

EMPLOYMENT CONTRACT

THIS CONTRACT ("Contract") is made and entered into this _____ day of September, 2022, by and between the San Joaquin County Local Agency Formation Commission, hereinafter called "Employer," and Jeffrey Hightower, hereinafter called "Employee," and is effective as of September 16, 2022 ("Effective Date").

The parties agree as follows:

SECTION 1. DUTIES.

A. Employer hereby employs Employee as Executive Officer of Employer. Employee, under broad policy guidance and direction of the Employer, executes the policies and directives of Employer in conformance with State law, and provides professional and non-partisan administration of the day-to-day activities, duties, and responsibilities of the Employer. Employee shall also perform such other duties and functions as Employer shall from time-to-time assign.

SECTION 2. TERM.

A. The term of this Contract shall commence on September 16, 2022, and shall continue indefinitely, subject to termination in accordance with Section 7 of this Contract. Notwithstanding the foregoing, Employee is an at will employee of Employer who shall serve at the pleasure of the Board of Employer. Notwithstanding the foregoing, in consideration of the benefits to Employee contained herein, Employee agrees to assist the current Executive Officer with the regularly scheduled Board meeting of Employer on September 8, 2022, in an unpaid capacity.

B. Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time.

C. Employee shall remain in the exclusive employ of Employer and shall neither accept other employment nor become employed by any other employer except upon written approval of Employer. Employee (during his employment with Employer) shall not engage, directly or indirectly, in any other business, commercial, or professional activity (whether or not pursued for pecuniary advantage) that is or may be competitive with Employer, that might create a conflict of interest with Employer, or that otherwise, might interfere with the business of Employer. The term "employed" shall not be construed to include occasional teaching, writing, or consulting performed on Employee's time off, nor an appropriate level of community service, nor attendance at seminars, conventions or similar events when approved by Employer.

SECTION 3. DISABILITY.

If Employee shall, for whatever reason, become incapable of performing any of the essential functions of Employee's position, even with reasonable accommodation by Employer, either (1) permanently, or (2) for a period exceeding the period of leave available to the Employee under the Family Medical Leave Act or the California Family Rights Act, or accrued sick leave, whichever is longer, then Employee shall be deemed to have suffered a disability. As the Executive Officer position requires Employee to devote a great deal of time both during and outside of normal office hours to the business of Employer, Employee recognizes that granting a leave longer than the time period stated in this section is presumed to constitute an undue hardship on Employer. In accordance with applicable law, any request for leave that constitutes an undue hardship shall be grounds for termination of the Contract.

SECTION 4. SALARY.

A. Employer agrees to pay Employee for his duties as Executive Officer a base annual salary of One Hundred Thirty-Five Thousand Seven Hundred Fifty-One Dollars (\$135,751.00) payable biweekly or according to the payroll cycle of other employees of the Employer, subject to normal withholdings.

B. Employer may increase said compensation of Employee in such amounts and to such extent as the Board of Employer may determine that is desirable to do so on the basis of a performance review of Employee. As an executive employee governed by this Contract, any and all adjustments to Employee's compensation will be obtained through negotiation with the Board of Employer and are not governed by the Employer's Personnel Policies.

SECTION 5. HOURS OF WORK.

Employee is expected to devote a great deal of time outside normal office hours to business of Employer. To that end Employee will be allowed to take Administrative Leave of up to eighty (80) hours per year, as he shall deem appropriate, during said office hours. On the Effective Date, Employer shall make forty (40) hours of Administrative Leave immediately available to Employee, and an additional forty (40) hours available to Employee at the conclusion of the 12th full and completed pay period of Employee's employment. Employee is expected to work such hours as are necessary to accomplish the goals of his employment, as Employee is exempt from overtime provisions of Federal and State laws.

SECTION 6. TERMINATION.

This contract shall terminate upon the occurrence of any of the following events:

- A. The death of Employee.
- B. The dissolution or bankruptcy of Employer.
- C. The disability of Employee, as defined in Section 3 of this contract.

D. The majority of the Board of Employer votes to terminate the Employee at a duly authorized meeting, with or without cause. "Cause," for purposes of this Section 6.D. and Section 7.A., shall be the conviction of Employee of any public offense which is a felony, and/or involves moral turpitude, and/or the punishment for which includes a prohibition on holding public employment; and/or the willful breach or habitual neglect of Employee's duties under this Contract, provided that, for habitual neglect, notice shall first be given to Employee, and Employee shall be given a period of at least one month to cure the defect; and/or commission of an act of dishonesty, fraud, misrepresentation and/or other act of moral turpitude such as would prevent the effective performance of his duties under this Contract.

E. The resignation of Employee, including voluntary retirement.

F. If the Employee resigns following an offer to accept resignation, or a suggestion that Employee resign, whether formal or informal, by any member of the Board of Employer acting as a representative of the majority of the Board of Employer, then the Employee may declare a termination as of the date of the offer or suggestion.

G. Breach of this Contract declared in writing by either party, provided that the party declaring the breach has given the other party a written notice to cure the breach and the other party has not cured the breach within 30 days after such notice.

SECTION 7. VACATION AND SICK LEAVE.

A. Vacation Accrual and Sick Leave rate shall be consistent with Section 1(b) Vacation Accrual Rate; and 1(c) Sick Leave of the Memorandum of Understanding between San Joaquin County and Executive Unit, as amended. Accordingly Employee has 28 years of total public service. Employee shall accrue vacation at the rate of five weeks per year (184 hours). Employee shall be limited to a maximum accumulation of three-hundred sixty eight (368) hours of total vacation hours.

B. Pursuant to County Ordinance Code Section 2-5221.5, whenever Employee's accumulation of vacation reaches its maximum, any further vacation accrual shall be credited to such employee's sick leave accumulation until such time as the employee's vacation accumulation falls below the maximum allowed.

C. Employee shall accrue .0462 hours of sick leave for each straight-time hour on payroll not to exceed eighty (80) straight-time hours per pay period (annual accrual rate, approximately 96 hours).

SECTION 8. FRINGE BENEFITS AND PERQUISITES.

A. Employee shall be entitled to those group health insurance benefits, short-term and long-term disability benefits, life insurance benefits, and other fringe benefits and perquisites provided to the executive bargaining unit employees of San Joaquin County consistent with the policies and practices of San Joaquin County and benefit plan requirements (including eligibility provisions), as executed in the Executive Bargaining Unit Memorandum of Understanding ("Executive MOU"), as amended. A true and exact copy of the Executive MOU effective as of the Effective Date of this Contract is attached hereto and incorporated herein by

this reference. Notwithstanding the foregoing, Employer shall provide Employee with the following fringe benefits and perquisites:

- (1) Employer shall pay a Cafeteria Plan allowance equal to 5% of Employee's annual base salary or other amount as may be provided by Employer's policy for executive management (the "Allowance"). Employee may use the Allowance to pay for health benefit premiums. Any unused portion of the Allowance is taxable income.
- (2) Employee has the option of participating in a 457 Deferred Compensation Plan. Employer shall contribute 5% of Employee's annual base salary, or other amount as may be provided by Employer's policy for executive management, to Employee's 457 Deferred Compensation Plan account. Such contributions by Employer shall be made in biweekly installments or according to Employer's payroll cycle.
- (3) Employer shall pay the premium on a County Life Insurance policy with a benefit of \$10,000.
- (4) Employer shall pay an automobile allowance of Five Hundred Eighty-Five Dollars (\$585.00) per month, payable biweekly or according to Employer's payroll cycle, subject to normal and usual withholdings.
- (5) Employee shall be entitled to eighty (80) hours (non-cumulative) of Administrative Leave per year.

B. This Contract shall control to the extent of any inconsistency between a benefit, perquisite, or other term provided by this Contract and the policies and practices generally applicable to Employer's employees. This Contract shall also control to the extent of any inconsistency between any benefit, perquisite, or other term provided by this Contract and the Executive MOU, as amended.

SECTION 9. DUES AND SUBSCRIPTIONS.

Employer shall budget and pay for the professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement and for the good of Employer.

SECTION 10. PROFESSIONAL DEVELOPMENT.

Employer shall budget for and pay the travel and subsistence expenses of Employee for professional official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer. Employer shall budget and pay for the travel and subsistence expense of Employee for short courses, institutes, and seminars necessary for her professional development and for the

good of the Employer. The expenses specified in this Section 11 shall be preapproved by the Board of Employer.

SECTION 11. REIMBURSEMENT OF EXPENSES.

To the extent Employee necessarily incurs expenses in the performance of his duties, Employee will receive reimbursement therefor. Employee shall submit a claim form to Employer in the form and manner required of any employee. Employer may, at its option, provide Employee with a valid credit card issued in the name of Employer which use is limited to proper Employer public purposes.

SECTION 12. PERFORMANCE EVALUATION.

Employer shall review and evaluate the performance of Employee one (1) year after the Effective Date of this Contract, and at least once annually thereafter. Such review shall include review of Employee's accomplishment of objectives and goals established by Employer. During the term of this Contract, following each performance evaluation, Employee's compensation may be increased at the sole discretion of Employer.

SECTION 13. INDEMNIFICATION AND BONDING.

Employer shall defend, save harmless, and indemnify Employee in accordance with Division 3.6. of the California Government Code, sections 800 et seq. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. Employer, in consultation with Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract or any other law.

B. Unless otherwise specifically provided herein, all provisions of the adopted policies, regulations, and rules of Employer as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of the Employer, including, but not limited to, conduct rules and working conditions.

SECTION 15. NOTICES.

All notices, demands, or requests of any kind that either party may be required or desires to serve upon the other party shall be in writing and shall be effective when actually received and delivered by: (i) personal service; (ii) registered or certified mail, return receipt requested, postage prepaid; (iii) reputable overnight mail courier that guarantees next day delivery and provides a receipt; (iv) facsimile; or (v) electronic mail transmission, and addressed to the Party to which such notice is given as follows:

(1) Employer:

San Joaquin County Local Agency Formation Commission
Attn: Commission Clerk
44 North San Joaquin Street, Suite 374
Stockton, CA 95202

With Copy to General Counsel to Employer

Neumiller & Beardslee
Attn: Rod Attebery, General Counsel
Post Office Box 20
Stockton, CA 95201-3020

(2) Employee:
J.D. Hightower

All notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been given at the time of delivery if given in person or within twenty-four (24) hours after being sent by certified mail, postage prepaid, return receipt requested and addressed as indicated above or at the latest address in the Employer's employment records or at any other address which the parties shall give written notice of pursuant to this section.

SECTION 16. GENERAL PROVISIONS.

- A. The text herein shall constitute the entire Contract between the parties.
- B. This Contract shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Contract shall become effective on the Effective Date written above.
- D. If any provision, or any portion thereof, contained in this Contract is held unconstitutional, invalid, or unenforceable, the remainder of this Contract, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. This Contract may be amended only by a written agreement executed by each party hereto.
- F. This Contract is non assignable by the Employer or Employee
- G. This Contract shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice of law provision or rule whether of the State of California or any other jurisdiction.

H. This Contract supersedes any and all other agreements, whether oral or in writing, between the Employer and Employee with respect to Employee's employment hereunder. Any modification of this Contract shall be effective only if embodied in a formal amendment duly adopted by the Employer's Board of Directors and reduced to a fully executed written document in writing.

I. Employee and Employer acknowledge that each party has reviewed, negotiated, and had an opportunity to discuss with counsel this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any document executed and delivered by any party in connection with transactions contemplated by this Contract.

IN WITNESS WHEREOF, the San Joaquin County Local Agency Formation Commission has caused this Contract to be signed and executed in its behalf by its Chairperson and duly attested by its Clerk, and the Employee has signed and executed this Contract, both in duplicate, the day and year first above written.

“EMPLOYER”

“EMPLOYEE”

SAN JOAQUIN COUNTY LOCAL AGENCY
FORMATION COMMISSION

JEFFREY HIGHTOWER

By: _____

ATTEST:

Mitzi Stites, Commission Clerk

APPROVED AS TO FORM:

ROD ATTEBERY, General Counsel for Employer