

**EMPLOYMENT AGREEMENT FOR THE  
INTERIM GENERAL MANAGER OF THE  
SAN MATEO COUNTY HARBOR DISTRICT**

THIS AGREEMENT is made and entered into as of December 19, 2018, by and between the San Mateo County Harbor District (hereinafter referred to as "District") a public agency and John Moren (hereinafter referred to as "Mr. Moren").

**RECITALS**

WHEREAS, Mr. Moren is a District employee, presently serving in the capacity of Director of Operations; and

WHEREAS, District desires to employ Mr. Moren as the Interim General Manager of District while it conducts a search for a permanent General Manager; and

WHEREAS, Mr. Moren desires to accept the position of Interim General Manager 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 Mr. Moren to serve as Interim General Manager, and Mr. Moren agrees to serve in this capacity beginning on December 19, 2018, 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 Mr. Moren subject to the conditions of this Agreement. Other than as set forth in this Agreement, there is no express or implied promise made to Mr. Moren for any form of continued employment.
- B. This Agreement shall commence as of December 19, 2018 and shall continue for the shorter of (a) a one-year term or (b) until such time as the District appoints a permanent General Manager.

**Section 2. Duties**

Mr. Moren shall do and perform all services, acts, functions and duties necessary or advisable to manage and conduct the affairs of the District as provided in the District's enabling statute (codified at Harbor and Navigation Code Section 6000, et

seq., as may be amended from time to time), and as directed or authorized by the District's Board of Harbor Commissioners.

Mr. Moren will be responsible and have full authority for the management of the affairs of the District and the supervision and management of its employees, subject to the rules and policies of the District and the direction of the Board of Harbor Commissioners. Mr. Moren's responsibilities are further described in Exhibit A.

Mr. Moren will determine his own work schedule, provided that he shall devote such time, effort, ability and attention to the business of the District during the Term as may be required to perform faithfully and fully the duties of General Manager. Mr. Moren will not be employed by any other person or any other entity while employed as Interim General Manager that would result in a conflict of interest or prevent him from performing his duties. Specifically, Mr. Moren shall not, either as an employee, employer, consultant, agent, principal, planner, stockholder, corporate officer, director, or any other individual or representative capacity, engage or participate in any business that is in competition with, or in conflict in any manner whatsoever with, the business, projects, or official positions of the District.

**Section 3. Compensation**

- A. Salary and Evaluation. District agrees to pay Mr. Moren an annual base salary of One Hundred, Seventy Thousand Dollars (\$170,000), 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 Interim General Manager, effective at the beginning of the first pay period following Board approval of Mr. Moren's salary and benefits.
  
- B. Merit Bonus. At the discretion of the Board of Harbor Commissioners, Mr. Moren may be considered for and eligible to receive increased benefits or merit bonuses for superior performance and accomplishments, in an amount not to exceed fifteen percent (15%) of his annual base salary. It is the express intent of the parties that any merit bonus received by Mr. Moren will not be considered pensionable compensation for the purposes of calculating adjustment to Mr. Moren's annual base salary as contemplated by Section 3.A. of this Agreement or PERS retirement benefits.
  
- C. Transition Payment. In addition to Mr. Moren's annual base salary, the District will make a one-time payment to Mr. Moren of \$1,232.80. This payment will be made in the first pay period after the effective date of this Agreement. The parties agree that this one-time payment will not be

considered pensionable compensation for purposes of PERS retirement benefits.

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

- A. Holidays, Vacation and Leave. Mr. Moren will be entitled to paid holidays in accordance with the District's established holiday schedule. Mr. Moren 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 management employees, except as provided below.
- B. Paid Time Off. Mr. Moren will receive annual Paid Time Off (PTO) as governed by District Policy and Procedure 6.5.1 modified as follows:
1. Mr. Moren does not need to request approval of use of PTO, however reasonable notice in accordance with professional protocols is required.
  2. Mr. Moren will accrue PTO at the rate of 12.3 hours of PTO per pay period up to a maximum of 320 hours of PTO per year.
  3. Unused PTO will carry over from year to year up to a total maximum of 540 hours, in accordance with 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 Mr. Moren 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 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 Mr. Moren requires time off for bona fide medical purpose of Mr. Moren or his immediate family, and a physician's verification of illness is provided.

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 Mr. Moren cash out EIB hours at any time.

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

Except as otherwise modified by this Section 5, Mr. Moren will continue to be entitled to participate in all employee benefit plans under the terms and conditions of his employment as the District's Director of Operations. To the extent future changes are made in the coverages provided or employee contributions required, Mr. Moren will be subject to those changes.

- A. Pension. Mr. Moren is a "new member" as defined under applicable CalPERS statutes and regulations, including the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), and is subject to the PEPRA retirement benefit formula of 2% at age 62 based on highest average pensionable compensation earned during a period of at least 36 consecutive months. Subject to applicable limits in PEPRA, Mr. Moren 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 on Mr. Moren's behalf. Throughout the term of this Agreement, the District shall make the required employer contributions to CalPERS in accordance with the terms of the contract between CalPERS and the District, subject to applicable limits in PEPRA.
  
- B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Mr. Moren and his immediate, eligible family, at a level of coverage substantially the same as the District provides other management employees. The District reserves the right to seek out and obtain comparable coverage in order to effect cost savings to the District. Mr. Moren agrees to pay 15% of the benefit premium cost for health insurance through payroll deductions. However, as a result of future actions taken by the Board of Harbor Commissioners, the District may increase or decrease the percentage that Mr. Moren may be required to contribute towards the payment of premiums to reflect parity with the payment of premiums by other employees of the District.
  
- C. Group Life Insurance. The District will provide Mr. Moren a group term life insurance policy whose value will be twice the annual salary up to a maximum of \$250,000. The District will pay the premium for such coverage.
  
- D. Deferred Compensation. Mr. Moren 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. In addition to any contributions made by Mr. Moren, the District will continue to make contributions to Mr. Moren's deferred compensation plan in an amount equal to 2% of Mr. Moren's base salary, in accordance with the procedures accorded other employees of the District.

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

- A. Office Supplies Business Expenses. District agrees to provide Mr. Moren with an office, suitable office and computer equipment, supplies and such other facilities and services (including a cellular telephone or other communication devices and services) commensurate with the General Manager's position in order to facilitate the performance of his duties. Mr. Moren may receive reimbursement for expenses he incurs in the direct performance of the District's business, as the District's Board of Harbor Commissioners may approve. Such expenses may be reimbursed regularly as they are incurred and submitted to the Board in compliance with any policies or procedures the District's Board of Harbor Commissioners has adopted, which are applicable to the Interim General Manager. In all cases, final approval of all such expenses rests with the District's Board of Harbor Commissioners, in its sole and absolute discretion.
  
- B. Professional Memberships. District agrees to budget for and pay for memberships in and service to professional organizations and associations which are reasonably related to Mr. Moren's duties as Interim General Manager of District. Such organizations include but are not necessarily limited to: local chamber(s) of commerce, local rotary club, Harbormasters and Port Captains Association. Memberships will be in the name of the District unless it is necessary or practical for memberships to be in Mr. Moren's name.
  
- C. Professional Development Activities. District agrees to budget for and pay for the travel, meals, accommodations, registration and other expenses of Mr. Moren for conferences, seminars, and such other occasions as are reasonably necessary for Mr. Moren to fulfill his duties as Interim General Manager of District, and to further Mr. Moren's professional growth and advancement. Such service and conferences include, but may not be limited to, those sponsored by 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 with District policies.

- D. **Automobile.** Mr. Moren will be entitled to an automobile allowance in the amount of Five Hundred Dollars (\$500) per month for use of his own automobile, for such meetings or other events as District reasonably requires Mr. Moren to attend. Mr. Moren shall maintain collision and liability insurance on any automobile he uses for any District business, at Mr. Moren's own expense, with coverage no less than \$100,000 per occurrence, \$300,000 aggregate. Mr. Moren shall be responsible for any income tax or other taxes resulting from such allowance. The automobile allowance is in addition to, and not instead of, the District's obligations to reimburse Mr. Moren's travel expenses pursuant to Section 6.C.

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

- A. **Termination Without Cause.** In the event Mr. Moren is terminated without cause by the District during the term of this Agreement and during such time as Mr. Moren is willing and able to perform his duties under this Agreement, and the District has not hired a permanent General Manager, District shall provide Mr. Moren written notice of said termination, which effective date shall be at least sixty (60) days from the date of said notice. In the event of such termination, and provided that Mr. Moren executes a full and complete waiver and release of any and all claim(s) which were known or reasonably should have been known by Mr. Moren and arising out of his employment and termination thereof, the District will continue to provide Mr. Moren health insurance coverage for a period of six months, and will pay Mr. Moren a cash payment of six (6) months of compensation based on Mr. Moren 's 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 then 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18." In addition, and regardless of any entitlement to severance benefits, Mr. Moren will receive a cash payment of the unused balance of any PTO and any other payments required by law.

If the District terminates without cause, Mr. Moren may, at his sole discretion, and in lieu of receipt of termination benefits above, return to his position as Director of Operations. Upon re-assuming the position of Director of Operations, Mr. Moren will thereupon be subject to all the terms of employment that applied to his employment as Director of Operations prior to the effective date of this Agreement.

- B. **Termination with Cause.** District may terminate Mr. Moren 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 policies 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, nor provide the prior sixty (60) day written notice of termination. Mr. Moren 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 Mr. Moren's right to resign at any time from his position as Interim General Manager of the District. Mr. Moren will give 90 days' written notice to District prior to the effective date of resignation unless a lesser period has been mutually agreed upon by the parties. Upon the effective date of such resignation, Mr. Moren may elect to return to the position of Director of Operations, and will thereupon be subject to all the terms of employment that applied to his employment as Director of Operations prior to the effective date of this Agreement.
- D. If this Agreement is terminated, any cash settlement related to the termination that Mr. Moren may receive from District will be fully reimbursed to District if Mr. Moren is convicted of a crime involving an abuse of his office or position with District.
- E. If terminated for cause, Mr. Moren will not return to his position as Director of Operations.

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

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

### **Section 9. Mediation**

Prior to District and/or Mr. Moren 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 Mr. Moren'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 section 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. Mr. Moren further understands that this agreement to arbitrate also applies to any disputes that District may have with Mr. Moren.
- B. **Procedure**. The parties agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS") pursuant to its Employment Arbitration Rules & Procedures (the "JAMS Rules"), which are available at <http://www.jamsadr.com/rules-employment-arbitration/> and from the District's Human Resources department. 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, and that the arbitrator shall award attorneys' fees and costs to the prevailing party. 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 at a JAMS location with reasonable proximity to San Mateo County, California.

- C. Remedy. Arbitration shall be the sole, exclusive, and final remedy for any dispute between Mr. Moren 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 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. In the event either party seeks injunctive relief, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.
- E. Administrative Relief. The parties understand that this agreement does not prohibit Mr. Moren 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 Mr. Moren from pursuing court action regarding any such claim, except as permitted by law.
- F. Voluntary Nature of Agreement. Mr. Moren acknowledges and agrees that he is executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Mr. Moren further acknowledges and 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 notice to be given hereunder by either party to the other may be affected 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 notice shall be deemed communicated as of three (3) days after mailing.

To the District: 504 Avenue Alhambra, Ste. 200  
PO Box 1449  
El Granada, CA 94018

To Mr. Moren: 159 Tamal Vista Dr.  
San Rafael, CA 94901

- B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Mr. Moren as Interim General Manager of the District 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 Mr. Moren shall not operate or be construed as a waiver of a subsequent breach by Mr. Moren.
- G. Assignment. This Agreement is not assignable by either District or Mr. Moren.

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

Interim General Manager

By:   
John Moren

San Mateo County Harbor District

By:   
President, Board of Harbor Commissioners

**EXHIBIT "A"**  
**San Mateo County Harbor District**  
**General Manager**  
**RESPONSIBILITIES**

The General Manager is the Executive Officer of the District and for the Board of Directors. The General Manager administers the District and has exclusive management and control of the operations and works of the District, subject to approval by the Board of Directors. The General Manager provides day-to-day leadership for the District.

The General Manager attends all meeting of the District's Board, unless otherwise requested, and such other meetings as the Board specifies.

The General Manager employs such employees as the General Manager deems necessary for the proper administration of the District and the proper operation of the works of the District in accordance with District Personnel Policy. Compensation of the General Manager and compensation ranges of such employees are subject to approval by the Board of Directors. The General Manager shall delegate authority at his discretion and has authority over all employees, including terminating for cause or lack of worthwhile work in accordance with District Personnel Regulations. The General Manager will provide a motivating work climate for District employees.

The General Manager shall maintain cordial relations with all persons entitled to the services of the District and attempt to resolve all public and employee complaints. The General Manager shall encourage citizen participation in the affairs of the District.

The General Manager shall carry into effect the expressed policies of the Board of Directors. The General Manager should plan the short, medium- and long-term work program for the District.

The General Manager shall prepare the District Budget. The General Manager shall manage the District budget.