

## **EMPLOYMENT CONTRACT FOR SOLANO LAFCO EXECUTIVE OFFICER**

The Solano Local Agency Formation Commission, hereinafter referred to as "EMPLOYER" agrees to employ Richard J. Seithel, hereinafter referred to as EMPLOYEE, as the Executive Officer of Solano LAFCO on the following terms and conditions:

### **ARTICLE 1. EMPLOYMENT SUBJECT TO SOLANO LAFCO PERSONNEL POLICIES**

Section 1.01 EMPLOYEE's employment shall be subject to the provisions of the Solano LAFCO Personnel and Salary Resolution, except to the extent otherwise expressly provided in this agreement. The Solano LAFCO Personnel and Salary Resolution shall hereinafter be referred to simply as "LAFCO Personnel Policies".

Section 1.02 EMPLOYEE has been provided with a copy of the LAFCO Personnel Policies prior to execution of this agreement and acknowledges by his signature on this agreement that he has read and understands those policies and agrees to abide by them.

### **ARTICLE 2. EMPLOYMENT AT WILL**

Section 2.01 EMPLOYER hereby employs EMPLOYEE as a full-time, at-will employee to serve until employee separates from service or his employment is otherwise ended hereunder.

Section 2.02 EMPLOYEE UNDERSTANDS AND ACKNOWLEDGES THAT HE IS AN AT-WILL EMPLOYEE SERVING AT THE WILL AND PLEASURE OF THE LAFCO COMMISSION. HE MAY BE TERMINATED, DISCIPLINED OR DISCHARGED AT ANY TIME DURING THE TERM HEREOF BY THE LAFCO COMMISSION, WITH OR WITHOUT CAUSE, AND WITHOUT RIGHTS OF APPEAL. EMPLOYEE FURTHER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT HE HAS NO PROPERTY INTEREST IN HIS EMPLOYMENT AND IS THEREFORE NOT ENTITLED TO PRE-DISCIPLINARY, OR PRE-REMOVAL DUE PROCESS.

### **ARTICLE 3. DUTIES AND OBLIGATIONS OF EMPLOYEE**

#### **General Duties**

EMPLOYEE shall serve as the LAFCO Executive Officer. In the capacity as Executive Officer, EMPLOYEE shall do and perform all services, acts or things necessary or advisable to manage and conduct the day-to day-business of LAFCO as specified under the Cortese-Knox Hertzberg Act, subject at all times to the Solano LAFCO administrative policies and the direction of the Commission. The EMPLOYEE's job description is attached as part of the Solano LAFCO Personnel and Salary Resolution , Exhibit A.

#### **Devotion of Entire Time to Employer's Business**

Section 3.01

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- (a) EMPLOYEE shall devote his productive time, ability and attention to the business of LAFCO during normal working hours during the term of the agreement except as otherwise allowed under the LAFCO Personnel Policies or agreed by amendment of this agreement.
- (b) Furthermore, during the term of this agreement, EMPLOYEE shall not, whether directly or indirectly, render any services of a commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that would either conflict with or subjugate the responsibilities of the EMPLOYEE to Solano LAFCO. However, the expenditure of reasonable amounts of time for education, charitable, or professional activities shall not be deemed a breach of this agreement if those activities do not materially interfere with the services required under this agreement.
- (c) This agreement shall not be interpreted to prohibit EMPLOYEE from making personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this agreement.

**Conflict of Interest**

Section 3.02 The parties to this Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. EMPLOYEE hereby covenants that he presently has no interest not disclosed to LAFCO and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of his services or confidentiality obligation hereunder, except as such as LAFCO may consent to in writing prior to the acquisition by EMPLOYEE of such conflict.

**ARTICLE 4. OBLIGATIONS OF EMPLOYER**

**General Description**

Section 4.01 EMPLOYER shall provide EMPLOYEE with the compensation, incentives, benefits, and expense reimbursement specified elsewhere in this agreement.

**Office and Staff**

Section 4.02 EMPLOYER shall provide EMPLOYEE with reasonable offices and staffing, equipment and supplies adequate for the performance of his duties consistent with the available funding as determined by the Commission.

**Indemnification of Losses of Employee**

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Section 4.03 EMPLOYER shall indemnify, defend and hold EMPLOYEE harmless for all claims, liability or losses sustained by EMPLOYEE as a consequence of the discharge of his duties on EMPLOYER'S behalf, to the extent permitted by law.

**Performance Evaluation**

Section 4.04 EMPLOYEE shall receive performance evaluations conducted by EMPLOYER at the discretion of EMPLOYER, with a goal of completing a performance evaluation within the first 6 months of employment and thereafter at least every year in accordance with the Personnel Policies. It shall be the responsibility of EMPLOYEE to timely schedule the performance evaluations on the Commission Agenda.

**Managerial Authority**

Section 3.05. EMPLOYEE, as Executive Officer, shall be responsible for the day-to-day operation of LAFCO and has the right to exercise his managerial discretion, subject to the applicable federal and state laws, Solano LAFCO policies and the general direction of the Commission as provided herein.

**ARTICLE 5. COMPENSATION AND BENEFITS OF EMPLOYEE**

Section 5.01 Annual Salary: As compensation for the services to be rendered by EMPLOYEE hereunder, EMPLOYER shall pay EMPLOYEE \$135,000 per year. Future merit increases will be considered annually as part of the performance review described above

Section 5.02 Employee Benefits

EMPLOYEE shall have such benefits as set forth in the LAFCO Personnel Policies and such additional or different benefits as provided in this article.

Section 5.03 Additional Benefits

- (a) Car and Phone Allowance: EMPLOYEE agrees to provide a personal cell phone and vehicle for use in the conduct of LAFCO business. EMPLOYER shall pay to EMPLOYEE a \$200.00 per month vehicle allowance and a \$50.00 per month cellular phone allowance. These allowances constitute full compensation for use of EMPLOYEEs personal vehicle and cell phone. Car and phone allowances commence from first day of the month following the date of approval and execution of this agreement.
- (b) Vacation Benefits. EMPLOYEE shall be entitled to accrue vacation time at the rate established in Section 4.2 C. of the LAFCO Personnel Policies.
- (c) Annual Vacation "Buy Back": In addition to provisions in the personnel and salary

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resolution, employee may choose to receive pay at the hourly rate for vacation hours in lieu of taking time off for those hours accrued but not taken, in any calendar year, up to 1/3 of the hours of the annual vacation accrual.

- (d) Participation in Professional Associations. Participation at EMPLOYER'S expense in professional associations for the benefit of EMPLOYER is authorized and encouraged, subject to budget appropriations.
- (e) Retirement Plan Coordination. The parties understand that EMPLOYER's PERS Retirement Plan will allow EMPLOYEE to transfer his prior retirement plan service years and benefits from his prior employer, Contra Costa County, into EMPLOYER's PERS plan under the provisions for reciprocity. EMPLOYER agrees to work with EMPLOYEE to implement such a transfer if EMPLOYEE so elects.

**ARTICLE 6.        TERMINATION OF EMPLOYMENT**

Section 6.01    Immediate Termination for Cause

- (a) EMPLOYER reserves the right to immediately terminate this agreement "for cause" if EMPLOYEE (1) willfully breaches this agreement or habitually neglects the duties which he is required to perform under the terms of this agreement, (2) is convicted of a felony, or misdemeanor involving moral turpitude, or (3) commits acts of dishonesty, fraud, misrepresentation, or other misconduct that would prevent or significantly interfere with his ability to effectively perform his duties consistent with LAFCO Policies and Procedures and the Cortese Knox Hertzberg Act.
- (b) EMPLOYER may terminate this agreement for the reasons stated in this section by giving written notice of termination to EMPLOYEE. Such action is without prejudice to any other remedy to which EMPLOYER may be entitled either at law, in equity, or under this agreement.
- (c) EMPLOYER may only terminate EMPLOYEE for cause upon a vote of a majority of the Commission.
- (d) The notice of termination required by this section shall specify the ground(s) for the termination and shall be supported by a statement of relevant facts.
- (e) Said termination shall be effective immediately after compliance with the provisions of Section 6.05 below.
- (f) If EMPLOYEE is terminated "for cause", EMPLOYEE shall not be entitled to the extended notice and continued salary and benefits provided in Section 6.03.

Section 6.02    Termination Upon Death or Disability

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- (a) This agreement shall be immediately terminated upon the death of the EMPLOYEE.
- (b) EMPLOYER may terminate the agreement upon the physical or mental disability of EMPLOYEE that prevents EMPLOYEE from performing essential functions of his position and where no reasonable accommodation is possible. Such termination shall be in accordance with the then applicable law but where not so specified, in accordance with the following procedure:
  - (i) Termination may only occur after a minimum of three months of such disability and only when it reasonably appears that such disability would prevent EMPLOYEE from resuming his duties and performing essential job functions within the next 6 months or more.
  - (ii) Such termination shall be effected by giving thirty (30) days written notice of termination to EMPLOYEE.
  - (iii) Prior to such termination, EMPLOYER shall meet and confer with EMPLOYEE or a representative of EMPLOYEE as provided in Section 6.05 below.

Section 6.03 Termination By EMPLOYER Without Cause

- (a) EMPLOYEE is aware of and agrees to the provisions of California Labor Code Section 2922 which provides:

*An employment having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means employment for a period greater than one month.*

- (b) EMPLOYER may unilaterally elect to terminate EMPLOYEE'S employment without cause only upon a vote of a majority of the Commission.
- (c) EMPLOYER shall provide written notice of termination.
- (d) In the event of termination by EMPLOYER without cause, EMPLOYER shall pay severance in an amount equal to of 90 days salary.
- (e) Remaining salary and accrued benefits shall be paid to EMPLOYEE up to the effective date of terminations.

**Termination by Employee**

Section 6.04 EMPLOYEE may terminate his obligations under this agreement by giving EMPLOYER at least ninety (90) days notice in advance, unless EMPLOYER agrees to accept less notice.

### **Meet and Confer Requirements**

Section 6.05 Prior to giving formal notice of termination, whether for cause, or without cause, the EMPLOYER and EMPLOYEE shall informally meet and confer in good faith with regard to the proposed action. EMPLOYER shall disclose the grounds being considered for termination and allow EMPLOYEE a reasonable opportunity to be heard on the issue. The EMPLOYER shall consider any response by EMPLOYEE prior to making its final decision. However, the provisions of this section are not intended to create any vested right in employment or right to due process beyond the informal process set forth above.

### **Effect on Compensation**

Section 6.06 In the event that this agreement is terminated, EMPLOYEE shall be entitled to the compensation and all benefits earned or accrued by and vested to the date of termination as provided for in this agreement, computed pro rata up to and including that date. EMPLOYEE shall be entitled to no further compensation as of the date of termination.

## **ARTICLE 7. GENERAL PROVISIONS**

### **Notices**

Any notices to be given by any party to the other shall be in writing and may be transmitted either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the Commission Chair and to the Clerk to the Commission at the LAFCO offices, and to the EMPLOYEE at the address shown below. Each party may change the address by written notice in accordance with this section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of five (5) business days after date of mailing.

### **Representation**

Section 7.01 The parties understand that Legal Counsel is representing EMPLOYER only in this transaction and that EMPLOYEE has been advised to seek his own attorney to review the agreement prior to execution. EMPLOYEE understands and acknowledges that neither Browne nor EMPLOYER have advised him concerning the legality, tax consequences, economic consequences, or other ramifications of executing this document.

### **Attorney's Fees**

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Section 7.02 If any action at law or in equity is necessary to enforce or interpret the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**Mediation\Arbitration**

Any dispute with regard to the interpretation or performance of this agreement shall be mediated or arbitrated in accordance with the provisions of Exhibit B.

**Entire Agreement**

Section 7.03 This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of EMPLOYEE by EMPLOYER, and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise no contained in this agreement, shall be valid or binding.

**Modifications**

Section 7.04 Any modification of this agreement will be effective only if it is in writing signed by both parties.

**Effect of Waiver**

Section 7.05 The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power for all or any other times.

**Partial Invalidity**

Section 7.06 If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without impaired or invalidated in any way.

**Law Governing Agreement**

Section 7.07 This agreement shall be governed by and construed in accordance with the laws of the State of California.

**Personnel Policies Superseded by Agreement Terms**

Section 7.08 The provisions of this agreement shall control and supersede the provisions of the Solano LAFCO Personnel Policies in the event there is now, or is in the future, any inconsistency between this agreement and the Solano LAFCO Personnel Policies as extant or as may be amended hereafter.

**Sums Due Deceased Employee**

Section 7.09 If EMPLOYEE dies prior to the expiration of the term of his employment, any sums that may due to him from EMPLOYER under this agreement as of the date of death shall be paid to the EMPLOYEE'S executors, administrators, heirs, personal representatives, successors, and assigns.

**Third Party Beneficiaries:**

Section 7.10 Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

**Severability**

Section 7.11 If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**Entirety of Contract**

Section 7.12 : This Agreement, including documents expressly incorporated by reference wither or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.



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IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as  
of the date first above written.

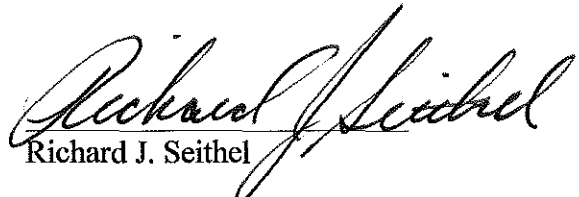
For LAFCO:

EMPLOYEE

By:

\_\_\_\_\_  
Nancy Shopay  
Chair, Solano LAFCO

By:

  
Richard J. Seithel

Approved as to Form:

By:

\_\_\_\_\_  
P. Scott Browne  
Counsel, Solano LAFCO

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Exhibit A

*(Attach copy of Solano LAFCO Personnel and Salary Resolution)*

EXHIBIT B

MEDIATION/ARBITRATION OF DISPUTES

- (a) Any controversy between the parties involving the construction, application or performance of any of the terms, provisions, or conditions of this agreement shall, on the written request of either party served on the other, be submitted to mediation before a mediator acceptable to all parties. The mediation shall occur within 45 days of the initial request, unless extended by agreement of the parties. Should any party commence arbitration or court action based on a dispute or claim to which this Section applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action or arbitration.
- (b) If the mediation is unsuccessful, either party may, within 5 days thereafter, serve a written request on the other demanding that the matter be submitted to binding arbitration.
- (c) Exceptions to Mediation/Arbitration. Neither mediation, nor arbitration is required under the following limited circumstances:
  - (i) If the matter is justiciable in small claims court, than the dispute shall be resolved through that court.
  - (ii) If the controversy to be arbitrated also involves third parties who are not willing to submit the matter to arbitration, and multiple proceedings would result from enforcement of this arbitration clause, then the dispute shall be resolved through the courts without referral to arbitration.
  - (iii) If it is alleged that irreparable harm would occur prior to the completion of the arbitration, a party may immediately apply for injunctive relief to prevent the irreparable harm, but the matter shall be stayed and submitted to mediation/arbitration after the Court has acted on the issue of injunctive relief.
- (d) Except as provided herein, Arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Section 1280 et.seq. of the California Code of Civil Procedure.
- (e) Upon receipt of a notice of intent to arbitrate, the parties shall mutually agree on an arbitrator within 15 days. If they are unable to agree on a single arbitrator, each party shall appoint another individual as a selection arbitrator and the two selection arbitrators shall select a third impartial arbitrator to decide the matter within 30 days of notice of arbitration. If for any reason this process fails to result in the selection of an impartial arbitrator in a timely manner, either party may petition the Court for appointment of an arbitrator pursuant to CCP 1281.6.

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- (f) The decision of the Arbitrator, after close of the hearing, shall be final and conclusive upon the parties.
- (g) The parties agree to do all acts necessary to expedite the arbitration proceedings such that the matter can be arbitrated within 90 days of service of the notice of intent to arbitrate.
- (h) Upon a showing of good cause and the approval of the arbitrator, either party may obtain discovery necessary for the proof of their case. Provided that the arbitrator shall supervise the discovery process to insure that it is carried out in an expeditious manner and that it is not permitted to be unduly burdensome or delay the hearing. The arbitrator may establish shortened time requirements for completion of any discovery and impose appropriate sanctions for non-compliance.
- (i) Up to the time of award, the cost of arbitration shall be split by the parties. In the event a party fails to pay their share in a timely fashion, the Arbitrator shall treat the omission as a default and enter judgment in favor of the other party. The Arbitrator may award the prevailing party reimbursement for any fees and expenses incurred, including arbitration costs paid, or allocate the attorneys fees and expenses between the parties in such proportions as the Arbitrator decides is just and reasonable.
- (j) The Arbitrator shall make his or her decision in writing. In making his or her decision, the arbitrator shall follow California Law and shall have authority to impose any appropriate remedy permitted under California Law. Either party may seek clarification or reconsideration of the award within 10 days of issuance.
- (k) Mediation and Arbitration Confidentiality. All proceedings and all documents prepared in connection with any Arbitrable Claim shall be confidential and, unless otherwise required by law, the subject matter thereof shall not be disclosed to any person other than the parties to the proceedings, their counsel, witnesses and experts, the mediator, the arbitrator, and, if involved, the court and court staff. All documents filed with the arbitrator or with a court shall be filed under seal. The parties shall stipulate to all arbitration and court orders necessary to effectuate fully the provisions of this Section concerning confidentiality.

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL.**

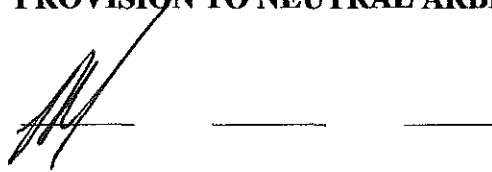
**BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE**

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**SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

**WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.**

Initial:

A handwritten signature in black ink is written over a horizontal line. To the right of this line are two more horizontal lines, all of which are part of a signature line.