

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

THIS AGREEMENT is made and entered into as of, November 20, 2019 by and between the San Mateo County Harbor District (hereinafter referred to as the "District"), a public agency, and James Pruett (hereinafter referred to as "Manager").

**RECITALS**

WHEREAS, the District desires to employ James Pruett as the General Manager of the District; and

WHEREAS, Mr. Pruett desires to accept the position of General Manager pursuant to the terms and conditions set forth in this Employment Agreement ("Agreement").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the District, through its Board of Harbor Commissioners, hereby appoints James Pruett, to serve as General Manager, and Manager agrees to serve in this capacity beginning on December 11, 2019 under the following terms:

**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 Manager. There is no express or implied promise made to Manager for any form of continued employment. Notwithstanding any other provision in this Agreement or in the District Personnel Rules and Policies and Procedures, Manager 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 Manager and the District.

B. This Agreement shall become effective on December 11, 2019, and shall continue for a one year term, unless this Agreement is terminated by either party as hereinafter provided. No later than 60 days prior to the expiration of the Agreement, the District should inform Manager whether it intends to extend the Agreement for an additional two-year term. Such extension is subject to the written consent of Manager. If the District does not provide 60 days' notice of its intent to extend the Agreement, Manager is released from his obligations under Section 7.B. Nothing in this Section 1.B prevents Manager from initiating the discussion as to whether the Agreement shall be extended, and Manager is encouraged to initiate such discussion if he wishes to remain in employment with the District and has not been informed of the District's intent with regard thereto.

## **Section 2. Duties**

- A. Manager shall 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.
- B. Manager 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. Manager's responsibilities are further described in Exhibit A.
- C. Manager is exempt from the overtime provisions of the Fair Labor Standards Act, and will determine his own work schedule, provided that he shall devote such time, effort, ability and attention to the business of the District during his employment as may be required to perform faithfully and fully the duties of General Manager. Manager will not be employed by any other person or any other entity while employed as General Manager that would result in conflict of interest or prevent him from performing his duties. Specifically, Manager 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 and Evaluation**

A. Salary. The District agrees to pay Manager an annual base salary of \$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 General Manager.

B. Performance Evaluation. The Board of Harbor Commissioners will conduct a performance review and evaluate Manager's performance at least once annually at or near the anniversary of employment with the District. As part of such performance evaluation, the Board of Harbor Commissioners will establish annual goals and criteria for the purpose of assessing Manager's performance at the next evaluation. In the first year of Manager's employment, it is the expectation of the parties that the Board of Harbor Commissioners will schedule an additional performance review between three to six months of the commencement of Manager's employment.

Manager's annual salary may be subject to increase based upon such evaluation of Manager's performance of his duties and obligations as the Board of Harbor Commissioners may, in its sole discretion, reasonably determine, predicated upon performance that achieves the goals and criteria that were established by the Board of

Harbor Commissioners. It shall be Manager's responsibility to work with staff to place his reviews and consideration of salary adjustments on a meeting agenda for Board consideration in a timely fashion.

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

A. Holidays, Vacation and Leave. Manager will be entitled to paid holidays in accordance with the District's established holiday schedule. Manager 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 managers, except as provided below.

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

1. Manager 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.

C. Extended Illness Bank (EIB). The EIB is an individual account containing accrued hours designated for severe or long term illness. The EIB may be used when Manager 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 of one week's work and a physician's verification of illness is provided; or
5. Any other time when Manager requires time off for bona fide medical purposes of Manager or his immediate family (spouse or registered domestic partner, 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 Manager or his 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 Manager cash out EIB hours at any time.

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

Except as otherwise modified by this Section 5, Manager will be entitled to participate in all benefit plans applicable to other management employees of the District including, but not limited to, a deferred compensation plan; health, dental, vision, workers compensation, flexible spending account, life/accidental death and

dismemberment, and short-term disability insurance benefits; and retiree health insurance benefits, subject to the terms and conditions of any such manager benefit plan and any applicable District Personnel Rules and Policies and Procedures. To the extent future changes are made in the coverages provided or Manager contributions required, Manager will be subject to those changes.

A. Pension. Manager shall participate in the CalPERS retirement plan. Manager 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. Manager shall pay the full employee share of the member contribution as determined by CalPERS through payroll withholding. The District shall not pay any portion of the Manager's member contribution.

B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Manager and his eligible family members, at a level of coverage substantially the same as the District provides other management employees. In its discretion, the District reserves the right to seek out and obtain alternative coverage in order to effect cost savings to the District. Manager agrees to pay 15% of the benefit premium cost for health insurance through payroll deductions. The District pays 100% of dental and vision premium obtained through the Special District Risk Management Authority.

C. Group Life Insurance. The District will provide Manager a group term life insurance policy of \$200,000. The District will pay the premium for such coverage.

D. Deferred Compensation. Manager is eligible to participate in the District's Deferred Compensation Plan through CalPERS 457 plan, or such other plan as is presently provided by the District on behalf of its employees. The District will not make any contributions to this plan on behalf of Manager.

E. Social Security. The District does not participate in Social Security. A pension based on earnings not covered by Social Security can affect the amount of your Social Security benefit. Further information is provided at <https://www.ssa.gov/planners/retire/wep.html> under the Windfall Elimination Provision.

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

A. Office, Supplies, Business Expenses. The District agrees to provide Manager with an office, computer equipment, supplies and such other facilities and services commensurate with Manager's position in order to facilitate the performance of his duties. Manager may request reimbursement for expenses he incurs in the direct performance of the District's business, subject to prior approval by the Board of Harbor Commissioners. Such expenses may be reimbursed regularly as they are incurred, and submitted for reimbursement in compliance with the District Personnel Rules and Policies and Procedures.

B. Professional Development Activities. The District agrees to budget for and pay for the travel, meals, accommodations, registration and other expenses of Manager

for conferences, seminars, and such other occasions as are reasonably necessary for Manager to fulfill his duties, and to further Manager's professional growth and advancement. Such service and conferences include, but may not be limited to, those sponsored by the California Special District Association (CSDA) or California Association of Harbormasters and Port Captains. Such expenses must be appropriately documented and approved in advance by the Board of Harbor Commissioners in compliance with District Personnel Rules and Policies and Procedures.

C. Automobile. Manager will be entitled to an automobile allowance in the amount of Three Hundred Fifty Dollars (\$350) per month for use of his own automobile, for such meetings and other events as the District reasonably requires Manager to attend. Manager shall maintain collision and liability insurance on any automobile he uses for any District business, at Manager's own expense, with coverage no less than \$100,000 per occurrence, \$300,000 aggregate. Manager shall be responsible for any income tax or other taxes resulting from such an allowance. The automobile allowance is in addition to, and not instead of, the District's obligations to reimburse Manager's travel expenses pursuant to Section 6.B.

D. Housing Allowance. The District will provide Manager with a housing allowance of \$1,250 per month for the first twelve months of his employment, commencing with the first day of the calendar month following commencement of employment. Manager is responsible for any income tax or other taxes resulting from such allowance.

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

A. Termination With Cause. The District may terminate Manager at any time during the term of this Agreement for Cause. 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 the 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 the District's business interests or reputation. In the event of termination for Cause, Manager is not entitled to any severance payment. Manager will only be entitled to any unpaid compensation due to him as a matter of law.

B. Nothing in this Agreement prevents, limits, or otherwise interferes with Manager's right to resign at any time from his position with the District. Manager shall give 30 days' written notice to the District prior to the effective date of resignation unless a lesser period has been mutually agreed upon by both parties. In the event Manager resigns, he shall not be entitled to any severance payment.

C. If this Agreement is terminated, any cash settlement related to the termination that Manager may receive from the District will be fully reimbursed to the

District if Manager is convicted of a crime involving an abuse of his office or position with the 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.

D. Termination Without Cause. In the event Manager is terminated without cause by the District during the term of this Agreement and during such time as Manager is willing and able to perform his duties under this Agreement, the District shall provide Manager 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 Manager executes a full and complete waiver and release of any and all claim(s) arising out of his employment and termination thereof, the District will continue to provide Manager health insurance coverage for a period of three (3) months, and will pay Manager a cash payment of three (3) months of compensation based on Manager'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." If this Agreement is extended by mutual agreement for an additional two year term as provided in Section 1.B, the severance payments indicated in this paragraph shall be automatically extended to six (6) months. In addition, and regardless of any entitlement to severance benefits, Manager will receive a cash payment of the unused balance of any PTO and any other payments required by law.

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

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

## **Section 9. Mediation**

Prior to the District and/or Manager 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 Manager's employment relationship with the District or the termination of such relationship with the 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. Manager further understands that this agreement to arbitrate also applies to any disputes that the District may have with Manager. Nothing herein changes the at-will nature of Manager's employment and that Manager may be terminated without cause. Nothing herein allows Manager 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 the Director of Administrative Services. 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. 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 Manager and the District. Accordingly, except as provided for by the

Federal Arbitration 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 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 Manager 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.

F. Voluntary Nature of Agreement. Manager acknowledges and agrees that he is executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Manager 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. 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 Manager:            James Pruett  
                                 294 Casa Grande Real  
                                 Novato, CA 94949

B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Manager 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.

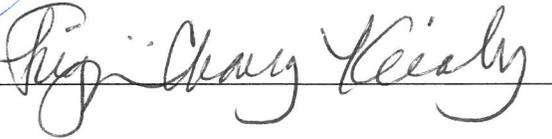
E. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

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

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

By:   
James Pruett

By: 

**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.