

Michael Valdivia General Manager Employment Agreement

This Agreement, made and entered into this 13th day of September 2023, by and between the Beaumont - Cherry Valley Recreation and Park District, ("District"), and Michael Valdivia ("General Manager" or "Employee") an individual who has the education, training and experience in local government management.

1. TERM

The District hereby agrees and does employ General Manager commencing on March 11, 2024 ("Commencement Date") and continuing until terminated in accordance with Section 8 of this Agreement.

2. DUTIES AND AUTHORITIES

District agrees to employ General Manager, and General Manager agrees to accept and begin employment on the Commencement Date to perform the functions and duties specified in the District's rules and regulations. In addition, General Manager shall have the powers and duties which are delegated to him by the Board of Directors. General Manager shall execute all powers and duties in accordance with policies adopted by the Board of Directors and applicable state and federal laws.

3. COMPENSATION

A. Base Salary: District agrees to pay General Manager an annual base salary of One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00), payable in installments at the same time that the other management employees of Employer are paid.

B. The Board of Directors may adjust General Manager's annual base salary from time to time at its discretion. Any such adjustments shall be made in open session during a regularly scheduled meeting of the Board of Directors, with a record of said Board of Directors action being subsequently attached to this Agreement as an automatic amendment thereto.

4. BENEFITS

Unless otherwise provided in this Agreement, General Manager shall receive all benefits provided by the District to other management employees, to the extent permitted by applicable law and as may be amended from time to time.

A. Vacation. Employee shall accrue vacation leave at the rate of Two Hundred (200) hours per calendar year. All other aspects governing the use and potential cash out of vacation leave shall be governed by the District's rules and procedures as applied to other management employees.

B. Sick Leave. Employee shall accrue sick leave at the rate of one and one-half (1-1/2) days per calendar month. All other aspects governing the use and potential cash out of sick leave shall be governed by the District's rules and procedures as applied to other management employees.

C. Administrative Leave. On March 11 of each year this Agreement is in effect, District shall provide employee with a bank of Eighty (80) hours of Administrative Leave that Employee may use at his discretion, upon providing advance notice to the President of the District's Board of Directors, in recognition of the fact that employee will often be required to otherwise perform work outside of the District's regular operation hours. Any unused Administrative Leave as of the end of business on March 10 of each year shall be lost and shall not carry over to the next year.

D. District shall provide employee with a monthly automobile allowance of Eight-hundred Fifty Dollars (\$850.00) per month. This automobile allowance shall increase by Fifty Dollars (\$50) per month on July 1 of each calendar year, beginning on July 1, 2024. In addition, District shall allow employee to use its gas credit card to purchase gasoline when traveling on District business. The automobile allowance may be subject to state and federal withholdings based on applicable law.

5. RETIREMENT

A. District agrees to maintain Employee's enrollment in the California Public Employee Retirement System as a classic member, under the same terms as other non-safety employees of the District.

B. District shall make a discretionary contribution in Employee's name to its Section 457 plan in an amount equal to ten percent (10%) of Employee's base salary. This contribution shall be provided over the course of the Employee's fiscal year on a monthly basis in increments of one twelfth (1/12th) of the overall amount until the full amount has been contributed. The contribution will be automatic each fiscal year unless the Board provides written notice to Employee, as of the time of his annual evaluation, that it will withhold this contribution in any fiscal year.

Upon Employee's request, District agrees to renegotiate this subsection to allow employee to have all or a portion of the above contribution redeposited into CalSTRS, to the extent permitted by applicable law.

6. GENERAL BUSINESS EXPENSES

A. District agrees to budget reasonable sums for and to pay for professional dues and subscriptions of General Manager necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for General Manager's continued professional participation, growth, and advancement, and for the good of District.

B. District agrees to budget reasonable sums for and, consistent with the District's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be

amended from time to time, to pay for travel and subsistence expenses of General Manager for professional and official travel, meetings, and occasions to adequately continue the professional development of General Manager and to pursue necessary official functions for Employer.

C. District agrees to budget reasonable sums for and, consistent with the District's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time, to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for General Manager's professional development and for the good of District.

D. District recognizes that certain expenses of a non-personal but job-related nature are incurred by General Manager and agrees to reimburse or to pay reasonable general expenses consistent with the District's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time.

E. All such expenses under this Section 6 are subject to review and approval by the Board of Directors.

7. TECHNOLOGY

District may provide General Manager with a laptop computer or equivalent and cell phone, and shall pay General Manager's cell phone bill to the extent necessary and consistent with the District's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time. Any equipment provided to employee must be immediately returned to the District upon termination or surrendered to the District upon request by the Board of Directors. Further, General Manager understands that while such equipment may be used for incidental personal purposes, he may have no expectation of privacy in any personal information contained on or stored in this equipment upon its return to the District.

8. TERMINATION

A. Employee serves at the will and pleasure of the Board of Directors and may be terminated immediately upon written notice, with or without cause by a majority vote of the full membership of the Board of Directors as then constituted. Notwithstanding, the District agrees that Employee's employment shall not be terminated without cause either ninety (90) days prior to or ninety (90) days following a general election in which any Board of Director seat is on the ballot.

B. If Employer reduces the base salary, compensation or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of all department heads of the District, such action shall constitute a breach of this Agreement and will be regarded as a termination.

C. If Employee resigns following an offer to allow resignation in lieu of termination, made following a majority vote of the full membership of the Board of

Directors as then constituted, Employee may declare a termination as of the date of the offer.

9. SEVERANCE

A. Severance shall be paid to General Manager when employment is terminated without cause under with Sections 8(A) above, or under Sections 8(B) or (C). Said severance payment shall be equal to nine (9) months' base salary at the then current base rate of pay. For each full year of service in the General Manager position, this severance payment shall increase by one (1) additional month, until it reaches a maximum amount equal to twelve (12) months' base salary. This severance shall be paid in a lump sum unless otherwise agreed to by District and General Manager. Said severance payment shall be subject to all applicable payroll deductions. As a condition of receiving any such severance, General Manager agrees to execute a waiver and release of all claims related to and arising out of his employment with District. Employee shall forfeit any right to severance if he does not execute the waiver and release within sixty (60) days of the effective date of his termination.

B. Notwithstanding Section 9(A) above, if General Manager is terminated because of a conviction of a felony or other serious misconduct, then the District is not obligated to pay severance under this section.

C. Pursuant to Government Code sections 53243, 53243.1 and 53243.2, if Employee is convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse District such amounts paid; (2) if District pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse District such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Employee may receive from District shall be fully reimbursed to District or void if not yet paid to Employee. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) 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.

10. RESIGNATION

In the event that General Manager voluntarily resigns his position with District, General Manager shall provide a minimum of 30 days' advance notice, unless the parties agree to provide for or accept a shorter notice period. District is not obligated to pay severance if General Manager voluntarily resigns.

11. PERFORMANCE EVALUATION

The Board of Directors shall provide the General Manager with initial reviews of his performance both three and six months after the Commencement Date of this Agreement. The Board of Directors shall also evaluate General Manager's performance annually on the anniversary of the Commencement Date of this Agreement.

The General Manager shall remind the Board of Directors of its obligation to conduct the three-month, six-month, and all annual performance evaluations. While the Board of Directors shall consult with the General Manager over the format and process of any evaluation, the ultimate format and process shall be at the Board of Directors' discretion.

Nothing in this section shall prohibit the Board of Directors from evaluating the General Manager's performance at any other interval or time. Further, the failure to conduct a performance evaluation under this Section shall not alter General Manager's at-will status as set forth in Section 8 above.

12. HOURS OF WORK

It is recognized that General Manager must devote a great deal of time outside the normal office hours on business for District, and to that end General Manager shall be allowed to establish an appropriate work schedule, subject to the direction of the Board of Directors. Notwithstanding the above, it is understood that the General Manager will be generally available during normal District operating hours, unless he is on an approved leave of absence.

13. OUTSIDE ACTIVITIES

The employment provided for by this Agreement shall be General Manager's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to District and the community, General Manager may elect to accept limited teaching, consulting, or other business opportunities on condition that such arrangements shall not cause interference with or constitute a conflict of interest with General Manager's responsibilities under this Agreement.

District recognizes that Employee is currently an elected official with the San Gorgonio Pass Water Agency and that his performance of duties and responsibilities in that capacity shall not be prohibited by this subsection.

14. INDEMNIFICATION

Subject to Section 9(C) above, District shall defend, hold harmless and indemnify General Manager against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of General Manager's duties or resulting from the exercise of judgment or discretion in connection with the performance of General Manager's duties or responsibilities, as required by law.

Also subject to Section 9(C) above, District agrees to pay all reasonable litigation expenses of General Manager throughout the pendency of any litigation to which the Employee is a party, witness, or advisor to the District. Such expense payments shall continue beyond General Manager's service to the District as long as litigation is pending. Further, District agrees to pay Employee reasonable consulting fees and travel expenses when General Manager serves as a witness, advisor, or consultant to District regarding pending litigation.

15. BONDING

District shall bear the full cost of any fidelity or other bonds required of General Manager under any law or ordinance.

16. NOTICES

Notice pursuant to this Agreement shall be given by depositing same in the custody of the United States Postal Service, postage prepaid, addressed as follows:

A. DISTRICT

390 W. Oak Valley Parkway
P.O. Box 490
Beaumont, CA 92223

B. GENERAL MANAGER:

Michael Valdivia

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. If there is any change in the above contract information, the party changing the contact information shall provide immediate written notice to the other party.

17. GENERAL PROVISIONS

A. Integration. This Agreement sets forth and establishes the entire understanding between District and General Manager relating to the employment of General Manager by District. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by

mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. Binding Effect. This Agreement shall be binding on District and General Manager, as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on September 13, 2023, with the obligations herein commencing on March 11, 2024.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Dated: 9-13-2023
By: Dan Dunbar

Dated: 9/13/2023
By: [Signature]

- An annual base salary of \$175,000, which can be adjusted from time to time at the Board's discretion.
- A benefit package that is equivalent to all benefits provided to other District management level employees, with the following exceptions:
 - Vacation leave accrued at the rate of 200 hours per calendar year. *vacation/PTO*
 - Sick leave accrued at the rate of 1-1/2 days per calendar month.
 - An annual allotment of 80 hours of Administrative leave.
 - An initial automobile allowance of \$850 per *year* to be increased by \$50 on July 1 of each subsequent year. *month*
 - An annual District contribution equal to 10% of base salary into the District's Section 457 plan. As an alternative, and upon Mr. Valdivia's request, the District would also agree to renegotiate this obligation in order have this contribution instead redeposited into CalSTRS, to the extent permitted by applicable law.

MOTION:

Approve the attached General Manager Employment Agreement.

ATTACHMENTS: Michael Valdivia General Manager Employment Agreement.

STAFF REPORT
September 13, 2023

FROM: District Counsel

SUBJECT: Michael Valdivia General Manager Employment Agreement

RECOMMENDATION:

Approve the attached General Manager Employment Agreement.

DISTRICT GOALS:

- Ensure the continued management of the District after March 10, 2024.
- Provide General Manager with a reasonable and fair compensation package.

DISCUSSION:

The District's current General Manager, Duane Burk, submitted his resignation to be effective March 10, 2024. This resignation was accepted by the Board of Directors during its meeting on August 17, 2023. During the August 17 meeting, the Board approved appointing Michael "Mickey" Valdivia as its General Manager effective March 11, 2024, subject the parties negotiating a mutually acceptable employment agreement.

The attached General Manager Employment Agreement, which was the subject of those negotiations, would be effective upon approval, but its terms would not become operative until March 11, 2024.

This proposed agreement would formalize Mr. Valdivia's appointment as General Manager and would contain the following relevant terms:

- An indefinite term of employment, subject to termination as set forth within the agreement. Those relevant termination provisions include:
 - Mr. Valdivia serving at the will and pleasure of the Board.
 - A severance payment in the event Mr. Valdivia's employment is terminated without cause. (The severance payment would be equivalent to nine months' base salary, with the amount increasing by one month for each full year of service until it reaches a maximum of twelve months' base salary.)
 - A prohibition of the Board's ability to terminate the agreement without cause 90 days before or after a general election where a Board Director seat is on the ballot.