



AGENDA STAFF REPORT

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CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS
2013 MAR 14 PM 4:29
RECEIVED

MEETING DATE: 03/19/13
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: BOS CEO Ad Hoc Negotiating Committee
DEPARTMENT CONTACT PERSON(S): Supervisor Janet Nguyen (714) 834-3110
 Supervisor Patricia Bates (714) 834-3550

SUBJECT: APPOINTMENT OF COUNTY EXECUTIVE OFFICER

CEO CONCUR N/A	COUNTY COUNSEL REVIEW Contract Approved as to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: Yes **Current Year Cost:** TBD **Annual Cost:** TBD
Staffing Impact: N/A **# of Positions:** 1 **Sole Source:** No
Current Fiscal Year Revenue: N/A
Funding Source: General Fund
Prior Board Action: N/A

RECOMMENDED ACTION(S):

1. Determine and approve the annual salary to be paid to the County Executive Officer;
2. Appoint Chandra L. Wallar as County Executive Officer for a two-year term; and
3. As required by Government Code section 53262, ratify the County of Orange Employment Agreement for County Executive Officer, attached hereto as Exhibit A.

SUMMARY:

By determining the annual salary of the County Executive Officer, appointing Chandra Wallar as County Executive Officer, and ratifying the accompanying employment agreement, attached as Exhibit A, the Board will hire and employ Ms. Wallar to serve as the County Executive Officer for a two-year term, assigning to her the duties and responsibilities set forth in both the accompanying employment agreement and also section 1-2-64 of the Codified Ordinances of the County of Orange.

BACKGROUND INFORMATION:

Since the August 3, 2012 resignation of former County Executive Officer Tom Mauk, the Board has conducted a recruitment to find the next permanent County Executive Officer. The County of Orange Employment Agreement for County Executive Officer, attached hereto as Exhibit A, sets forth the terms and conditions of Ms. Wallar's employment with the County.

FINANCIAL IMPACT:

General Fund

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

N/A

ATTACHMENT(S):

County of Orange Employment Agreement for County Executive Officer

**COUNTY OF ORANGE
EMPLOYMENT AGREEMENT FOR
COUNTY EXECUTIVE OFFICER**

This Employment Agreement for County Executive Officer (“AGREEMENT”) is made this [INSERT DATE OF EXECUTION], by and between the County of Orange and its Board of Supervisors (collectively, “COUNTY”) and Chandra L. Wallar (hereinafter “WALLAR”).

IT IS MUTUALLY AGREED:

1. APPOINTMENT

Pursuant to Government Code Section 25300, and Section 1-2-63 of the Codified Ordinances of the COUNTY, the Board of Supervisors (“BOARD”) hereby appoints, and the COUNTY hereby employs, WALLAR as the County Executive Officer, on the terms and conditions specified herein. WALLAR hereby agrees to accept this appointment to the position of County Executive Officer and agrees to become an employee of the COUNTY and serve as an agent of the BOARD.

2. TERM

This AGREEMENT is for a two-year term commencing on the [INSERT START DATE] and ending on [INSERT END DATE TWO YEARS AFTER START DATE] (“EXPIRATION DATE”). The “EFFECTIVE DATE” of this AGREEMENT shall be the date that this AGREEMENT is ratified by a majority of the BOARD at an open and public meeting, pursuant to Government Code section 53262.

3. DUTIES, RESPONSIBILITIES, AND AUTHORITY

WALLAR shall perform the duties of the County Executive Officer, including those duties and responsibilities set forth in Section 1-2-64 of the Codified Ordinances of the County of Orange, as well as any other such duties that may be assigned by the BOARD or prescribed by law, and shall at all times perform all such duties in a manner satisfactory to the BOARD. WALLAR shall also be responsible for ensuring that all COUNTY employees enjoy a work environment free of unlawful harassment, discrimination, and retaliation, and that allegations of unlawful harassment, discrimination, and retaliation are promptly and thoroughly investigated and addressed. WALLAR shall devote her full time and attention to the duties and responsibilities of her position and shall not accept outside employment (including non-compensated volunteer activities) without prior BOARD approval.

In the performance of her duties, WALLAR shall have and exercise all authority and powers necessary to manage all functions and operations of the COUNTY, except those functions and operations committed to voter-elected officers of the COUNTY, including, but not limited to, the Sheriff-Coroner, District Attorney, and Treasurer-Tax Collector. With regard to the functions and operations of COUNTY departments committed to such voter-elected officers,

WALLAR shall have and exercise budget control and oversight, subject to final approval by the BOARD. WALLAR shall have and exercise direct oversight of the appointed department heads and their agencies and departments, except for the offices of Clerk of the Board, County Counsel, Internal Audit, Office of Independent Review, and Performance Audit, all of which report directly to the BOARD.

WALLAR shall bring to the BOARD's immediate attention any sensitive matters, including, but not limited to, budget, human relations, legislative affairs, and all internal and external operations of the COUNTY. WALLAR shall cause the budget planning of all departments to be compatible with approved BOARD policies and long range plans. WALLAR shall review and evaluate the budget estimates of all COUNTY departments and shall submit a recommended annual budget to the BOARD. WALLAR shall exercise continuous review of revenues and expenditures throughout the year to insure budgetary control and shall recommend to the BOARD any necessary fiscal controls. All departmental requests for supplemental appropriations and budget transfers that require BOARD approval shall be reviewed by WALLAR for her recommendation. WALLAR shall exercise all of the authority vested in the County Executive Officer pursuant to the COUNTY Personnel and Salary Resolution, as amended, and all other resolutions adopted by the BOARD.

4. COMPLIANCE WITH THE LAW

WALLAR shall, during the term of this AGREEMENT, comply with all laws and regulations, and all Codified Ordinances of the County of Orange, that are applicable to the position of County Executive Officer. By signing this AGREEMENT, WALLAR acknowledges that, as County Executive Officer, she is a "designated employee" required to file a statement of economic interests and agrees that she will comply with the Orange County Gift Ban Ordinance (commencing at section 1-3-21 of the Codified Ordinances of the County of Orange). WALLAR shall also comply with the limitations on her authority, as set forth in Section 1-2-65 of the Codified Ordinances of the County of Orange.

5. PERFORMANCE EVALUATION

The BOARD will evaluate the performance of WALLAR both formally and informally on a constant and ongoing basis, as determined by the BOARD. At least annually, however, WALLAR shall receive a formal evaluation based on the performance of WALLAR as the County Executive Officer and the BOARD's adopted goals, criteria, and procedures. Any such formal evaluation must be conducted by the BOARD. However, a failure to perform this evaluation will not affect any other provision of this AGREEMENT.

Upon completion by WALLAR of the first year of active employment with the COUNTY, if the BOARD determines, as part of its formal evaluation of WALLAR's performance, that WALLAR has met or exceeded the performance metrics set by the BOARD, WALLAR shall be entitled to a one-time, five (5) percent increase in annual salary.

6. COMPENSATION, BENEFITS, AND ANNUAL LEAVE

For services rendered to the COUNTY as County Executive Officer, WALLAR shall be compensated on a salary basis in the annual amount of _____. In addition, and within thirty (30) days of the EFFECTIVE DATE of this AGREEMENT, the COUNTY shall pay, and WALLAR shall be entitled to receive, a one-time relocation payment in the amount of fifteen thousand dollars (\$15,000.00). Relocation expenses are treated as a reimbursable and some or all of the payment may be taxable. Within thirty (30) days of the EFFECTIVE DATE of this AGREEMENT, the COUNTY shall also provide WALLAR with two hundred (200) hours of Annual Leave. After providing notice to the Clerk of the Board, WALLAR shall be entitled to annually cash out up to eighty (80) hours of accrued, unused Annual Leave.

As the position of County Executive Officer is an overtime-exempt executive position, WALLAR shall not be entitled to overtime pay under either the Fair Labor Standards Act or California law. WALLAR shall receive salary payments in the same manner, and at the same times, as other COUNTY Executive Management employees generally.

WALLAR shall receive the same benefits generally provided to other Executive Management (Group II) employees, except as otherwise provided herein or in other acts of the BOARD. As with other COUNTY Executive Management (Group II) employees, the COUNTY shall contribute an amount equal to 5% of WALLAR'S biweekly salary to WALLAR'S COUNTY 401(a) Plan. WALLAR shall be a member of the Orange County Employees Retirement System, and shall pay 50 percent of normal cost of her pension, *i.e.*, 100 percent of the required employee contribution, and the COUNTY shall also pay 50 percent of the normal cost of WALLAR'S pension. WALLAR shall accrue annual leave, and shall be entitled to payoff for accrued, unused annual leave, in the same manner as other COUNTY Executive Management employees and in accordance with the COUNTY Annual Leave Plan, Amendment 1 to the COUNTY Personnel & Salary Resolution, as updated on July 31, 2007.

As required under Labor Code Section 2802 and Government Code Section 995, the COUNTY will defend and indemnify WALLAR for all losses and against all liability sustained by WALLAR in direct consequence of the discharge of duties performed on behalf of the COUNTY. However, the COUNTY shall have no obligation to indemnify WALLAR, or provide legal representation to WALLAR, for any criminal proceeding.

7. RESIGNATION/TERMINATION

WALLAR shall serve as County Executive Officer at the sole pleasure of the BOARD. This AGREEMENT may be terminated "at will" by either WALLAR or the BOARD with a 60-day written notice. Upon termination of this AGREEMENT, WALLAR's authority as the County Executive Officer shall immediately terminate and revert to the BOARD. By signing below, WALLAR acknowledges, understands and agrees that this AGREEMENT will automatically terminate, and WALLAR shall be dismissed from her position as COUNTY EXECUTIVE

OFFICER, if WALLAR applies for a pension or similar defined-benefit retirement payment from any public pension system during the life of this AGREEMENT.

WALLAR is advised and, with her signature below, hereby acknowledges and agrees that she shall have none of the due process rights of a regular, full-time COUNTY employee. As a condition of her appointment, WALLAR 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 of this AGREEMENT, and/or to any continued employment with the COUNTY after termination of this AGREEMENT.

In the event the BOARD decides to terminate this AGREEMENT within one year of the EFFECTIVE DATE of this AGREEMENT, WALLAR shall receive from the COUNTY a severance package consisting of 12 months of salary only, paid as wages, less any applicable taxes, deductions, or other required contributions, such as deductions for pension, medical, or other Executive Manager benefits. However, WALLAR shall not be entitled to this or any other severance package from the COUNTY if (1) she voluntarily resigns her employment; (2) WALLAR elects to apply for a pension or similar defined-benefit retirement from any public pension system; or (3) this AGREEMENT is terminated by the BOARD more than one year after the EFFECTIVE DATE of this AGREEMENT. Thus, and by way of example, if the BOARD elects to terminate this AGREEMENT in August 2014, WALLAR shall not be entitled to any severance package, and shall be entitled to receive only a lump sum payment for her accrued, unused Annual Leave balance, in an amount to be determined in accordance with the formula set forth in Amendment 1 to the Personnel and Salary Resolution, as updated by the BOARD on July 31, 2007.

8. BINDING ARBITRATION

By signing this AGREEMENT, both the COUNTY and WALLAR agree to arbitrate any and all disputes, claims, or controversies ("claims") they may have against each other which arise from the employment relationship between the COUNTY and WALLAR, the termination of that employment relationship, or the termination of this AGREEMENT. Claims covered by this section of the AGREEMENT include, but are not limited to: claims of employment discrimination and harassment under Title VII of the Civil Rights Act, as amended; the California Fair Employment & Housing Act; the Age Discrimination in Employment Act, as amended; the Americans with Disabilities Act; 42 U.S.C. section 1981; the Employment Retirement Income Security Act; the California Labor Code, including any claims brought by WALLAR related to wages; breach of employment contract or the implied covenant of good faith and fair dealing; wrongful discharge; or tortious conduct (whether intentional or negligent) including defamation, misrepresentation, fraud, infliction of emotional distress, but excluding claims for workers' compensation benefits to remedy work-related injury or illness. By signing this AGREEMENT, the COUNTY and WALLAR understand and agree that they are waiving their rights to bring such claims to court, including the right to a jury trial.

The arbitration shall be conducted by a neutral arbitrator in accordance with state and federal law. The COUNTY will pay the arbitrator's fee for the proceeding, as well as any room or other charges. Discovery shall be permitted in accordance with the California Discovery Act

and either party may file pre-hearing motions directed at the legal sufficiency of a claim or defense equivalent to a demurrer or summary judgment prior to the arbitration hearing.

The arbitrator will issue a detailed written decision and award, resolving the dispute. The arbitrator's written opinion and award shall decide all issues submitted and set forth the legal principle(s) supporting each part of the opinion. The decision or award of the arbitrator shall be final and binding upon both the COUNTY and WALLAR. The arbitrator shall have the power to award any type of legal or equitable relief that would be available in a court of competent jurisdiction including, but not limited to attorneys' fees and punitive damages when such damages and fees are available under the applicable statute and/or judicial authority. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. The COUNTY and WALLAR agree that any relief or recovery to which they are entitled arising out of the employment relationship or cessation thereof shall be limited to that awarded by the arbitrator.

9. MERGER

This AGREEMENT is intended as the final expression of the agreement between the COUNTY and WALLAR. The COUNTY and WALLAR acknowledge and agree that no representations, inducements, promises and/or agreements, oral or written, have been made by any party or any person acting on behalf of any party, which are not embodied herein. The COUNTY and WALLAR also agree that no other agreement, statement, or promise beyond the terms and conditions expressly stated in this AGREEMENT are binding.

10. MODIFICATION

This AGREEMENT may be modified by mutual agreement between the COUNTY and WALLAR. However, no waiver or modification of this AGREEMENT shall be valid unless in writing and duly executed by the parties hereto.

11. ACKNOWLEDGEMENT AND CONSENT

By signing below, WALLAR and Orange County Board of Supervisors Chairman Shawn Nelson, on behalf of the COUNTY, acknowledge that (1) they each have read and fully understand the terms and conditions of this AGREEMENT, including the binding arbitration provision set forth in section 8 of this AGREEMENT, and (2) they consent and agree to each and every term and condition contained herein.

Chandra L. Wallar

Date

FOR THE COUNTY OF ORANGE:

Shawn Nelson
Chairman of the Board of Supervisors
County of Orange

Date

Signed and certified that a copy of this document has been delivered to the Chairman of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

Susan Novak
Clerk of the Board of Supervisors
Orange County, California

Approved as to form:
Office of the County Counsel
Orange County, California

By: _____
Nicholas S. Chrisos, County Counsel