

STAFF REPORT

SUBJECT: Executive Director Employment Agreement

MEETING DATE: May 15, 2008

AGENDA ITEM: 4B

STAFF CONTACT: Jim Kemp

RECOMMENDATION:

Authorize the chair to sign an amended executive director employment agreement

DISCUSSION:

The board's employment agreement with the executive director is typically renewed annually. The agreement was last amended in November 2006 and the term of the agreement is through June 30, 2009.

It is recommended that the board authorize the chair to sign the revised employment agreement (attached). The amendments include an increase in the cap on the amount SBCAG pays toward the employee retirement contribution of \$50/pay period (Section 9) and an increase in the monthly auto allowance of \$200.00 (Section 10) No salary change is proposed.

COMMITTEE REVIEW:

The SBCAG executive committee reviewed the revised employment agreement and is recommending approval.

ATTACHMENTS:

Proposed Employment Agreement

AGREEMENT OF EMPLOYMENT
BETWEEN THE
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
AND
JAMES M. KEMP, EXECUTIVE DIRECTOR

Agreement made on this date by and between the Santa Barbara County Association of Governments, hereafter referred to as "Agency" and James M. Kemp, hereinafter referred to as the "Executive Director," is intended to acknowledge and memorialize the continued employment of Mr. Kemp, pursuant to the intent and effect of the resolution adopted by the governing board of the Agency as Resolution 90-23, and to provide particular terms for the employment of an executive director of the Agency.

Section 1. Duties

The Agency agrees to employ James M. Kemp as the Executive Director of the Santa Barbara County Association of Governments to perform the functions and duties of the Executive Director of the Agency, and to perform such other legally permissible and proper duties and functions as the governing board shall from time to time assign. The Executive Director agrees that to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement.

Section 2. Term

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the governing board to terminate the services of the Executive Director at any time, subject only to the provisions set forth in Section 3, Paragraphs A and B, of this Agreement. Termination shall require a majority vote of the full governing board of the Santa Barbara County Association of Governments.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Executive Director to resign at any time from his position with the Santa Barbara County Association of Governments, subject only to the provision set forth in Section 3, Paragraph C of this Agreement.
- C. The Executive Director agrees to remain in the exclusive employ of the Santa Barbara Association of Governments through June 30, 2009 neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided. The term "employed" shall not be construed to include occasional teaching, writing, or consulting performed on the Executive Director's personal time.

- D. During the month of March 2009, the Executive Director shall advise the Agency governing board that the term of this Agreement will expire and shall request the Agency to renew or not renew the Agreement for a new term. The Agency shall determine not later than 60 days prior to the termination of this Agreement whether or not to renew it and, if it is to be renewed, the terms upon which it will be renewed. If the Agency fails to take action within such time, the Agreement shall continue in force and effect subject to termination on 60 days' notice without liability for the payment pursuant to Section 3.

Section 3. Termination and Severance Pay

- A. In the event the Executive Director is terminated by the governing board before expiration of the aforesaid term of employment and during such time the Executive Director is willing and able to perform his duties under this Agreement, then in that event the Agency agrees to pay the Executive Director a cash payment equal to four (4) months aggregate salary; provided, however, that in the event the Executive Director is terminated because of his conviction of any illegal act involving personal gain to him, moral turpitude, malfeasance in office or misuse of office then, in that event, the Agency shall have no obligation to pay the aggregate severance sum designated in this paragraph. Said cash payments may be paid, at the option of the Executive Director, in (a) lump sum upon date of the termination; (b) lump sum on January 1 of the year following termination; or, (c) four equal monthly payments.
- B. In the event the Agency at any time during the term of this Agreement reduces the salary or other financial benefits of the Executive Director in a greater percentage than an applicable across-the-board reduction of all employees of the Agency, or in the event the Agency refuses, following written notice, to comply with any other provision benefitting the Executive Director herein, or the Executive Director resigns following a request or recommendation, by the governing board that he resign, then, in that event, the Executive Director may, at his option, be deemed to be "terminated" at the date such reduction or such refusal to comply within the meaning and context of the herein severance pay provision.
- C. In the event the Executive Director voluntarily resigns his position with the Agency before expiration of the aforesaid term of his employment, then the Executive Director shall give the agency sixty (60) days' notice in advance, unless the parties otherwise agree.

Section 4. Disability

If the Executive Director is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued sick leave, the Agency shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Paragraph A. However, the Executive Director shall be compensated for any accrued vacation, holidays, compensatory time and other accrued benefits.

Section 5. Salary

The Agency agrees to pay the Executive Director a salary at a rate of \$73.176/hour which is the equivalent of Salary Range 754, Step E.

Agency agrees to increase said base salary and/or other benefits of the Executive Director in such amounts and to such extent as the governing board may determine that it is desirable to do so on the basis of an annual salary review of the Executive Director made at the same time as similar consideration is given other employees generally.

Section 6. Performance Evaluation

- A. The Executive Committee of the Agency shall review and evaluate the performance of the Executive Director annually, in May. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Executive Committee and the Executive Director. Said criteria may be added to or deleted from as the Executive Committee may from time to time determine, in consultation with the Executive Director. Further, the Executive Committee shall provide the Executive Director with a summary written statement of the findings of the Executive Committee and provide an adequate opportunity for the Executive Director to discuss his evaluation with the governing board.
- B. Annually, the Agency and the Executive Director shall define such goals and performance objectives which they determine necessary for the proper operation of the Agency, and in the attainment of the governing board's policy objective and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 7. Personnel Manual and Benefits

The employment of the Executive Director is subject to the Personnel Manual adopted by said Resolution 90-22 and the Pay and Benefits provisions of said Resolution 90-23, and the hours of work, sick leave, holiday, vacation and other leave, retirement, professional development and education benefits shall be as provided in such resolutions, as amended from time to time, All provisions of the ordinances of the Agency, and regulations and rules of the Agency as they now exist or hereafter may be amended, also shall apply to the Executive Director as they would to other employees of the Agency in addition to benefits enumerated specifically for the benefit of the Executive Director. Notwithstanding the foregoing to the extent that such provisions are inconsistent with this agreement, the provisions of this agreement shall prevail. Nothing herein shall be deemed to make the Executive Director a permanent employee of the Agency.

Section 8. Deferred Compensation

The Agency shall contribute one hundred and fifty dollars (\$150.00) per pay period on behalf of the Executive Director to the Section 457 deferred compensation plan currently established by

the Agency. This contribution may be adjusted from time to time by the governing board of the Agency.

Section 9. Retirement Contribution

SBCAG shall maintain benefit provisions of the Santa Barbara County Employees Retirement System, a 1937 Act system. In addition to the regular employer contribution to said retirement system, SBCAG shall contribute towards the Executive Director's employee contribution an amount up to ~~\$200.00~~ 250.00 per pay period. Such contribution shall be subject to the provisions of Government Code Section 31630.

Section 10. Automobile

The Executive Director shall receive a vehicle allowance of an additional ~~\$300.00~~ \$500.00 per month, together with mileage reimbursement at the rate exempted by the Internal Revenue Service for income reporting (currently ~~44.5~~ 50.5¢ per mile) for travel in a personal vehicle on Agency business within and outside the County of Santa Barbara.

Section 11. Bonding

The Agency shall bear the full cost of any fidelity or other bonds required of the Executive Director pursuant to duties of the Agency under any law or ordinance.

Section 12. Other Terms and Conditions of Employment

The Executive Committee of the governing board, in consultation with the Executive Director, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the Executive Director, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, any applicable ordinance or any other law.

Section 13. No Reduction of Benefits

The Agency shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of the Executive Director, except to the degree of such a reduction across-the-board for all employees of the Agency.

Section 14. Notices

Notices pursuant to this Agreement may be given by mail, first class postage prepaid to the respective parties at the following addresses:

The Executive Director: James M. Kemp
 387 Arboleda Rd.
 Santa Barbara, CA 93110.

To Agency:

C/o County Counsel
105 East Anapamu Street, Suite 201
Santa Barbara, CA 93101

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, in the course of transmission in the United States Postal Service.

Section 15. General Provisions

- A. The text herein shall constitute the entire agreement between the parties.
- B. This Agreement shall become effective commencing ~~November 16, 2006~~ May 15, 2008.
- C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Date: _____.

Santa Barbara County
Association of Governments

By: _____
Brooks Firestone, Chair

Date: _____.

James M. Kemp

APPROVED AS TO FORM:

By: _____
Kevin E. Ready
Senior Deputy County Counsel