



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/10/2012

Agenda Placement: 7N

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Robert Westmeyer - County Counsel
County Counsel

REPORT BY: Helene Franchi, Principal Management Analyst - 253-4820

SUBJECT: Approval of Amendment No. 2 to Agreement No. 6276 relating to severance, limitations on severance, repayment of cash settlements in certain circumstances and eligibility to receive Non-Matching 401(a) Employer Contributions

RECOMMENDATION

County Counsel requests the following actions relating to the County Executive Officer:

1. Adoption of a resolution amending certain provisions of the existing employment agreement relating to severance entitlements including the current mandatory Government Code provisions relating to limitations on severance and a minor revision relating to deferred compensation to ensure consistency with the current regulations of the Internal Revenue Code and related regulations; and
2. Approval of and authorization for the Chairman to sign Amendment No. 2 to Agreement No. 6276 to reflect these changes.

EXECUTIVE SUMMARY

The proposed amendment makes no changes to the County Executive Officer's existing employment agreement (Agreement No. 6276) other than (1) revising and clarifying the severance provisions in the agreement; (2) incorporating the limitations on severance required by Government Code 53260; (3) incorporating certain new statutory provisions required to be included in employment agreements by Government Code sections 53243 through 53243.4; and (4) on advice of tax counsel making certain minor revisions to the provisions relating to deferred compensation that will result in Agreement 6276 being fully compliant with the Internal Revenue Code and current implementing regulations.

All of the changes discussed above that are mandated by state statute or the IRS have been included in the employment agreements of your new County Counsel that takes effect September 1, 2012. The third change, being recently enacted in January 2012, will need to be included in the Agricultural Commissioner's contract the

next time it is amended or he is reappointed.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The proposed amendment moves the County Executive Officer's severance entitlements into Agreement 6276. Presently Agreement 6276 simply references whatever severance is provided in the Management Compensation Plan (Management Non-Classified). The amendment clarifies that the County Executive Officer is entitled to only 12 months severance rather than the 18 months maximum severance permitted by Government Code section 53260. This approach is consistent with the level of severance afforded county executive officers in comparable counties. Incorporating this statutory language into new or amended employment agreements is mandatory. Government Code section 53260 provides that the maximum severance that may be paid pursuant to an employment agreement is an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the employment agreement, or an amount equal to the monthly salary of the employee multiplied by 18, whichever is less. This change, mandated by Government Code section 53260, has previously been included in the County Counsel and Agricultural Commissioner's employment agreements. It has also been included in the employment agreement of the Board's newly appointed County Counsel that will take effect on September 1, 2012, following the retirement of the current County Counsel on August 31, 2012. It now needs to be added to Agreement 6276.

The proposed amendment also adds language to Agreement 6276 that is found at Article 2.6 of Chapter 2 of Title 5 of the California Government Code. (Government Code sections 53243-53243.4) Incorporating these statutory provisions into new or amended employment agreements are mandatory as of January 1, 2012. Government Code sections 53243-53243.4 require employees convicted of a crime involving abuse of office to fully reimburse the local agency for any funds received that are related to severance. This provision was added to the County Counsel employment agreement of Mr. Tran that was approved in May of 2012. It will need to be added to the employment agreement of the Agricultural Commissioner the next time it is amended or he is reappointed. It will also need to be included in any further employment agreements that might be negotiated.

Finally, the proposed amendment clarifies that Non-Matching Employer 401(a) contributions, as well as Matching Employer 401(a) contributions, may occur but only at the sole discretion of the Board of Supervisors. It does not require the Board to ever make an Employer 401(a) contribution to the County Executive Officer's 401(a) subaccount whether Matching or Non-Matching. This clarifying change has previously been included in the County Counsel and Agricultural Commissioner's employment agreements to ensure those agreements conform to the Internal Revenue Code and the current implementing regulations. This change now needs to be made to Agreement 6276 for the same reason.

SUPPORTING DOCUMENTS

A . Resolution

CEO Recommendation: Approve

Reviewed By: Helene Franchi