

**SACRAMENTO METROPOLITAN AIR QUALITY
MANAGEMENT DISTRICT**

For Agenda of: September 28, 2006

To: Board of Directors

From: Jeff Starsky, Chair
Sacramento Metropolitan Air Quality Management District

Subject: **First Amendment to Employment Agreement with the
Air Pollution Control Officer/Executive Director**

Recommendation:

Adopt the attached resolution approving an amendment to the District's Employment Agreement with Larry Greene, Air Pollution Control Officer/ Executive Director, and authorize the Chairperson to execute the amended agreement on behalf of the Board of Directors.

Purpose:

For purposes of clarification, Mr. Greene wishes to modify the attached Employment Agreement regarding his health insurance, transportation allowance, and changes resulting from the change in Board structure from a 9-member Board to a 14-member Board.

Discussion

The following changes/ clarifications would be made:

1. Amendments to various provisions

The Board of Directors previously determined that Mr. Greene's title should be revised to be "Air Pollution Control Officer/Executive

Director," since he interacts with entities that do not understand the role and authority of an APCO and "Executive Director" is a more universally understood title. The contract language will be revised to reflect this change in title. No change in duties or responsibilities is proposed.

2. Amendments to Section 2.4.2 (Vote requirements)

- a. Existing Language: Section 2.4.2 subsection ii. currently reads as follows:

"If the Board determines by a five-ninths vote to terminate the APCO, it must notify the APCO of this determination in writing."

- b. Discussion:

The contract amendment will delete the requirement for a five-ninths vote and replace it with a requirement for an eight-fourteenths vote so that it is consistent with the Board's new membership.

3. Amendments to Section 2.4.3 (Vote requirements)

- a. Existing language: Section 2.4.3 currently reads as follows:

"The District Board may terminate this Agreement for any other reason by a six-ninths vote of the Board. If the Board terminates Larry Greene under this section, it will pay him a lump sum cash payment equal to accrued vacation balances plus six (6) months aggregate salary.

The Board will also pay the amount specified in paragraph 2.6.2.i. for the same six month period, or until Mr. Greene finds other employment, whichever occurs first."

b. Discussion:

The contract amendment will delete the requirement for a six-ninths vote and replace it with a requirement for a nine-fourteenths vote so that it is consistent with the Board's new membership.

4. Amendments to Section 2.6.2, subsection i (Cafeteria Plan).

a. Existing Language: Section 2.6.2, subsection i. currently reads as follows:

"Insurance: The District will pay \$550.00 for the cafeteria plan offered to other District Management Employees. Mr. Greene may use the \$550.00 to cover the costs of the cafeteria plan, or may opt to forego any plan benefits (except dental benefits), and collect the remaining portion of the \$550.00 in cash. If Mr. Greene elects to forego health insurance, he must provide proof that he maintains alternative health insurance coverage. The \$550.00 amount will be automatically increased to equal any increases in the health care contribution paid to other District employees."

b. Proposed Revision: This contract amendment deletes the existing language in its entirety and replaces it with the following:

"Insurance: Mr. Greene will be entitled to the same cafeteria plan benefits offered to other District Management Employees hired as of July 26, 2004 and will meet any obligations (such as proof of insurance) imposed on the employees."

c. Discussion:

In July, 2005, the District increased the cafeteria plan to \$740 (with family), but decreased the "cash out" limit from \$550 to \$490 for existing employees. This amendment will clarify that Mr. Greene is subject to the same cash out as all other employees and will ensure that his future cafeteria plan benefits and obligations track any revisions made to the plan for all other District employees.

5. Amendments to section 2.6.2, subsection vii (Transportation allowance)

a. Existing Language: Section 2.6.2, subsection vii. currently reads as follows:

"District will pay Mr. Greene a transportation allowance of \$400 per month. He may use the allowance to offset the cost of any form of alternative transportation, or for the purchase, lease, operation and maintenance of a vehicle for his use in conducting District business. If Mr. Greene purchases a vehicle, he will be responsible for paying liability, property damage, and comprehensive insurance coverage for the vehicle and will further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of the vehicle."

b. Proposed Language: This contract amendment adds the following language to the end of section 2.6.2, subsection vii.:

"Notwithstanding the foregoing, Mr. Greene will be entitled to the same mileage reimbursement for out-of-county travel that District Management Employees receive."

c. Discussion:

In addition to the language cited above, section 2.6.2, subsection viii. of the contract states that Mr. Greene is entitled to "all benefits received by management employees that are greater than provided in the Agreement, unless otherwise specified." All management employees are entitled to receive a mileage reimbursement for miles traveled on District business. Since the transportation allowance did not specifically address mileage, the District staff has always interpreted this second provision as allowing Mr. Greene to receive the mileage allowance paid to management. Recently, staff have raised the concern that outside auditors might disagree with this interpretation of the contract, arguing that the statement in subsection vii that Mr. Green is responsible for all expenses "attendant to...operation," includes mileage.

The proposed language will clarify that Mr. Greene is entitled to mileage. Allowing a mileage payment is also consistent with the transportation allowance and mileage benefits he received in Yolo-Solano and with the benefits allowed by Sacramento City and County.

6. New Section 2.10 (Effective Dates)

- a. Proposed language: A new section 2.10 will be added to the contract to address the effective dates of the various amendments:

The effective date of the amendments to the Cafeteria Plan in Section 2.6.2, subsection i is July 1, 2005. The effective date of the amendments to the Transportation Allowance in Section 2.6.2, subsection vii is July 26, 2004 (the date the contract was originally signed). The effective date of the amendments to section 2.4.2 and 2.4.3 is the date the Board approves the contract amendment.

- b. Discussion:

This amendment ties the effective date on the cafeteria plan to the effective date applicable to all employees. It also allows the mileage payment amendment to relate back to the first date of the contract, since the amendment simply confirms prior interpretations of the contract.

Conclusion

It is recommended that the Board approve the proposed amendments to the Employment Agreement for Mr. Greene.

Jeff Starsky, Chairperson
Board of Directors
Sacramento Metropolitan Air
Quality Management District

AQMD RESOLUTION NO. _____

BE IT RESOLVED AND ORDERED that the Chairperson of the Board of Directors is hereby authorized and directed to execute an amendment to the Employment Agreement in the form hereto attached, on behalf of the Sacramento Metropolitan Air Quality Management District, with Larry Greene, and to do and perform everything necessary to carry out the purpose of this Resolution.

ON A MOTION by Director _____, seconded by Director _____, the foregoing Resolution was passed and adopted by the Board of Directors of the Sacramento Metropolitan Air Quality Management District, this 28th day of September, 2006, by the following vote, to wit:

Chairperson, Board of Directors
Sacramento Metropolitan Air
Quality Management District

(SEAL)

ATTEST: _____
Clerk of the Board