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**SBCAG STAFF REPORT**

**SUBJECT:** Executive Director's Employment Agreement

**MEETING DATE:** March 15, 2018 **AGENDA ITEM:** 4G

**STAFF CONTACT:** Bobbi Didier

**RECOMMENDATION:**

Approve and authorize the Chair to execute the Agreement of Employment for Marjorie C. Kirn to serve as Executive Director of the Santa Barbara County Association of Governments with the term of March 15, 2018 to March 15, 2022 with a base salary of \$173,532.32 plus benefits and allowances.

**DISCUSSION:**

The attached Agreement of Employment is for a four year term and contains provisions for salary, benefits and allowances. The Agreement also contains procedures for annual performance evaluations.

The recommended action is not a project under the California Environmental Quality Act (CEQA) pursuant to section 15378 of the CEQA Guidelines.

**COMMITTEE REVIEW:**

None

**Attachments:**

- A. Agreement of Employment Between the Santa Barbara County Association of Governments and Marjorie C. Kirn, Executive Director

# ATTACHMENT A

## AGREEMENT OF EMPLOYMENT

### BETWEEN THE

SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS

### AND

MARJORIE C. KIRN, EXECUTIVE DIRECTOR

This Agreement is made by and between the Santa Barbara County Association of Governments, hereafter referred to as "Agency" and Marjorie C. Kirn, hereinafter referred to as the "Executive Director," (collectively the "parties") and is intended to acknowledge and memorialize the employment of Ms. Kirn, pursuant to the intent and effect of the resolution adopted by the governing board of the Agency as Resolution 15-29, and to provide particular terms for the employment of an executive director of the Agency.

#### **Section 1. Duties**

The Agency agrees to employ Marjorie C. Kirn as the Executive Director of the Agency 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 her ability and experience, she will at all times loyally and conscientiously perform all of the duties and obligations required of her either expressly or implicitly by the terms of this Agreement.

#### **Section 2. Term**

- A. This Agreement shall be effective on March 15, 2018, and shall expire at the close of business on March 15, 2022, unless otherwise extended by the parties.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Agency 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 Agency.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Executive Director to resign at any time from her position with the Agency, subject only to the provision set forth in Section 3, Paragraph C of this Agreement.

- D. The Executive Director agrees to remain in the exclusive employ of the Agency through March 15, 2022, and 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.
- E. During the month of October 2021, 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 will 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.

### **Section 3. Termination and Severance Pay**

- A. In the event the Executive Director is terminated by the Agency before expiration of the aforesaid term of employment and during such time the Executive Director is willing and able to perform her duties under this Agreement, then in that event the Agency agrees to pay the Executive Director a cash payment equal to three (3) months aggregate salary; provided, however, that in the event the Executive Director is terminated because of her conviction of any illegal act involving personal gain to her, 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) three (3) 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 benefiting the Executive Director herein, or the Executive Director resigns following a request or recommendation, by the governing board that she resign, then, in that event, the Executive Director may, at her option, be deemed to be "terminated" as of the date of such reduction or such refusal to comply within the meaning and context of the above severance pay provision.
- C. In the event the Executive Director voluntarily resigns her position with the Agency before expiration of the aforesaid term of her 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 her 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 \$83.429/hour effective March 15, 2018.

Agency agrees to increase base salary of the Executive Director in an amount on the basis of an annual salary review of the Executive Director as follows:

- 0% base salary increase for overall rating of improvement needed ;
- 2% base salary increase for overall satisfactory performance;
- 2.5% base salary increase for overall very good performance; and,
- 3% base salary increase for overall outstanding performance.

The overall rating shall be based on the majority vote of the Board of Directors on the Performance Evaluation. Based on the Executive Director's evaluation for January to December 2017, the Executive Director shall receive a 3% increase in salary in pay period 12 in June 2018. In addition, the Executive Director shall be eligible for a base salary increase in the pay period including June 1, 2019, June 1, 2020, and June 1, 2021 based on the overall rating in the Performance Evaluation prepared pursuant to Section 6 of this Agreement.

#### **Section 6. Performance Evaluation**

- A. The Executive Committee of the Agency shall review and evaluate the performance of the Executive Director annually in February or March. 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 her evaluation with the Agency. The draft Performance Evaluation shall be prepared by the Executive Committee and include a recommendation of non-satisfactory, satisfactory, very good, or

outstanding performance. The Executive Committee shall make the recommendation to the Board of Directors. The Performance Evaluation will be final after approval by a majority of the Board of Directors.

- 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 the attainment of the governing board's policy objectives 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 SBCAG Employee Handbook/Policies and Procedures adopted by the SBCAG Board on January 18, 2018 and the Pay and Benefits provisions of Resolution 15-29, 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. If the Board of Directors approves a Cost of Living Adjustment (COLA) for the SBCAG staff pursuant to SBCAG's Classification and Compensation Plan, the Executive Director shall also receive the COLA. 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 Executive Director has elected to not participate in the Agency's Section 457 deferred compensation plan. As long as the Executive Director elects to not participate in the Agency's Section 457 deferred compensation plan, the Agency shall pay her an in lieu amount of one hundred fifty dollars (\$150.00) per pay period. Should the Executive Director later elect to participate in the Section 457 deferred compensation plan, the cash in lieu of payment will be converted to a contribution to the Agency's Section 457 deferred compensation plan in the same amount of one hundred fifty dollars (\$150) per pay period. This contribution may be adjusted from time to time by the governing board of the Agency.

**Section 9. Automobile**

The Executive Director shall receive a vehicle allowance of an additional \$500.00 per month, together with mileage reimbursement at the rate exempted by the Internal Revenue Service for income reporting (currently 54.5¢ per mile) for travel in a personal vehicle on Agency business within and outside the County of Santa Barbara.

**Section 10. Supplemental Cash Benefit.**

Agency shall pay Executive Director a supplemental cash benefit allowance of \$6500 per year.

**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 . Notices**

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

The Executive Director: Marjorie C. Kim  
260 N. San Antonio Road, Suite B  
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. Either party may update the address for receiving notice by providing written notice of such update at least 10 business days prior to the effective date of the change.

**Section 14. In Lieu Health Benefits Payment**

Executive Director has elected to not participate in Agency's health care coverage. As long as Executive Director elects to not participate the Agency's health care coverage plan, Agency shall pay her an in lieu amount of \$527 per month. Should Executive Director elect to participate in SBCAG's health care coverage, this payment shall cease once such participation commences.

**Section 15. General Provisions**

- A. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
- B. 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.
- C. This Agreement is is not assignable, transferable, or subject to subcontract.
- D. The headings of the several sections, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
- E. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in State court, or in the federal district court nearest to Santa Barbara County, if in federal court.

*(Signatures on following page)*

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on March 15, 2018.

Santa Barbara County  
Association of Governments

By:

\_\_\_\_\_  
Joan Hartmann, Chair  
Date: \_\_\_\_\_.

Attestation:

By: \_\_\_\_\_  
Terry Contreras, Clerk of the Board

\_\_\_\_\_  
Marjorie C. Kim  
Date: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: Rachel Van Mullem  
Rachel Van Mullem  
Chief Assistant County Counsel  
Date: 3/7/18