

MEMORANDUM

TO: LOS ANGELES HOMELESS SERVICES AUTHORITY
MANAGEMENT COMMITTEE

FROM: OFFICE OF THE LOS ANGELES CITY ATTORNEY
Noreen Vincent and Curtis S. Kidder

CC: Heidi Marston, LAHSA Executive Director
Aleen Langton, LAHSA General Counsel
Catrina M. Archuleta, LAHSA General Counsel

SUBJECT: **INCREASE OF LAHSA MINIMUM SALARIES**

DATE: February 18, 2022

This Memorandum is in response to the request made by the Committee at its meeting of January 14, 2022, regarding whether the action to increase the minimum compensation paid to certain LAHSA employees in March 2021 should have been approved by the LAHSA Commission. Briefly, and as further discussed below, the increase in the compensation paid to employees represented by the Service International Union Local 721 ("SEIU" or "Union") constituted a substantive revision to the Memorandum of Understanding between LAHSA and the Union (the "MOU") and should have been approved by the LAHSA Commission prior to implementation.

The compensation paid to LAHSA employees represented by SEIU is set forth in the MOU. Specifically, Article 16(A) states that "[a]ll bargaining Unit employees shall be compensated in accord with the Appendix attached hereto." Attachment A to the MOU identifies the employee classifications subject to the MOU and the salary ranges for each classification. Article 16(A) also sets forth the salary increases for the term of the MOU: (i) 5% retroactive to July 1, 2018, (ii) 3% retroactive to July 1, 2018, (iii) 3% effective July 1, 2019, and (iv) 3% effective July 1, 2020. The LAHSA Commission approved the MOU at its meeting of March 22, 2019.¹

The action to increase the minimum compensation paid to Union employees was done administratively in March 2021. The minimum annual salary was raised from as low as \$33,119.00 to \$50,000.00. Attachment A to the MOU was revised in March 2021 to show that the minimum salary paid to employees in Grades 4 - 8 was \$50,000.00 and the minimum salary paid to employees in Grade 9 was increased from \$52,854.00 to \$58,240.00.

¹ It should be noted that Attachment A was not actually attached to the version of the MOU approved by the Commission at its meeting of March 22, 2019. A version of Attachment A was added to the MOU thereafter.

Notification of the increase was provided to all LAHSA staff on February 18, 2021. The Union representative was specifically notified on the same day. The Union never requested to meet and confer with LAHSA regarding the increase in compensation. An amendment to the MOU, or side letter to the MOU, amending Article 16(A) regarding salary increases and/or replacing the Salary Appendix was apparently never prepared or executed by the parties. LAHSA commenced paying the higher compensation to the employees in the 6 classification grades in March 2021.

The increase in compensation paid to LAHSA employees does not appear to be within the Commission's delegated authority to the Executive Director. The Commission adopted the Delegated Authority for Purchasing and Contracts Policy ("Policy") on May 24, 2019. The stated purpose of the policy is to support LAHSA's achievement of operational efficiency and to operate with maximum efficiency in the management of internal business operations and procurements. The policy provides delegated authority to the Executive Director "to approve and execute contracts and contract amendments for funder agreements, subrecipient awards for housing and services, and professional services" individually and in the aggregated up to \$500,000.00.

The delegation of authority may include the entrance and amendment of the MOU if the services provided thereunder constitute "professional services." The term "professional services" is not defined in the Policy, but, generally, "professional services" are defined as services requiring specialized training or the holding of a degree, license or certificate. Without knowing more, it is not likely that all or some of the 6 employee classifications would be considered "professional services." Those classifications include, among others, data entry specialist, receptionist/clerical assistant, clerk, data specialist, administrative assistant, data coordinator and executive assistant. Also included is HET Member/Homeless Referral Specialist.

Regardless, the aggregate amount of increased compensation for employees in the 6 classification grades likely exceeds the delegated authority of \$500,000.00 -- although the precise amount of the aggregate impact of the minimum salary increase has not been calculated. For HET Member/Homeless Referral Specialist the minimum salary was increased from \$39,710.00 to \$50,000.00 (the maximum salary remained the same at \$57,579.00), an approximate annual \$10,000.00 salary increase. If only one-half of the approximate 200 HET Members received a \$10,000 increase, the aggregate annual salary increase would be approximately \$1 million.²

² The precise amount of the actual aggregate salary increase would, of course, be a much more complex calculation. The analysis would require the actual salary increase to all employees in the 6 classification grades; however, it seems unlikely that the aggregate amount of the salary increase was less than \$500,000. Still, if somehow the initial salary increase for 2021-22 was less than \$500,000, even with no additional or new funds being used for that fiscal year, the cumulative effect of this decision goes well beyond \$500,000.

In conclusion, since the increase in the minimum annual compensation paid to certain LAHSA employees changed a substantive provision of the MOU and was likely not within the delegated authority to the Executive Director, it should have been approved by the LAHSA Commission prior to implementation. The LAHSA Commission's approval of the 2021 – 2022 annual budget, however, which included the higher salaries paid to employees in the 6 classification grades, arguably ratified the Executive Director's prior action. To remove any doubt, it is recommended that the LAHSA Commission approve the salary increase in conjunction with the approval of the new MOU.³

³ Without such ratification or approval, the salary increase could be deemed an ultra vires act, thus rendering the salary increase as unenforceable.