

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

This Agreement for the Employment of County Executive Officer ("AGREEMENT") is made by and between the County of Orange and its Board of Supervisors (collectively, "COUNTY") and MIKE GIANCOLA (hereinafter "GIANCOLA").

IT IS MUTUALLY AGREED:

1. APPOINTMENT

The COUNTY hereby appoints, and the COUNTY hereby agrees to employ, GIANCOLA as the County Executive Officer on the terms and conditions specified herein. GIANCOLA 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 three-year term commencing on the EFFECTIVE DATE of this AGREEMENT. The EFFECTIVE DATE of this AGREEMENT shall be the date when this AGREEMENT is (A) signed by the Chairman of the Orange County Board of Supervisors ("BOARD") after (B) a public vote by a majority of the Orange County Board of Supervisors to appoint GIANCOLA to the position of County Executive Officer. Unless extended by mutual agreement, in writing, this AGREEMENT shall terminate three years after the EFFECTIVE DATE, a date hereinafter identified as the "EXPIRATION DATE".

3. DUTIES, RESPONSIBILITIES, AND AUTHORITY

Under the direction and supervision of the BOARD, GIANCOLA 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.

GIANCOLA 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. GIANCOLA shall devote his full time and attention to the duties and responsibilities of his position and shall not accept outside employment (including non-compensated volunteer activities) without prior BOARD approval.

In the performance of his duties, GIANCOLA 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. With regard to the functions and operations of COUNTY departments committed to such voter-elected officers,

GIANCOLA shall have and exercise budget control and oversight, subject to final approval by the BOARD. GIANCOLA 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.

GIANCOLA 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. GIANCOLA shall cause the budget planning of all departments to be compatible with approved BOARD policies and long range plans. GIANCOLA shall review and evaluate the budget estimates of all COUNTY departments and shall submit a recommended annual budget to the BOARD. GIANCOLA 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 GIANCOLA for his recommendation. GIANCOLA 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**

GIANCOLA shall, during the term of this AGREEMENT, comply with all laws and regulations, and all Codified Ordinances of the County of Orange. By signing this AGREEMENT, GIANCOLA acknowledges that, as County Executive Officer, he shall be a "designated employee" required to file a Statement of Economic Interests (FPPC Form 700) and agrees that he will comply with the Orange County Gift Ban Ordinance (commencing at section 1-3-21 of the Codified Ordinances of the County of Orange).

5. **PERFORMANCE EVALUATION**

The BOARD will evaluate the performance of GIANCOLA ^{at least once per year,} ~~both formally and informally~~ on an ongoing basis, as determined by the BOARD.

6. **COMPENSATION, BENEFITS, AND ANNUAL LEAVE**

For services rendered to the COUNTY as County Executive Officer, GIANCOLA shall be compensated on a salary basis through the EXPIRATION DATE of this AGREEMENT in the annual amount of two hundred and forty-five thousand dollars (\$245,000.00). GIANCOLA shall accrue annual leave, and shall be entitled to a payoff for accrued, unused annual leave, at the time of separation of employment, in the same manner as other COUNTY Executive Management (Group II) 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 the position of County Executive Officer is an overtime-exempt executive position, GIANCOLA shall not be entitled to overtime pay under either the Fair Labor Standards Act or

California law. GIANCOLA shall receive salary payments in the same manner, and at the same times, as other COUNTY Executive Management employees generally.

GIANCOLA 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. GIANCOLA shall be a member of the Orange County Employees Retirement System, and shall be required to pay for the employee's share of the normal cost of his pension benefit plus the complete reverse pick-up.

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

7. RESIGNATION/TERMINATION/RETURN RIGHTS

GIANCOLA shall serve as County Executive Officer at the sole pleasure of the BOARD. This AGREEMENT may be terminated "at will" by either GIANCOLA or the BOARD at any time, and without notice. Upon termination of this AGREEMENT, GIANCOLA's authority as the County Executive Officer shall immediately terminate and revert to the BOARD. By signing below, GIANCOLA acknowledges, understands and agrees that this AGREEMENT will automatically terminate, and GIANCOLA shall be dismissed from his position as County Executive Officer, if GIANCOLA receives or applies for a pension or similar defined-benefit retirement payment from any public pension system during the life of this AGREEMENT.

GIANCOLA is advised and, with his signature below, hereby acknowledges and agrees that he shall have none of the due process rights of a regular, full-time COUNTY employee. As a condition of his appointment, GIANCOLA knowingly, willingly, and voluntarily gives up, waives, and disclaims any and all rights he 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, except as provided below.

In the event the BOARD decides to terminate this AGREEMENT prior to March 31, 2014, GIANCOLA shall be dismissed from his position as County Executive Officer and shall have a right to return to his former position as Director, OC Waste & Recycling, and, from that point forward, and upon exercising that right, GIANCOLA shall again be an at-will employee of the COUNTY, entitled to receive from the COUNTY the compensation and other benefits enjoyed by other COUNTY Department Directors, including a severance payment equal to three (3) months of salary only, paid as wages, less any applicable taxes or deductions, if his employment as Director, OC Waste & Recycling, is terminated by the COUNTY without cause.

Consistent with the terms and conditions of his employment as Director, OC Waste & Recycling, in the event the BOARD decides to terminate this AGREEMENT on or after March 31, 2014, GIANCOLA shall retain the right he enjoyed as Director, OC Waste & Recycling, to

receive from the COUNTY a severance package consisting of three (3) months of salary only, paid as wages, less any applicable taxes and deductions, in accordance with the "at will" agreement signed by GIANCOLA. However, GIANCOLA shall not be entitled to this or any other severance package from the COUNTY, if (1) GIANCOLA voluntarily resigns from his employment as County Executive Officer; (2) GIANCOLA elects to apply for a pension or similar defined-benefit retirement from any public pension system; or (3) the COUNTY terminates this AGREEMENT for "good cause" under the legal standard set forth in *Cotran v. Rollins Hudig Hall International, Inc.*, 17 Cal. 4th 93 (1998).

8. MERGER

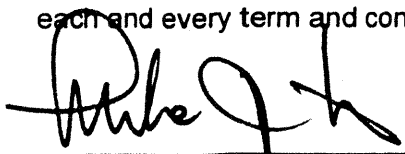
This AGREEMENT is intended as the final expression of the agreement between the COUNTY and GIANCOLA. The COUNTY and GIANCOLA acknowledge and agree that no representations, inducements, promises and/or agreements, oral or written, have been made by any party or any person acting on behalf of any party,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

9. MODIFICATION

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

10. ACKNOWLEDGEMENT AND CONSENT

By signing below, GIANCOLA and Orange County Board of Supervisors Chairman Shawn Nelson, on behalf of the COUNTY, acknowledge that they each have read and fully understand the terms and conditions of this AGREEMENT, and that they consent and agree to each and every term and condition contained herein.




MIKE GIANCOLA

4/30/13

Date

FOR THE COUNTY OF ORANGE:



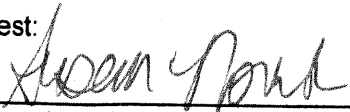
Shawn Nelson
Chairman of the Board of Supervisors
County of Orange

5/7/13

Date

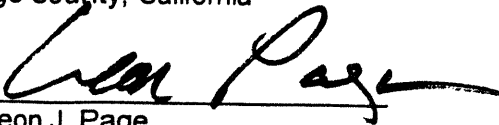
Signed and certified that a copy of this document has been delivered to the Chairman of the Board per G.C. Sec. 25103, Reso 79-1535

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: 

Leon J. Page
Senior Deputy County Counsel