

LAFCO

Santa Barbara Local Agency Formation Commission

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Date: November 5, 2020 (Agenda)

Title

Executive Officer Appointment and Contract

Members of the Commission

RECOMMENDATION

That the Commission:

1. Approve one-year employment agreement with Michael Prater for \$13,418.77 monthly plus an extra cash allowance of \$50 per pay period and effective November 22, 2020, appoint Mr. Prater as Executive Officer of the Santa Barbara Local Agency Formation Commission; and
2. Rescind appointment of William Dillon as Interim Executive Officer, effective the date Mr. Prater assumes office.

DISCUSSION

After an extensive recruitment process, the Commission selected Michael Prater as the next Executive Officer of the Santa Barbara Local Agency Formation Commission. Today's action will formalize that selection by approving an employment contract and appointing Mr. Prater as the Executive Officer. The effective date of the appointment is to be November 22, 2020, which is the date following Mr. Prater stepping down from his current position with the San Luis Obispo LAFCO.

In a significant break from past Santa Barbara LAFCO practice, Mr. Prater is being hired as an employee rather than an independent contractor. As an employee, Mr. Prater will receive pension and health care benefits on par with an entry level department head with the County of Santa Barbara.

Pension benefits will be administered by the Santa Barbara County Employees' Retirement System. Health Care and other benefits are addressed in the employment agreement.

The monthly salary is proposed to be 13,418.77 plus an extra cash allowance of \$50 per pay period. The extra cash allowance is based on Mr. Prater's 10 years of experience working at San Luis Obispo LAFCO. A similar provision was included in the contract for the Santa Barbara County Air Pollution Control Officer where the new executive officer had extensive air pollution control district experience but was a first-time executive officer when appointed.

Commissioners: Craig Geyer, Chair ♦ Roger Aceves ♦ Cynthia Allen ♦ Jay Freeman ♦ Joan Hartmann ♦ Steve Lavagnino
Holly Sierra ♦ Shane Stark ♦ Etta Waterfield, Vice-Chair ♦ Roger Welt ♦ Das Williams ♦ **Executive Officer: William Dillon**

BUSINESS ITEM NO. 1

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Although the agreement is characterized as a one-year agreement, it runs through to and includes December 2, 2021, which is a regularly date for the Commission's monthly meeting. The agreement is subject to extensions with the consent of both parties.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "William M. Dillon". The signature is written in a cursive style with a horizontal line underneath the name.

William M Dillon
Interim Executive Officer

Attachment: Agreement for LAFCO Executive Officer Services.

AGREEMENT FOR LAFCO EXECUTIVE OFFICER SERVICES

This AGREEMENT is entered into by and between the Santa Barbara Local Agency Formation Commission (hereafter "LAFCO" or "Commission") and Michael Prater (hereinafter "Mr. Prater" or "Executive Officer"), collectively referred to as "the parties."

NOW, THEREFORE, the parties agree as follows:

Section 1. Duties.

- A. LAFCO agrees to employ Mr. Prater as Executive Officer as detailed below for the term specified in Section 2.
- B. Mr. Prater shall perform all Executive Officer duties as specified in the Cortese Knox Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq., as amended from time to time, any other applicable statutes, and as authorized or directed by the Commission. Mr. Prater shall also perform those duties identified in the Commissioner Handbook, as amended from time to time.
- C. Clerk. Mr. Prater shall coordinate and work with the Clerk of the Board of Supervisors, who provides all clerk services to the Commission, and other agreed upon administrative services.
- D. Standards of Performance. Mr. Prater represents that he has the skills, expertise, and licenses and permits necessary to serve as LAFCO's Executive Officer. Accordingly, Mr. Prater shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession.

Section 2. Term.

The term of this Agreement shall be as follows:

- A. One-Year Appointment. The appointment of Mr. Prater as Executive Officer shall be effective on November 22, 2020 and shall expire on December 3, 2021, unless otherwise extended by the Commission subject to Section 3.
- B. Exclusive Employment. The Executive Officer agrees to remain in the exclusive employ of the LAFCO and neither to accept other employment nor to become employed by any other employer. The term "exclusive employ" shall not be construed to include occasional teaching or writing, performed on the Executive Officer's personal time.
- C. Reappointment. The Commission may in its discretion reappoint Mr. Prater as Executive Officer for an appropriate period subject to Mr. Prater's acceptance of such reappointment.

Section 3. Termination; Severance Pay.

- A. For Convenience. Either party may terminate this Agreement on sixty (60) days written notice. If the Commission terminates for convenience, payment of severance pursuant to Paragraph C below shall be made by LAFCO.
- B. For Cause. The Commission shall have the right to terminate this Agreement immediately upon written notice at any time for employee malfeasance, breach or habitual neglect of duties under this Agreement, commission of a crime or offense punishable under state law by removal from office, or commission of acts of moral turpitude, including acts of dishonesty, fraud, or misrepresentation.
- C. Severance Payment. In the event the Commission terminates the Agreement for convenience, the Commission agrees to pay Mr. Prater a cash payment equal to three months aggregate salary. Said cash payment may be paid, at the option of Mr. Prater, in (1) a lump sum upon date of the termination; (2) lump sum on January 1 of the year following termination; or (3) three equal monthly payments.
- D. Reduction in Salary or Financial Benefits. In the event the Commission at any time during the term of this Agreement reduces the salary or other financial benefits of the Executive Officer, and the Commission refuses, following a written notice, to comply with providing such financial benefits, then Mr. Prater may, at his option, be deemed to be “terminated” at the date of such reduction or such refusal to comply, terminating the Agreement for convenience, within the meaning and context of the Paragraph C.
- E. Voluntary Resignation. In the event the Executive Officer voluntarily resigns his position with LAFCO, he shall be compensated for any accrued vacation, holidays, compensatory time and other accrued benefits.

Section 4. Disability.

If the Executive Officer is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, beyond any accrued leave period, the Commission shall have the option to terminate this Agreement, subject to the limitations of any applicable protected leave and any other applicable ordinances and laws. The Executive Officer shall be compensated for any accrued vacation, holidays, compensatory time and other accrued benefits.

Section 5. Salary.

- A. Payment for Executive Officer Services. LAFCO shall pay Contractor the amount of \$6,193.60 bi-weekly or \$161,033.60 annually for Executive Officer services pursuant to this Agreement, payable biweekly.
- B. Cost of Living Adjustments (“COLA”). Anytime the County Board of Supervisors authorizes a COLA or onetime payment for Unit 41 “Department Heads,” the Commission shall apply the COLA or onetime payment to the Executive Officer.

- C. Annual Salary Review. The Commission agrees to salary discussions with the Executive Officer in conjunction with the annual employee performance review required in Section 7.

Section 6. Expenses.

- A. LAFCO shall reimburse Executive Office for expenses incurred in performing services as set forth in Exhibit A. Expenses not explicitly set forth in Exhibit A shall not be reimbursed without the prior written consent of LAFCO. Expenses will be reimbursed only if incurred during the contract period.
- B. Executive Office is responsible for operating within adopted LAFCO budget appropriations. The process for reimbursement of expenses that exceed given appropriations shall require review and approval by LAFCO.

Section 7. Performance Evaluation.

The Executive Officer shall be subject to an annual performance evaluation by the Commission. At least one month prior the evaluation, the Executive Officer shall prepare and submit a list of accomplishments for the past year and performance goals for the next year.

Section 8. Benefits.

The Executive Officer will be eligible for membership in the County of Santa Barbara Employees Retirement System (“SBCERS”) and to the extent possible LAFCO will provide Executive Officer with all benefits from a group plan for hospital, surgical, medical, vision and dental insurance or programs, or for such other comparable job benefits that are afforded to management employees of the County of Santa Barbara.

A. Retirement.

1. SBCERS. LAFCO agrees to pay the contribution to a retirement plan with benefits that are outlined in Santa Barbara County Employees’ Retirement System General Plan 8-3: 2 percent at age 62. Retirement allowances are based on the calculated average monthly salary (pursuant to Government Code section 7522.32 this is the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months), age at retirement, service credit, and the payment option selected at time of retirement. Plan 8 annual contributions, and Final Average Salary, are limited by Sections 401(a)(17) and 415 of the Internal Revenue Code and subsequent amendments. Plan Retirement eligibility at attainment of age 52 with at least 5 years of SBCERS employer and/or Reciprocal service. No employer paid insurance subsidy is provided to General Plan 8 members Annual Cost of Living Adjustment caps each year at 3 percent. Please refer to the Summary Plan Document at www.sbcers.org.

2. LAFCO may adjust the employee contribution rates to the Retirement System when such adjustments are based on an Actuary Report, recommended by the Retirement Board and approved by the Commission. The effective dates of rate adjustments shall be in accordance with the applicable provisions of the County Employees Retirement Law of 1937.

B. Health Care. The following benefits may be acquired directly by Mr. Prater and his expenses for such shall be “reimbursable expenses” under Exhibit A to the Agreement, subject to the employer contribution limits applicable to management employees of the County of Santa Barbara.

1. Indemnity type and/or Health Maintenance Organization (“HMO”) or Preferred Provider Organization (“PPO”) medical and dental plans shall be available to the Executive Officer.
2. LAFCO shall contribute:
 - i. \$194.43 per two-week pay period (\$210.63 semi-monthly) toward the cost of the premium for Executive Officer medical plan coverage.
 - ii. \$17.94 per two-week pay period (\$19.44 semi-monthly) toward the cost of the premium for dental plan coverage.
 - iii. \$9.23 per two-week pay period (\$20.00 monthly) toward the cost of Vision plan coverage.
3. As available, the Executive Officer may select coverage from the following options.

Medical.

- Health Maintenance Organization Medical Plan
- Preferred Provider Organization Medical Plan

Dental

- Indemnity Dental Plan
- HMO Dental Plan

Executive Officer may insure his eligible dependents under one of the available medical and dental plans in accordance with the rules and regulations applicable to obtaining said dependent coverage.

- C. Flexible Spending Account. Through Benefits Coordinate Corporation, Executive Officer is eligible to pay for eligible out-of-pocket healthcare expenses with pre-tax dollars. Eligible expenses include medical, dental, or vision costs such as plan deductibles, copays, coinsurance amounts, and other non-covered healthcare costs for you and your tax dependents. For 2020, Executive Officer can set aside up to \$2,700.
- D. Disability Insurance. The following policies may be acquired directly by Mr. Prater and his expenses for such shall be “reimbursable expenses” under Exhibit A to the Agreement.
1. Short term. LAFCO shall provide Short Term Disability Insurance for Executive Officer. The waiting period for benefit eligibility will be 7 days. The benefit will equal sixty percent of the first \$2,500 of pre-disability earnings in accordance with specific plan provisions, limitations, and exclusions.
 2. Long Term. LAFCO shall provide Long Term Disability Insurance for Executive Officer. The waiting period for benefit eligibility will be 60 days. The benefit will equal sixty percent of pre-disability earnings in accordance with specific plan provisions, limitations, and exclusions.
 3. State of California Disability Insurance (“SDI”). The Executive Office participates in SDI. Benefits shall be integrated with paid leave as follows:
 - i. Executive Officer may use his sick leave credits to supplement his SDI benefits so that the sum of the SDI benefits and sick leave credits used equals 85 percent of his gross salary.
 - ii. Executive Officer may apply with the State for approval as soon as possible following the date of his eligibility for SDI benefits. Current eligibility begins on the eighth consecutive calendar day of an extended illness or injury.
 4. Term Life Insurance. LAFCO will provide Executive Officer basic Group Term Life Insurance at an insured amount of \$50,000.

Section 9.

- A. Extra Cash Allowance. LAFCO shall pay to the Executive Officer an extra fifty dollars (\$50.00) per pay period.
- B. Deferred Compensation Contribution. LAFCO shall contribute \$160.31 bi-weekly to the Executive Officer’s deferred compensation account.
- C. Vacation. The Executive Officer shall accrue 0.0889 hours of vacation for each hour in a paid status or 185 hours annually, which may be used to accrual and use requirements of LAFCO, subject to a maximum payoff of 320 hours. This accrual rate shall be increased to 0.1010 or 210 hours annually after four years of service.

- D. Holidays. Executive Officer shall be entitled to thirteen (13) paid holidays per year on the same schedule as employees of the County of Santa Barbara Employee. Executive Officer is also entitled to paid administrative leave of six (6) days per year.
- E. Sick Leave. Employee shall be entitled to twelve (12) days of sick leave per year and shall be entitled to accrue twelve (12) days of sick leave per year up to a maximum of 90-days.
- F. Social Security. LAFCO shall provide the employer contribution to the federal Social Security Program.

Section 10. Automobile and Phone

- A. Automobile. The Executive Officer shall receive a taxable automobile compensation allowance at five hundred eighty-three and 33/100 dollars (\$583.33) per month plus a non-taxable fifty-eight cents (\$0.58) per mile business reimbursement for travel, or as increased or updated annually by the Santa Barbara County Auditor Controller pursuant to guidelines of the Internal Revenue Service. The Executive Officer shall obtain and maintain general liability automobile insurance and provide proof of insurance to the LAFCO Counsel within sixty (60) days of execution of this agreement.
- B. Phone. The Executive Officer shall receive a non-taxable phone reimbursement of eighty-five dollars (\$85.00) per month for business use of his personal cell phone.

Section 11. General Provisions.

- A. Support by LAFCO.

Executive Office may use his own office as necessary to provide services under this Agreement. Executive Officer shall have use of the LAFCO office space and telephone service at the County Administration Building.

- B. Conflicts of Interest.

Executive Officer is subject to and shall comply with the Political Reform Act, Government Code section 81000 et seq., the regulations of the Fair Political Practices Commission and LAFCO's Conflict of Interest Code and any applicable LAFCO policies.

- C. No assignment. Executive Officer shall not assign any of rights nor transfer any of obligations under this Agreement or have the power to delegate duties without the prior written consent of LAFCO and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

D. Notices. All notices and other communications required or permitted hereunder to be effective shall be in writing and shall be deemed to have been duly given and received when delivered by hand, or if mailed, five (5) business days after deposit in the mail, with postage prepaid for registered or certified mail. Written notice to each party shall be addressed to:

William Dillon
LAFCO Counsel
c/o Clerk of the Board
105 E. Anapamu St., Room 407
Santa Barbara, CA. 93101

Michael Prater
8484 Carmelita Av.
Atascadero, CA. 93422

or at such other address or to such other person that the parties may from time to time designate in writing.

E. Ownership of documents and assets. LAFCO shall be the owner of any and all documents, publications, software, equipment, office supplies, and computers purchased by Executive Office with LAFCO funds or prepared or created by Executive Office while performing work for LAFCO. LAFCO shall also be the owner of any and all public records held by Executive Office. Executive Office shall annually report to LAFCO as part of the budget process a list of significant assets owned by LAFCO.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of LAFCO. LAFCO shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

F. Nondiscrimination. Executive Office shall comply with all laws and regulations regarding unlawful discrimination in the performance of this Agreement.

G. General Provisions. This Agreement shall be governed and construed in accordance with the laws of the State of California. It is agreed and understood by LAFCO and Executive Officer that this Agreement has been arrived at through negotiations, and that within the meaning of Civil Code section 1654 neither party is to be deemed to be the party which prepared this Agreement.

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H. Modifications. This Agreement constitutes the entire understanding of the parties hereto and no changes, amendments, or alterations shall be effective unless in writing and signed by both parties.

This Agreement is entered into this 5th day of November, 2020, in Santa Barbara, County of Santa Barbara, California and shall be effective when fully executed by the parties.

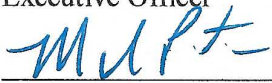
SANTA BARBARA COUNTY
LOCAL AGENCY FORMATION
COMMISSION

Craig Geyer, Chair

ATTEST:
Clerk of the Commission

By _____
Jacquelyne Alexander,

Date _____

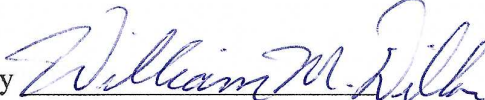
Executive Officer


Michael Prater
Date: 10-27-2020

APPROVED AS TO FORM:

LAFCO COUNSEL

RISK MANAGEMENT

By 
William M. Dillon
LAFCO Counsel

By: _____
Ray Amoritorio
RISK MANAGER

EXHIBIT A

REIMBURSABLE EXPENSES

Travel, transportation and meals shall be reimbursed as set forth below. Reimbursable expenses include but are not limited to those listed below.

- Mileage at the standard Santa Barbara County rate, calculated from Executive Officer's office in Atascadero.
- Long distance telephone and fax charges
- Postage and express mail
- Messenger service
- Publications and software purchased for the Santa Barbara LAFCO
- Equipment and office supplies purchased exclusively for Santa Barbara LAFCO
- Duplicating and printing
- Computer and research services
- Travel expense, including air and other transportation, taxis, rental cars, hotel, meals and other related expenses related to LAFCO business, including CALAFCO meetings. Hotel expenses may include up to 5 stays per fiscal year on the south coast of Santa Barbara when necessary for attending multi-day or early morning meetings on the Santa Barbara south coast.
- Health Care and Insurance expenses authorized pursuant to Section 8 of this Agreement.