

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

965



FROM: Human Resources Department

SUBMITTAL DATE:
December 6, 2012

SUBJECT: Employment Agreement between Roger Shintaku, Salton Sea Authority and County of Riverside.

RECOMMENDED MOTION: That the Board approve the attached Employment Agreement between Roger Shintaku, Salton Sea Authority and the County of Riverside.

BACKGROUND: The Salton Sea Authority (SSA) is a joint powers agency chartered by the State of California by a Joint Powers Agreement on June 2, 1993, for the purpose of ensuring the beneficial uses of the Salton Sea. The SSA is governed by a Board of Directors and employs an Executive Director to manage day-to-day operations. Historically (from 1999 to 2007), the Executive Director held a County job classification and received County salary and benefits. Under this arrangement, the County paid the salary and benefits and the SSA reimbursed the County.

FORM APPROVED COUNTY COUNSEL
BY: PAMELA J. WALLS DATE: 12/11/12
Departmental Concurrence

Barbara A. Olivier
Asst. County Executive Officer/Human Resources Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

SOURCE OF FUNDS: Reimbursement by Salton Sea Authority	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY:
Ivan M. Chand 12/11/2012

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District: All

Agenda Number:

3.29

BACKGROUND (continued):

However, when the last incumbent was hired into the position, the SSA decided to utilize an internal non-County job classification and payroll process. After this incumbent resigned in March 2012, the SSA began seeking qualified candidates to fill the position. In order to leverage the County's benefits and administrative infrastructure, the SSA decided to revert back to the former model of utilizing a County job classification to fill the Executive Director position. Through an internal recruitment process, the SSA selected Roger Shintaku to fill the Executive Director position. The SSA, in cooperation with the County Executive Office and Human Resources Department, negotiated Mr. Shintaku's compensation, benefits, and other terms and conditions of employment which are formalized in the attached Employment Agreement (Attachment A). This agreement requires Board approval and is needed to establish Mr. Shintaku as a County employee. There is no cost associated with this request as all salary and benefits costs to the County will be reimbursed by the SSA.

**EMPLOYMENT AGREEMENT BETWEEN ROGER SHINTAKU, SALTON SEA
AUTHORITY AND COUNTY OF RIVERSIDE**

This employment agreement (hereinafter "Agreement") is made and entered into between Roger Shintaku (hereinafter "Shintaku"), the Salton Sea Authority (hereinafter "Authority") and the County of Riverside (hereinafter "County") in order to provide, in writing, the terms and conditions for the employment of Shintaku by the County, under direction of the Authority.

RECITALS

WHEREAS, the Salton Sea Authority contracts with the County for staff and support services pursuant to a Memorandum of Understanding dated August 26, 1997, as subsequently amended (hereinafter "MOU"); and

WHEREAS, Authority and County desire to employ Shintaku as a County employee to perform the functions of Executive Director/General Manager of the Authority under the direction of the Authority's Board of Directors, but subject to the terms of this Agreement, and not principally subject to the County Personnel Ordinance, Ordinance 440

NOW, THEREFORE, in consideration of the foregoing facts and the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. Employment

The County hereby agrees to employ Shintaku, and Shintaku agrees and does accept employment subject to the Authority's Board of Directors' direction upon the terms and conditions set forth herein.

2. Duties

(a) Shintaku shall be employed to perform the functions of Executive Director/General Manager of the Authority. In said capacity, Shintaku shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Authority, subject at all times to applicable state and federal laws, regulations, and the policies, ordinances, resolutions and rules adopted by the Authority Board of Directors, as further described in Exhibit "A".

(b) In addition, Shintaku shall perform such other duties as directed by the Authority's Board of Directors, maintain a record of activities performed on behalf of the Authority and keep the Authority's Board of Directors informed as to these activities.

3. Compensation and Work Schedule

(a) Shintaku shall receive a regular base salary of \$5,000.00 per month (\$60,000.00 per annum) and, unless otherwise provided by applicable law, shall be exempt from the overtime provisions of the Fair Labor Standards Act. Shintaku shall receive cost-of-living pay increases as applicable to County Confidential Bargaining Unit employees. In addition, the

Authority shall review Shintaku's compensation at six month intervals and Shintaku shall receive such merit pay increases commensurate with performance as may be determined by the Authority's Board in its sole discretion.

(b) Authority shall reimburse Shintaku for all reasonable expenses incurred in connection with Authority business, pursuant to the Authority's Travel and Reimbursement Policy. Expenditures shall be reimbursable if, and only if, approval is obtained from the Authority pursuant to its Policy. Authority, through its Board and not the County, will be responsible for reviewing the appropriateness of such reimbursements. Authority shall also reimburse Employee for cost of cell phone use pursuant to a standard voice/data plan. Such reimbursement may be considered taxable income by the Internal Revenue Service (IRS).

(c) Shintaku shall accrue annual leave at a rate of 12 hours per biweekly pay period. Subject to Authority Board approval, Shintaku may be permitted to take annual leave before it has actually accrued. However, if this Agreement is terminated pursuant to Section 5 below before annual leave has been fully accrued, then the County shall recoup from Shintaku's final paycheck the amount of wages represented by any annual leave taken in excess of the amount that has accrued as of the date the Agreement is terminated. Any request to take annual leave must be submitted for approval to the President or Vice President of the Authority Board, who will endeavor to schedule annual leave at the mutual convenience of the Authority and Shintaku.

(d) Shintaku shall be provided life insurance, disability and retirement benefits consistent with those provided to County management employees. Medical, dental and other benefits provided by the County's flexible benefit plan shall not be provided.

(e) Subsequent to the date of this Agreement, periodic changes in benefits which accrue to management employees of the County shall accrue to Shintaku, to the extent those benefits are included in this agreement.

(f) For the first six month term of this Agreement, while Shintaku relocates into the area and completes existing consulting commitments, it is anticipated that he will work full time, but in a compressed four day per week schedule. Existing consulting commitments shall not interfere with completion of his responsibilities under this Agreement.

4. Term

(a) The term of this Agreement and the employment of Shintaku pursuant to this Agreement shall commence on January 1, 2013 and continue for a period of three (3) years, unless earlier terminated as provided at Section 5, below.

(b) This Agreement shall automatically be extended for an additional term(s) of twelve (12) months, unless earlier terminated as provided at Section 5 and/or the Authority notifies Shintaku in writing at least six (6) months prior to the expiration of the initial term or any subsequent term that the Authority intends that this Agreement should terminate at the end of the then applicable term.

5. Termination

(a) Resignation.

Shintaku may resign and thereby terminate this Agreement at any time upon giving at least twenty-one (21) days advance written notice to the Authority Board of Directors and County. Termination shall be effective upon the last day of such notice period, provided that the Authority may, within such twenty-one (21) days, direct Shintaku not to perform any of the duties described herein. Upon such termination, Shintaku shall not be entitled to any severance pay or other compensation of any kind.

(b) Termination Without Cause.

The County and/or the Authority, in their sole discretion, may terminate Shintaku's employment, and thereby terminate this Agreement, at any time and for any reason. It is understood and agreed that Shintaku serves at the will and pleasure of the Authority Board of Directors, that his employment may be terminated with or without notice, with or without cause, and that no reason need be given for such termination. Upon termination pursuant to this provision:

(i) Shintaku shall have no right to any hearing or other review of the reasons for his termination by the Authority. Shintaku hereby expressly waives any and all such rights he might otherwise be entitled to by law or which may be applicable to other employees of the County.

(ii) Shintaku shall be entitled to severance pay equal to three (3) months' salary or severance pay equal to the number of months remaining on the unexpired term of this Agreement, whichever is less. After the third anniversary of this Agreement, the severance pay shall equal six (6) months' salary or the unexpired term, whichever is less.

(c) Termination for Cause.

(i) Pursuant to Government Code sections 53243-53243.4 (and as these sections may be amended), if the officer or employee is convicted of a crime involving the abuse of his or her office or position, the officer or employee shall fully reimburse to the local agency: (1) any leave salary paid pending an investigation; and (2) any cash settlement or severance pay related to the termination of the employee or officer.

(ii) "Abuse of office or position" means either of the following: (a) an abuse of public authority, including, but not limited to waste, fraud, and a violation of the law under color of authority; and (b) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with section 92) of Part 1 of the Penal Code.

(iii) In accordance with Government Code section 23260 (and as this section may be amended), the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left in the unexpired term of the contract. However, if the unexpired term of the contract is greater than eighteen (18) months, the maximum cash settlement shall be an amount equal to the

monthly salary of the employee multiplied by eighteen (18). This is a maximum ceiling on the amount that may be paid by the local agency to an employee, in the sole discretion of the local agency and is not a target example of the amount of the cash settlement to be paid by the local agency to the employee.

(iv) In the event that Shintaku is terminated for “Good and Sufficient Cause” as defined below, he shall be entitled to notice of the cause(s) for his termination, but shall not be entitled to receive the above-described severance payment.

(v) “Good and Sufficient Cause” means that the termination is the result of an act that would constitute bribery, perjury, embezzlement, fraud or other malfeasance or misfeasance.

(vi) Shintaku shall be entitled to a post-termination hearing before a neutral hearing officer to determine whether or not Good and Sufficient Cause existed for denying Shintaku severance pay.

(vii) The parties hereby acknowledge and agree that the issue at said hearing shall be strictly limited to whether or not Good and Sufficient Cause existed for denying Shintaku severance pay. Under no circumstances shall Shintaku be entitled to reinstatement to his former position.

(viii) The neutral hearing officer shall be selected from a list provided by the State Mediation and Conciliation Service. Said hearing officer shall be selected by each party striking names from the list until a single hearing officer remains.

(ix) The decision of the neutral hearing officer shall be final and binding on both parties.

(x) The Authority hereby agrees to pay the neutral hearing officer’s fee. Each party shall, however, pay its own legal fees and costs associated with the hearing.

(d) Termination for Other Reasons

(i) The employment of Shintaku and this Agreement shall automatically terminate upon the death of Shintaku or upon the termination of his employment because of a permanent disability which prevents Shintaku from performing the essential functions of his position, with or without reasonable accommodation, for a period of three (3) or more months.

(ii) The determination as to whether Shintaku is permanently disabled from performing the essential functions of his position, with or without reasonable accommodation, shall be made by the Authority based on competent medical authority(ies).

(iii) Neither Shintaku nor his heirs, administrators, successors or assigns shall have any right under this Agreement to any additional salary or severance pay following the termination of this Agreement due to Shintaku’s death or disability.

(e) Shintaku, in executing this Agreement, shall be deemed to have waived any and all claims for damages, costs, or attorney fees which may otherwise arise from the County's or Authority's termination of his employment or this Agreement with or without cause.

6. Fitness for Duty Examination

(a) Shintaku agrees to undergo a fitness for duty medical examination annually and/or at any time pursuant to the direction of the Authority. Said examination shall be made by a licensed physician selected and/or approved by the County.

(b) Shintaku hereby acknowledges and agrees that a statement and/or report regarding his fitness for duty shall be obtained from the physician and filed with the Authority, which shall keep such statement and/or report confidential.

(c) Shintaku hereby agrees to execute any and all documents required by state and/or federal law for certifying Shintaku's consent to said medical examination and consent to the release of medical information to the Authority.

(d) The costs of said medical examination and report shall be paid by the Authority.

7. Performance Review

Shintaku's performance may be reviewed from time to time as deemed necessary or desirable in the sole discretion of the Authority's Board of Directors.

8. Modification

Any modification of this Agreement will be effective only if it is in writing and signed by all parties.

9. Effect of Waiver

The failure of any party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other parties shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

10. Successors and Assignment

Neither this Agreement, nor any right, privilege, or obligation of Shintaku hereunder shall be assigned or transferred by him without the prior written consent of the County and Authority. Any attempt at assignment or transfer in violation of this provision shall, at the option of the County and Authority, be null and void and may be considered a material breach of this Agreement.

11. Entire Agreement

(a) This Agreement shall be interpreted and enforced in conjunction with, and to be consistent with, the MOU between the County and the Authority as it currently exists or is hereinafter amended. This Agreement supersedes any and all other agreements between the County, Authority and Shintaku, whether oral, in writing, express or implied.

(b) This Agreement and the MOU contain all of the covenants and agreements between the parties with respect to Shintaku's employment by the County in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, or in the MOU, and that no other agreement, statement or promise not contained in this Agreement or the MOU shall be valid or binding on either party. It is expressly agreed that the County's personnel rules, policies and regulations shall not be applicable to Shintaku except as expressly incorporated herein.

12. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

13. Law Governing Agreement

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Notices

(a) Any notices to be given hereunder by any party to the other shall be in writing and may be transmitted by personal delivery or mail, registered or certified, postage prepaid, with return receipt requested.

(b) Mailed notices shall be addressed to the following respective addresses:

- (i) Roger Shintaku
1718 N. Arthur Drive
Brea, CA 92821
- (ii) Salton Sea Authority
44-199 Monroe Street, Suite C
Indio, CA 92201
Attn: President of the Board of Directors
- (iii) County of Riverside
4080 Lemon Street, 12th Floor
Riverside, CA 92501-3651
Attn: County Executive Officer

(c) Notices delivered personally shall be deemed communicated as of the date of actual receipt, mailed notices shall be deemed communicated as of the date of mailing, plus two (2) calendar days.

15. Interpretation

This Agreement has been negotiated by all parties to the agreement. Any ambiguity in the Agreement or the terms, or provisions contained therein, shall not be interpreted against the drafter of the Agreement.

16. Approval by Authority and County

This Agreement is subject to the approval of the Board of Directors of Authority and the Board of Supervisors of County, and upon such approval shall be effective for the term specified at Section 4, above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day
of _____, _____.

SHINTAKU

By: _____
Roger Shintaku

SALTON SEA AUTHORITY

By: _____
Marion Ashley, President

ATTEST:

By: _____
_____, Secretary

COUNTY OF RIVERSIDE

By: _____
Chairman, Board of Supervisors

ATTEST:

By: _____
Clerk of the Board

APPROVED:


By:  _____
County Counsel

Exhibit A
General Manager Duties

1. Direct the development of strategic plans for SSA covering visionary multi-year/multi-agency efforts; effectively document and communicate these plans to members and other agencies, legislators and other stakeholders.
2. Plan, organize, direct, and manage the activities of the Authority; provide direction and leadership to SSA staff by setting organizational standards and objectives; interpret and implement policies and goals established by the Board.
3. Represent the Authority in legislative activities at the State and Federal levels.
4. Represent the Authority in dealings with other governmental agencies, private firms, citizen groups, and members of the general public; negotiate certain contracts with subcontractors and consultants used to provide special services for the Authority.
5. Direct the development and administration of the Authority's budget; makes recommendations for projects to be included in expenditure plan.
6. Seek additional short term and permanent financial support for the SSA as well as the mission of the Salton Sea restoration through grants and favorable legislation.
7. Prepare and administer SSA agendas; submit periodic reports on operations and other matters of interest to the Board.
8. Prepare, review, and make recommendations to the Board on issues for its consideration and action.
9. Exercises direct supervision of Authority staff.
10. Perform additional related duties and responsibilities as assigned.