

**EMPLOYMENT AGREEMENT FOR THE  
DIRECTOR OF OPERATIONS OF THE  
SAN MATEO COUNTY HARBOR DISTRICT**

THIS AGREEMENT is made and entered into as of, by and between the San Mateo County Harbor District (hereinafter referred to as "District") a public agency and John Moren (hereinafter referred to as "Director").

**RECITALS**

WHEREAS, District desires to employ John Moren as the Director of Operations of District; and

WHEREAS, John morendesires to accept the position of Director of Operations pursuant to the terms and conditions set forth in this Employment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, District hereby appoints Director to serve as Director of Operations and Director agrees to serve in this capacity beginning on August 1, 2016, under the following terms as follows:

**Section 1. Term**

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the District to, at any time and in its sole discretion, terminate the services of Director. There is no express or implied promise made to Director for any form of continued employment. Notwithstanding any other provision in this Agreement or in District Personnel Rules and Policies and Procedures, Director serves on an at will basis, and may be terminated at any time with or without cause. This Agreement is the sole and exclusive basis for an employment relationship between Director and the District.

B. This Agreement shall commence as of August 1, 2016 , and shall continue for a one year term (Term), unless this Agreement is terminated by either party as hereinafter provided. This Agreement shall automatically renew for consecutive one year terms unless the General Manager provides the Director with written notice at least 60 days prior to the expiration of the base term or any extension.

**Section 2. Duties**

Director shall do and perform all services, acts, functions and duties necessary or advisable to perform the duties of Director of Operations as described in the Job Description, attached. Absent authorization from the General Manager, Director shall also attend all regular or special Board of Harbor Commissioner meetings. Except as otherwise expressly provided in this Agreement, the Director is subject to all applicable District Personnel Rules and Policies and Procedures.

### **Section 3. Compensation and Evaluation.**

A. Salary. District agrees to pay Director an annual base salary of \$107,224, payable in installments at the same time and in the same manner as other management employees of the District are paid, for the faithful and diligent performance of the duties and obligations of Director.

B. Performance Evaluation. General Manager will conduct a performance review and evaluate Director's performance at least once annually at or near the anniversary of employment with District. Failure of the General Manager to complete the evaluation process shall not result in the amendment or extension of this Agreement. Failure of the General Manager to evaluate the Director shall not preclude the General Manager from giving notice of termination or non-renewal in accordance with the terms of this Agreement.

### **Section 4. Holidays; Vacation; Leave**

A. Holidays, Vacation and Leave. Director will be entitled to paid holidays in accordance with the District's established holiday schedule. Director will be entitled to bereavement leave, jury duty leave and other leave required by law in accordance with leave policies established from time to time by the Board of Harbor Commissioners for all of its employees, except as provided below.

B. Paid Time Off. Director will receive annual Paid Time Off (PTO) as governed by District Policy and Procedure 6.5.1 modified as follows:

1. Director will accrue PTO at the rate of 22 hours of PTO per month.
2. Unused PTO will carry over from year to year up to a total maximum of 540 hours, in accordance with District Policy and Procedure 6.5.1.

C. Extended Illness Bank (EIB). The EIB is an individual account containing accrued hours designed for severe or long term illness. The EIB may be used when Director experiences a severe or long term illness and one of these circumstances:

1. Is admitted to a hospital; or
2. Otherwise qualifies for State Disability benefits; or
3. Is eligible for Workers Compensation Benefits; or
4. When PTO, if available, has been used consecutively for the equivalent for one week's work and a physician's verification of illness is provided; or
5. Any other time when Director requires time off for bona fide medical purposes of Director or his immediate family (e.g., spouse, child, or parent), and a physician's verification of illness is provided.

EIB is not to be used for regular or routine physician or dental appointments for self or family. EIB accrual rates are equivalent to 3.077 hours biweekly. There is no maximum number of EIB hours that may be accumulated. In no event may Director cash out EIB hours at any time.

**Section 5. Retirement, Health and Welfare, and Other Benefits**

Except as otherwise modified by this Section 5, Director will be entitled to participate in all employee benefit plans applicable to other management employees of the District including, but not limited to, a deferred compensation plan; health, dental, vision, workers compensation, life/accidental death and dismemberment, and long-term disability insurance benefits; and retiree health insurance benefits, subject to the terms and conditions of any such employee benefit plan and any applicable District Personnel Rules and Policies and Procedures. To the extent future changes are made in the coverages provided or employee contributions required, Director will be subject to those changes.

A. Pension. Director shall participate in the CalPERS retirement plan. Director is defined as a new member under applicable CalPERS statutes and regulations, and is subject to the retirement benefit formula of 2% at age 62 with 3-year final compensation. Director shall pay the full employee's share of the member contribution as determined by CalPERS through payroll withholding. The District shall not pay any portion of the employee member contribution.

B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Director and his immediate, eligible family, at a level of coverage substantially the same as the District provides other management employees. Within its discretion, the District reserves the right to seek out and obtain alternative coverage in order to effect cost savings to the District. Director agrees to pay 15% of the benefit premium cost for health insurance through payroll deductions.

C. Group Life Insurance. The District will provide Director a group term life insurance policy whose value will be twice the annual salary up to a maximum of \$200,000. The District will pay the premium for such coverage.

D. Deferred Compensation. Director is eligible to participate in the District's Deferred Compensation Plan through ICMA Retirement Corp, or such other plan as is presently provided by the District on behalf of its employees. District will not make any contributions to this plan on behalf of Director.

**Section 6. Other Obligations of the District**

A. Office, Supplies, Business Expenses. District agrees to provide Director with an office, computer equipment, supplies and such other facilities and services (including a cellular telephone or other communication devices and services) commensurate with the Director's position in order to facilitate the performance of his duties. Director may request reimbursement for expenses he incurs in the direct performance of the District's business, as the District's General Manager may approve.

Such expenses may be reimbursed regularly as they are incurred, and submitted for reimbursement to the General Manager in compliance with any District Personnel Rules and Policies and Procedures.

C. Professional Development Activities. District agrees to budget for and pay for the travel, meals, accommodations, registration and other expenses of Director for conferences, seminars, and such other occasions as are reasonably necessary for Director to fulfill his duties, and to further Director's professional growth and advancement. Such service and conferences include, but may not be limited to, those sponsored by the California Marine Affairs and Navigation Conference (CMANC), the California Association of Harbor Masters and Port Captains, and the California Special District Association (CSDA). Such expenses must be appropriately documented and approved in accordance by the General Manager in compliance with District Personnel Rules and Policies and Procedures.

D. Automobile. Director will be entitled to an automobile allowance in the amount of two Hundred and fifty Dollars (\$250) per month for use of his own automobile, for such meetings and other events as District reasonably requires Director to attend. Director shall maintain collision and liability insurance on any automobile he uses for any District business, at Director's own expense, with coverage no less than \$100,000 per occurrence, \$300,000 aggregate. Director shall be responsible for any income tax or other taxes resulting from such allowance.

## **Section 7. Termination and Severance Pay**

A. Termination Without Cause. In the event Director is terminated without cause by the General Manager during the term of this Agreement and during such time as Director is willing and able to perform his duties under this Agreement, General Manager shall provide Director written notice of said termination. In the event of such termination, and provided that Director executes a full and complete waiver and release of any and all claim(s) which were known or reasonably should have been known by Director and arising out of his employment and termination thereof, the District will pay Director a cash payment of one month of compensation for each full year of employment with the District, on a pro-rated basis as appropriate, up to a maximum of six (6) months of compensation, based on Director's then-current annual base salary subject to the limitations imposed by Government Code 53260, which provides as follows: "regardless of the term of the contract, if the contract is terminated, 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 on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18." The intent of this provision is to satisfy the requirements in Government Code sections 53260-53264, and shall be interpreted consistently with those statutes. In addition, and regardless of any entitlement to severance benefits, Director will receive a cash payment of the unused balance of any PTO and any other payments required by law. Any cash payments will be subject to the general payroll withholdings. Any cash settlement shall be paid within 30 calendar days

of the date Director executes the full and complete waiver and release of all claims. The District's decision to terminate Director's employment without cause is not subject to challenge.

B. Termination With Cause. District may terminate Director at any time during the term of this Agreement for Cause (as defined below). For purposes of this Agreement, "Cause" shall include the following: (a) malfeasance demonstrated by a pattern of failure to perform job duties diligently and professionally; (b) the refusal to implement or follow District's reasonable personnel rules, policies, procedures or directives; (c) the breach of a material provision of this Agreement; (d) committing an act of fraud, dishonesty, misrepresentation, moral turpitude, or the misappropriation of property belonging to the District; (e) conviction of any criminal act; or (f) the commission of an act that has a direct, substantial, and adverse effect on District's business interests or reputation. District will have no obligation to pay the severance payment set forth in paragraph 7.A, above. Director will only be entitled to any unpaid compensation due to him as a matter of law, including the unused balance of any PTO Leave.

C. Nothing in this Agreement prevents, limits, or otherwise interferes with Director's right to resign at any time from his position with the District. Director will give 30 days' written notice to District prior to the effective date of resignation unless a lesser period has been mutually agreed upon by the parties.

D. If this Agreement is terminated, any cash settlement related to the termination that Director may receive from District will be fully reimbursed to District if Director is convicted of a crime involving an abuse of his office or position with District. This Agreement shall be subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement to the District under circumstances stated therein.

## **Section 8. Other Terms and Conditions of Employment**

The General Manager will fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Director, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

## **Section 9. Mediation**

Prior to District and/or Director seeking to arbitrate a dispute pursuant to Section 10, the parties may seek to resolve such a dispute through non-binding means, such as mediation. A party seeking to mediate a dispute must serve a written demand for mediation upon the opposing party. The demand for mediation must provide that it is given pursuant to this Section of the Agreement, should briefly describe the nature of the claim(s) sought to be mediated, and request that the opposing party respond in writing within a reasonable time with the opposing party's willingness to participate in mediation. Such demand for mediation need not include the names of potential mediators, nor the proposed time and place of mediation. If the opposing party declines

to participate in mediation, the aggrieved party may immediately seek to arbitrate the dispute pursuant to Section 10 of this Agreement. If the opposing party agrees to participate in mediation, the dispute will not be arbitrated until completion of the mediation, or reasonable and good faith efforts to schedule a mediation have proven unsuccessful. Any arbitration initiated without complying with this Section shall be subject to dismissal.

## **Section 10. Arbitration and Equitable Relief**

A. Arbitration. The parties agree that any and all controversies, claims, or disputes with anyone arising out of, relating to, or resulting from Director's employment relationship with District or the termination of such relationship with District, including any breach of this Agreement, shall be subject to binding arbitration under the arbitration provisions set forth in California Code of Civil Procedure sections 1280 through 1294.2 (the "act") and pursuant to California law. The federal arbitration act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the act. Disputes which the parties agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law. Director further understands that this agreement to arbitrate also applies to any disputes that District may have with Director. Nothing herein changes the at-will nature of Director's employment and that Director may be terminated without cause. Nothing herein allows the Director to arbitrate or in any way challenge the District's decision to terminate the Agreement without cause.

B. Procedure. The parties agree that any arbitration will be administered by judicial arbitration & mediation services, Inc. ("JAMS") pursuant to its commercial arbitration rules & procedures (the "JAMS rules"), which are available at <http://www.jamsadr.com/rules-employment-arbitration/> and from human resources. The parties agree that the arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication and motions to dismiss and demurrers, applying the standards set forth under the California Code of Civil Procedure. The parties agree that the arbitrator shall issue a written decision on the merits. The parties also agree that the arbitrator shall have the power to award any remedies available under applicable law. The District shall be responsible for paying all of JAMS' administrative and arbitrators fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties agree that the decree or award rendered by the arbitrator may be entered as a final and binding judgment in any court having jurisdiction thereof. The parties agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure and the California Evidence Code, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS rules conflict with California law, California law shall take precedence. The parties further agree that any arbitration under this Agreement shall be conducted in San Mateo County, California.

C. Remedy. Arbitration shall be the sole, exclusive, and final remedy for any dispute between Director and District. Accordingly, except as provided for by the act and this Agreement, neither party will be permitted to pursue court action regarding claims that are subject to arbitration.

D. Availability of Injunctive Relief. In accordance with rule 1281.8 of the California Code of Civil Procedure, the parties agree that any party may also petition the court for injunctive relief where either party alleges or claims a violation of any agreement regarding intellectual property, confidential information or noninterference. The parties shall bear their own attorneys' fees and costs. E. Administrative Relief. The parties understand that this Agreement does not prohibit Director from pursuing an administrative claim with a local, state or federal administrative body or government agency such as the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the workers' compensation board. This Agreement does, however, preclude Director from pursuing court action regarding any such claim, except as permitted by law.

F. Voluntary Nature of Agreement. Director acknowledges and agrees that he is executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Director further acknowledges and agrees that he has carefully read this Agreement and that he has asked any questions needed for him to understand the terms, consequences and binding effect of this Agreement and fully understand it, including that he is waiving his right to a jury trial. Finally, he agrees that he has been provided an opportunity to seek the advice of an attorney of his choice before signing this Agreement.

## **Section 11. General Provisions**

A. Notices. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses indicated below or as changed by written notice delivered in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three (3) calendar days after mailing.

To the District:        504 Avenue Alhambra, Suite 200  
                                 P.O. Box 1449  
                                 El Granada, CA 94018

To Director:            xxxx

B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Director in any manner whatsoever. Each party to this Agreement acknowledges that no

representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if in writing signed by both parties.

C. Provisions Severable. If any provision or any portion hereof is held invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

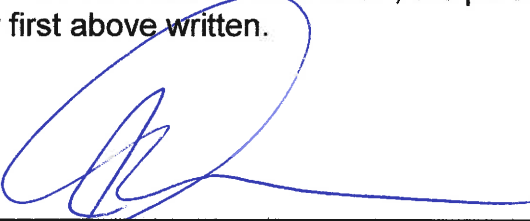
D. Headings. The headings used in connection with this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

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

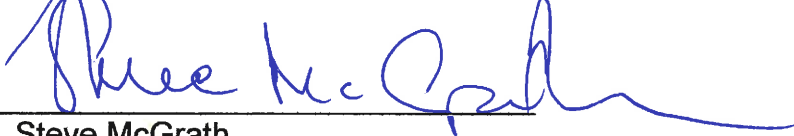
F. Waiver of Breach. The waiver by District of a breach of any provision of this Agreement by Director shall not operate or be construed as a waiver of a subsequent breach by Director.

G. Assignment. This Agreement is not assignable by either District or Director.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

By:   
\_\_\_\_\_

John Moren

By:   
\_\_\_\_\_

Steve McGrath  
General Manager