson County of San Diego</p> <p>Jim Desmond County of San Diego</p> <p>Nora Vargas, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann City of Chula Vista</p>	<p>Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Vice Chair Barry Willis Alpine Fire Protection</p> <p>Jo MacKenzie Vista Irrigation</p> <p>David A. Drake, Alt. Rincon del Diablo</p>	<p>Harry Mathis General Public</p> <p>Brigitte Browning, Alt. General Public</p>
---	--	--	--	--	--

The EO's current salary is \$230,505 which includes the recent 2.75% cost-of-living adjustment provided to all employees. The established salary range for the position is \$147,805 to \$262,163. For context, Attachment B is a chart of the current LAFCO salaries of Executive Officers for LAFCOs in the Southern California Region and reflects an average salary is \$233,932.

The EO Compensation Committee consists of Chair Whitburn, Vice-Chair Willis and the most immediate past chair, Commissioner Desmond. The Committee met on September 27, 2024, as part of the Executive Officer's annual performance review process and recommends the Commission consider a salary increase commensurate with the EO's overall recommended performance rating level of "outstanding."

FISCAL IMPLICATIONS

The changes to salary and benefits provided by this amendment are within existing budget appropriations.

ALTERNATIVES FOR ACTION

The Commission may refuse to approve the amendment, request changes to the amendment, or give other appropriate direction on this subject.

Respectfully,

Holly O. Whatley,
Commission Counsel

Attachments:

- 1) Proposed Seventh Amendment to Employment Agreement (including attached original agreement)
- 2) Chart of Comparative EO Salaries in Southern California Region

SEVENTH AMENDMENT TO EMPLOYMENT AGREEMENT

RECITAL

On October 2, 2023, 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 six times. This Seventh 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 hiring anniversary date, September 11, 2024, 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 Sixth Amendment to Employment Agreement.

EXECUTIVE OFFICER

Dated: _____

Keene Simonds

LAFCO

Dated: _____

Stephen Whitburn, Chair

Approved as to form:

Holly O. Whatley
General Counsel

Dated: _____

Attest:

Erica Sellen
LAFCO Clerk

Dated: _____

EXHIBIT A

**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

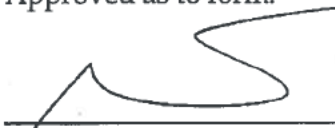
LAFCO

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

Current Annual Salaries Among Other Executive Officers
in the Southern California Region

LAFCO	Executive Officer	Current Salary
Los Angeles	Paul Novak	276,000
Ventura	Kai Luoma	237,007
Orange	Carolyn Emery	230,051
San Bernardino	Sam Martinez	192,670
Average		233,932

- 1) Riverside and Imperial LAFCO's Executive Officers are contracted retirees.

Blank for Photocopying