

FIFTH AMENDMENT TO MEMORANDUM OF AGREEMENT FOR THE POSITION OF
LAFCO EXECUTIVE OFFICER

October 9, 2024

WHEREAS, Carolyn Emery (“Emery”) has been serving as Executive Officer and previously served as Interim Executive Officer and in other positions for Local Agency Formation Commission, County of Orange (“LAFCO”) for more than 20 years; and

WHEREAS, LAFCO and Emery entered into an Amended and Restated Memorandum of Agreement for the Position of LAFCO Executive Officer on July 1, 2018 in order to restate their prior agreements and to memorialize the terms of her employment as Executive Officer going forward (“Agreement”); and

WHEREAS, LAFCO and Emery entered into a First Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer on June 12, 2019 (“First Amendment”); and

WHEREAS, LAFCO and Emery entered into a Second Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer on November 10, 2021 (“Second Amendment”); and

WHEREAS, LAFCO and Emery entered into a Third Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer on January 11, 2023 (“Third Amendment”); and

WHEREAS, LAFCO and Emery entered into a Fourth Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer on December 13, 2023 (“Fourth Amendment”); and

WHEREAS, after having completed Emery’s 2024 annual performance evaluation, LAFCO and Emery have reached agreement on the terms for her continued appointment as Executive Officer, as provided herein; and

WHEREAS, LAFCO and Emery now desire to amend the Agreement to memorialize the terms for her continued employment by the Commission (“Fifth Amendment”).

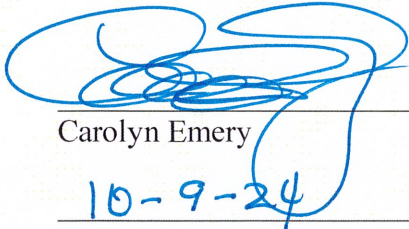
NOW, THEREFORE, in consideration for the mutual covenants herein, it is agreed by and between the parties as follows:

1. **Salary.** Section 4 of the Agreement is hereby amended in its entirety to read as follows:

“As salary for services rendered by this appointment, Emery shall receive, effective July 1, 2024, \$239,828 per annum, paid biweekly, which shall be paid in the same manner and at the same times as County of Orange employees generally.”

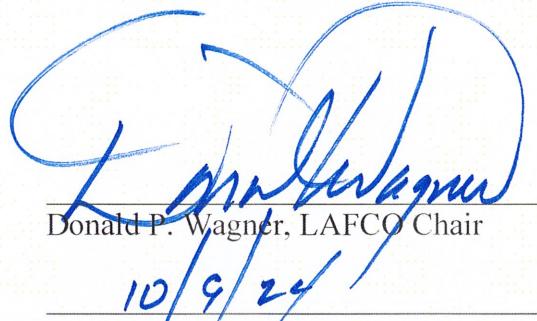
2. **Remaining Provisions of Agreement.** Except as otherwise specifically set forth in this Fifth Amendment, the remaining provisions of the Agreement shall continue in full force and effect.

3. **Acknowledgment and Consent.** I, Carolyn Emery, acknowledge that I have read and fully understand the terms and conditions of this Fifth Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer, and I consent and agree to each and every term and condition contained herein.



Carolyn Emery
10-9-24

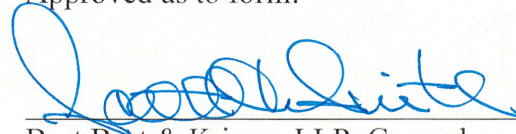
Date



Donald P. Wagner, LAFCO Chair
10/9/24

Date

Approved as to form:



Best Best & Krieger LLP, General
Counsel
10-9-24

Date

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT FOR THE POSITION
OF LAFCO EXECUTIVE OFFICER

July 1, 2018

WHEREAS, Carolyn Emery (“Emery”) has been serving as Executive Officer and previously served as Interim Executive Officer and in other positions for Local Agency Formation Commission, County of Orange (“LAFCO”) for more than 10 years; and

WHEREAS, LAFCO and Emery entered into that certain Memorandum of Agreement for the Position of LAFCO Executive Officer dated May 8, 2013; and

WHEREAS, LAFCO and Emery entered into an Amendment to Memorandum of Agreement for the Position of LAFCO Executive Officer dated August 13, 2014; and

WHEREAS, LAFCO and Emery entered into a new Memorandum of Agreement for the Position of LAFCO Executive Officer dated August 10, 2016; and

WHEREAS, LAFCO and Emery entered into a First Amendment to that Memorandum of Agreement for the Position of LAFCO Executive Officer on August 9, 2017; and

WHEREAS, after having completed Emery’s 2018 annual performance evaluation, LAFCO and Emery have reached agreement on the terms for her continued appointment as Executive Officer, as provided herein; and

WHEREAS, LAFCO and Emery desire to restate their prior agreements and to memorialize the current terms of her employment as Executive Officer, as set forth herein.

NOW, THEREFORE, in consideration for the mutual covenants herein, it is agreed by and between the parties as follows:

1. **Appointment and Term:** Pursuant to Government Code Section 56384, LAFCO hereby appoints and Emery accepts appointment to the position of LAFCO Executive Officer. The term of this Agreement shall be from July 1, 2018 to June 30, 2021, unless earlier terminated as provided herein. This initial three (3) year term will, pursuant to the provisions below, automatically extend from year to year unless the Commission takes action to prevent the automatic extension. In the event the Commission does not want this Agreement to automatically extend, it will provide written notice to Emery, within the deadlines described below, that the Agreement will not be extended and consequently will terminate as of the end of the current term. Any such decision by the Commission not to extend the Term by one additional year shall not constitute a termination for purposes of Section 9 of this Agreement.

If action is not taken by the Commission at least six (6) months before the June 30, 2021 expiration of the initial term of this Agreement (i.e., by December 31, 2020), this Agreement shall on January 1, 2021 automatically extend for one (1) year from June 30, 2021 until June 30, 2022; and if the Commission does not take action to extend or terminate the extended Agreement by

December 31, 2021, it shall automatically extend for one (1) additional year from June 30, 2022 to June 30, 2023. Similarly, for each succeeding year that the Commission does not take action to extend or terminate this Agreement at least six (6) months before the expiration of the then current term of the Agreement, the Agreement shall automatically extend for an additional year.

Unless otherwise provided for by a subsequent written agreement between the Parties, the terms and conditions of this Agreement shall apply to any extended Term of this Agreement.

2. **Duties:** Emery shall do and perform all acts necessary or advisable to manage and conduct the business of LAFCO, subject always to the policies set by LAFCO. Emery shall perform the duties of LAFCO Executive Officer, and such other duties as may be prescribed by LAFCO, or by law, in a professional manner.

3. **Performance Evaluation:** LAFCO shall conduct an annual performance evaluation and an annual salary review using best efforts to perform that review in conformance with LAFCO policy for the performance evaluation process.

4. **Salary:** As salary for services rendered by this appointment, Emery shall receive, effective July 1, 2018, \$156,696 per annum, paid biweekly, which shall be paid in the same manner and at the same times as County of Orange employees generally. Effective January 1, 2019, Emery shall receive \$163,752 per annum.

5. **Salary Adjustment and Performance Bonus:** At its sole discretion, LAFCO, by resolution and/or amendment to this Agreement, may increase the salary specified in paragraph 4 and/or award a performance bonus. Such salary adjustments and bonuses, if any, will be considered following the completion of the written performance evaluation specified in paragraph 3 and LAFCO policy.

6. **Benefits:** In addition to the salary specified in paragraphs 4 and 5, Emery shall receive the following benefits:

a. Health Insurance, Dental Insurance and Salary Continuation Benefits: Emery shall receive health insurance, dental insurance and salary continuation benefits in accordance with current LAFCO programs and benefits available to other LAFCO employees and Executive Employees of Orange County. Currently, LAFCO pays for 95% of the employee cost and 75% of the dependent cost of health insurance and 100% of dental insurance. Emery understands and accepts that these LAFCO benefits are subject to amendment and/or renegotiation with benefit providers from time to time, and that any amendments, changes, or modifications to LAFCO benefits shall apply to Emery and shall be deemed incorporated herein.

b. Transportation Allowance: Emery shall receive a transportation allowance in the amount of \$600 per month.

c. Reimbursement of Necessary Expenses: Emery shall receive reimbursement of necessary expenses in accordance with the current LAFCO reimbursement regulations, policies, and procedures in existence upon commencement of her employment. Emery understands and

accepts that these LAFCO reimbursement regulations, policies, and procedures are subject to amendment and/or modification from time to time, and that any amendments, changes, or modifications to LAFCO reimbursement regulations, policies, and procedures shall apply to Emery and shall be deemed incorporated herein.

d. Life Insurance and AD&D: Emery shall receive life insurance and accidental death and dismemberment benefits in accordance with current LAFCO programs and benefits available to other LAFCO employees and Executive Employees of Orange County. Emery understands and accepts that these LAFCO benefits are subject to amendment and/or renegotiation with benefit providers from time to time, and that any amendments, changes, or modifications to LAFCO benefits shall apply to Emery and shall be deemed incorporated herein.

e. Holidays: Emery shall receive holidays in accordance with the LAFCO policies on holidays. Emery understands and accepts that the holidays designated by LAFCO are subject to amendment and modification from time to time, any amendments or modifications to LAFCO designated holidays benefits shall apply to Emery and shall be deemed incorporated herein.

f. Vacation: Emery shall accrue vacation in accordance with LAFCO policies on vacation accrual, as available to other LAFCO employees. Based on Emery's years of service, Emery currently accrues 160 hours of vacation. Emery shall be subject to the same rules on accrual caps and cash out of benefits as other LAFCO employees.

g. Sick Leave: Sick leave time shall be provided to Emery in accordance with the LAFCO policies as available to other LAFCO employees. Based on Emery's years of service, Emery currently accrues .0462 hours of sick leave for each paid hour (approximately 96 hours per year).

h. Administrative Leave: Emery will not receive any administrative leave, however the parties agree to discuss provision of administrative leave upon review of Emery's performance and discussion of any increases to her salary.

i. Retirement and Retirement Contribution: Emery as a current employee is entitled to the 2.7% at 55 benefits formula under OCERS, unless LAFCO were to withdraw from participation in OCERS retirement. Emery shall receive the OCERS benefits in accordance with current LAFCO retirement benefits as are available to other LAFCO employees. Emery will contribute the employee share of the payment to OCERS. Emery understands and accepts that these LAFCO benefits are subject to amendment and/or renegotiation with benefit providers from time to time, and that any amendments, changes, or modifications to LAFCO retirement benefits shall apply to Emery and shall be deemed incorporated herein.

j. Deferred Compensation: Effective July 1, 2018, Emery shall receive an additional 5% of compensation paid by LAFCO into the County of Orange Deferred Compensation Plan (401a Plan), available to Executive Employees of Orange County. Emery understands and accepts that these LAFCO benefits are subject to amendment and/or renegotiation with benefit providers from time to time, and that any amendments, changes, or modifications to LAFCO retirement benefits shall apply to Emery and shall be deemed incorporated herein.

k. Optional Benefit Plan: Emery shall receive \$4,500 in the Optional Benefit Plan of the County of Orange Emery understands and accepts that these LAFCO benefits are subject to amendment and/or renegotiation with benefit providers from time to time, and that any amendments, changes, or modifications to LAFCO retirement benefits shall apply to Emery and shall be deemed incorporated herein.

l. Severance Pay: In the event Emery's appointment is terminated by action of LAFCO as provided in paragraph 9, Emery shall receive one month's additional salary for every full year of service as Executive Officer (dating back to her original 2013 appointment), up to six (6) months maximum ("Severance Pay"), payable within four (4) weeks of the date of termination. Additionally, Emery shall continue to receive the benefits contained in Sections 6(a) through (d) herein for the same number of months following the date of termination. COBRA rights shall apply thereafter. Additionally, if Emery becomes re-employed after termination of this Agreement, LAFCO shall no longer be obligated to provide Emery's health and dental benefits. However, in no event shall the severance payment that Emery may receive under this Agreement exceed an amount equal to the monthly base salary of Emery multiplied by the number of months left on the unexpired term of this Agreement as provided in California Government Code Section 53260. This paragraph 6(1) (Severance Pay) shall not apply in the event of resignation or an inability to perform the essential functions of the job, with or without accommodations.

m. Abuse of Office: Pursuant to Government Code section 53243, et seq. which became effective on January 1, 2012, if Emery were convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: (1) if Emery is provided with administrative leave pay pending an investigation, Emery shall be required to fully reimburse such amounts paid; (2) if LAFCO pays for the criminal legal defense of Emery (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Emery shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Emery may receive from LAFCO shall be fully reimbursed to LAFCO. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

n. Benefits: Emery shall be entitled to those benefits specified in this Agreement, as may be modified in accordance with paragraph 9, and any other benefits provided to other LAFCO employees (as modified by this Agreement) or required to be provided by LAFCO to its Executive Management employees, in accordance with LAFCO's Memorandum of Understanding with the County of Orange.

7. **Outside Professional Activities:** Upon prior notice to Orange County LAFCO and after obtaining prior approval from the LAFCO Executive Committee, Emery may, from time to time, undertake outside professional activities which do not interfere with or present a conflict with her position with LAFCO.

8. **Compliance with Employer's Rules:** Emery agrees to comply with all of the policies, rules and regulations of Orange County LAFCO, including but not limited to, policies regarding minimum working hours, office availability, notices and approvals, safety, and conduct.

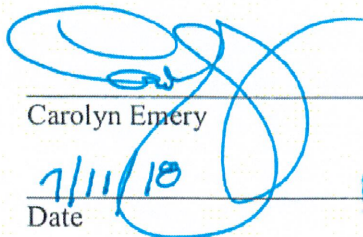
9. **Termination:** Emery shall serve at the sole will and pleasure of LAFCO, which may at any time with or without cause, and without notice or hearing, terminate Emery's appointment by five-sevenths' (5/7) vote. Emery is advised and acknowledges that she has no termination rights, except for those specified in Section 6(1) above. Except as expressly provided herein, and as a condition of appointment, Emery knowingly, willingly and voluntarily gives up, waives and disclaims any and all rights she may have, express or implied, to any notice and/or hearing either before or after termination, and/or to any continued employment with LAFCO after termination.

10. **Merger and Modification:** Pursuant to Code of Civil Procedure Section 1856, this Agreement is intended both as the final expression of agreement of the parties with respect to the terms and conditions herein, and as a complete and exclusive statement of the terms and conditions of the agreement of the parties. Each party to this Agreement acknowledges that no representations, inducements or promises and/or agreements, oral or written, whether contained in any LAFCO promotional material, LAFCO job classifications, or elsewhere, have been made by any party or by any person acting on behalf of any party which is not embodied herein, and that no other agreement, statement or promise not contained in this agreement shall be valid or binding.

11. **Amendments:** No amendment of this Agreement shall be effective unless and until such modification is set forth in writing and signed by Emery and approved by LAFCO, except for those potential applicable amendments and/or modifications as referenced in Paragraph 6 herein, which in the event of such amendment(s) shall apply automatically to the terms of Emery's employment and become incorporated by this Agreement.

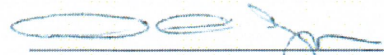
12. **Acknowledgment and Consent:** I, Carolyn Emery, acknowledge that I have read and fully understand the terms and conditions of this Memorandum of Agreement for the Position of LAFCO Executive Officer, and I consent and agree to each and every term and condition contained herein.

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Carolyn Emery
7/11/18


Date



Derek J. McGregor, LAFCO Chair
7/11/2018

Date

Approved as to form:



Best Best & Krieger LLP, General
Counsel
7/11/2018

Date