

**LAGUNA BEACH COUNTY WATER DISTRICT
EMPLOYMENT AGREEMENT – GENERAL MANAGER**

This Employment Agreement (herein, "Agreement") is made and entered into as of the 27th day of ~~October~~, 2020 by and between LAGUNA BEACH COUNTY WATER DISTRICT (hereinafter, the "District") and KEITH VAN DER MAATEN (hereinafter, "Employee"). District and Employee are each referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, District wishes to engage the services of Employee as the General Manager of the District and to induce the Employee to remain in such position on the terms and conditions set forth in this Agreement;

WHEREAS, Employee is familiar with the position's legal requirements including but not limited those requirements set forth in Water Code sections 30580 and 30581; industry standards; and the responsibilities and duties set forth in the position's job description, attached at Exhibit A hereto and incorporated herein; and

WHEREAS, Employee represents and warrants that he has the skill and ability to serve in such position and wishes to accept such employment on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals (which are hereby incorporated by reference into this Agreement) the mutual covenants herein contained, and other good, valuable, and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. EMPLOYMENT.

A. The District, consistent with the provisions of Water Code section 30510, hereby offers and the Employee hereby accepts the position of General Manager of the District. Employee shall perform the duties and responsibilities imposed by law, industry standards, and responsibilities and duties as specified in Exhibit A, and such legally permissible further duties and functions as shall, from time to time, be assigned by the Water Commission, as appropriate, or Board of Directors of the District.

B. Employee shall devote such time, interest, and effort to the performance of his duties as may be reasonably necessary to fulfill the above requirements. Employee agrees to perform such services to the best of his ability, in an efficient and competent manner consistent with the standards of the profession. Without limiting the generality of the foregoing, Employee understands and agrees that this position is an exempt, salaried, full-time position with regular

required office hours Monday through Friday and weekend and evening hours when required in the best interests of the District.

SECTION 2. TERM AND RENEWAL.

A. This Agreement shall be effective as of January 1, 2021 (the “Anniversary Date”). The term of this Agreement shall be for three (3) years, through December 31, 2024, unless sooner terminated or extended by the Parties as set forth in this Agreement.

B. In the event that the Board determines that the Employee is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the Board at least four (4) months in advance of the expiration of the term of this Agreement. Should the Board fail to re-employ the Employee and the written notice provided for in this Section 2 has not been given at least four (4) months prior to the initial term of this Agreement, it shall be extended on the same terms for additional periods of one (1) year on each renewal.

SECTION 3. TERMINATION AND SEVERANCE PAY.

A. It is expressly understood that Employee, in his capacity as General Manager, is a contracted employee serving at the pleasure of the Board, subject to termination pursuant to the terms of this Agreement, and with no right to any hearing or appeal, including any so-called *Skelly* conference, other than the rights expressly provided in this Agreement.

B. This Agreement shall automatically terminate upon Employee’s death, retirement, or permanent incapacity.

C. The Employee serves at the will and pleasure of the Board. At any time during the term of this Agreement or any extension thereof, the Board reserves the right to terminate the employment of Employee and determine his last day of employment upon the vote of three or more Board members at a duly called and noticed Board meeting. The District agrees, however, to refrain from voting on the issue of Employee’s termination in any sixty (60) day period immediately following a new Board member’s installation so that said new Board member may have sufficient time to apprise his or herself with Employee’s performance prior to vote.

1. In the event that this Agreement is terminated before the end of its term “for cause” as defined below, no further compensation or benefit shall be made to the Employee. Upon any allegation that Employee has engaged in conduct that would result in his termination “for cause” as defined below, Employee is entitled to address and attempt to rebut those allegations before the Board in a closed session prior to the Board making any final determination regarding the veracity of those allegations. In the event the Board, in its discretion, still finds merit to the allegations and terminates, the Employee shall not be entitled to any severance and will be owed no further compensation. However, if this Agreement is terminated “for cause,” the Employee shall have the right to appeal the Board’s

decision upon written notice to the Board of such appeal within ten (10) days of the determination. Failure to provide written notice within the ten (10) day period will result in waiver of the right to appeal. Upon appeal, the Parties will select an independent arbitrator, either mutually agreed to or selected from a list of seven (7) arbitrators provided by the State Mediation and Conciliation Service. The arbitrator must be selected by the Parties within ten (10) days from the date of the notice of appeal; if the Parties are unable to agree upon an arbitrator, they shall alternate striking names from the list until such time as only one arbitrator remains on the list. Any arbitrator selected must be able to hear the matter within thirty (30) days of selection and render a decision within fifteen (15) days of the close of the hearing. The District shall bear the costs of the arbitrator. The issue at the hearing shall be limited solely to whether or not District's "for cause" termination was arbitrary and capricious, entitling Employee to severance pursuant to Section 3(C)(2), which shall be the sole remedy in the event of the arbitrator's finding that the "for cause" termination was arbitrary and capricious. For the avoidance of doubt, under no circumstances shall the Employee be entitled to reinstatement to the position of General Manager as a result of such hearing. Following the hearing, the arbitrator shall submit his/her findings and decision to the District, which shall be final and binding. Termination shall be "for cause" if the Employee: (1) Acts in bad faith and to the detriment of the District; (2) Refuses or fails to act in accordance with any legal requirement or specific direction or order of the Board of Directors of the District; (3) Exhibits in regard to his employment unfitness or unavailability for service, unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence; (4) Is involved in crime involving dishonesty, breach of trust, or public conduct reflecting negatively on the District (no pending criminal prosecution need be in effect for termination due to fraud, embezzlement or public conduct reflecting on the District; rather the Board must only have a good faith belief based on a good faith investigation); (5) Creates physical or emotional harm to any person (a) in violation of state or federal laws (including without limitation that no pending criminal prosecution need be in effect for termination due to such harm), or (b) based on a reasonable good faith belief of the Board (as evidenced by an independent third party investigation); or (6) Breaches any material term of this Agreement.

2. In the event the District terminates Employee's employment for a reason other than those set forth in Section 3(C)(1), the Employee shall be entitled to the following severance in accordance with the terms of California Government Code sections 53260, *et seq.*: An amount equal to six (6) months of the Employee's then base monthly salary or the remainder of the term of this Agreement, whichever is less. Contributions to CalPERS for such Severance Pay shall be made in accordance with the District's CalPERS contract and the CalPERS law and regulations. The Employee shall be entitled to this severance pay either in a lump sum or, if he so elects, in a reasonable number of installments. Upon notice of termination, unless otherwise directed by the Employee, the District shall continue to make such health payments as the Employee previously had elected

under the management health and related benefits program for the period of the severance pay, or until he finds other employment, whichever occurs first.

D. The Employee may terminate this Agreement upon written notice to the Board and shall endeavor to give sixty (60) days prior notice. The District shall have the option, in its complete discretion, to terminate the Employee any time prior to the end of such notice period, provided the District pays the Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period. Thereafter, all the District's obligations under this Agreement shall cease.

SECTION 4. COMPENSATION.

The District agrees to pay Employee for services rendered pursuant hereto at a rate of Two Hundred and Seventy Two Thousand Dollars (\$272,000.00) annually, pursuant to the procedures regularly established and as they may be amended by the District in its sole discretion. The Employee may receive annual increases in salary as may be determined by the Board in its sole discretion; provided, however, that the Employee shall automatically receive Cost of Living Adjustment ("COLA") increases commensurate with, and to the extent provided to, all other District managers. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement, with the exception of the above-referenced salary increase for COLA, which shall go into effect at the same time as the other District managers. All compensation and comparable payments to be paid to Employee shall be less withholdings required by law.

SECTION 5. BENEFITS

In addition to the compensation set forth in Section 4 the Employee shall be entitled to the following benefits:

A. Relocation. If Employee agrees to establish residence and relocate to a residence within 30 minutes of response time to the District within twelve (12) months of the Anniversary Date of this Agreement, District shall pay up to five thousand dollars (\$5,000) for costs associated with moving expenses from a reputable moving service. Employee shall submit receipts of such moving expenses, and the District shall thereafter make a lump sum payment to reimburse Employee for those costs of moving expenses identified on the submitted receipts. For purposes of this Section 5.A, said moving expenses shall be defined as packing, moving, storage costs, unpacking, and insurance charges.

B. Retirement Benefits. The District contracts with the California Public Employees Retirement System (CalPERS) for retirement benefits. The District shall pay the same amount of employer and employee contributions to CalPERS for Employee as provided for all other designated management employees of the District. The District's contributions shall be the same for Employee as it would be for any other District management employee hired on the same date

as the Appointment Date. Employee shall further be entitled to participate in the District's Deferred Compensation plan, if any.

C. Vacation. Employee shall accrue 120 hours vacation time annually. Upon hire and so that Employee shall have immediate access to vacation hours in the first year of his employment, Employee shall be granted forty (40) hours from his annual one hundred and twenty (120) hour allotment of vacation immediately upon the Anniversary Date of this Agreement. The remainder of his annual allotment shall accrue pursuant to a per-paycheck proration. Thereafter, Employee shall accrue his vacation hours on a per-paycheck prorated basis such that he will accrue a total of one hundred and twenty (120) hours by the end of each year. Usage of vacation leave shall otherwise be governed by the policies of the District, as they may change from time to time. The District reserves the discretion to revise or amend its sick leave pay out policy at any time. *The Employee's vacations shall be scheduled in coordination with the Board.*

D. Sick Leave. Employee will annually accrue 96 hours of sick leave, to be used during illness, injury, or other reason typically covered by such leave. Upon hire and so that Employee shall have immediate access to sick leave in the first year of his employment, Employee shall be granted forty (40) hours from his annual ninety-six (96) hour allotment of sick leave immediately upon the Anniversary Date of this Agreement. The remainder of his annual allotment shall accrue pursuant to a per-paycheck proration. Thereafter, the District will provide prorated per paycheck accrual in order to total a ninety-six (96) hour accrual by the year end. Usage of sick leave shall otherwise be governed by the policies of the District, as they may change from time to time. The District reserves the discretion to revise or amend its sick leave pay out policy at any time.

E. Floating Holidays. Effective upon the Anniversary Date of this Agreement and for each year thereafter, Employee will be allotted two (2) floating holidays away from the office, to be scheduled and used throughout the year. These days off do not accrue and are paid out, if unused, by June 30th of each year. Such compensation shall be based upon the General Manager's then-current base salary. Floating Holidays shall be payable upon termination in the same manner as vacation.

F. Job-Related Expense Reimbursement. The District will pay the Employee's business expenses incurred in connection with District business as provided by District policy, as it may be amended from time to time in the District's sole discretion.

G. Technical Equipment. Upon commencement of employment, the District shall provide the Employee with a cell phone and such technical equipment as may be necessary for the performance of his duties.

H. Dues and Subscriptions. The District shall budget and pay up to one thousand dollars (\$1,000) each year for Employee's professional dues and subscriptions necessary for his continued full participation in approved national, regional, state and local associations and

organizations necessary and desirable for continued professional growth and advancement and for the good of the District.

I. Professional Development. The District shall budget and pay for travel and subsistence expenses for Employee (as set out by applicable District policy, as it may be amended from time to time in the District's sole discretion) for Board approved professional and official travel, meetings and similar necessary functions, including, but not limited to, Board approved groups and committees of which Employee is a member, as well as short courses, institutes and seminars necessary for the Employee's professional development and the good of the District.

J. Civic Club Memberships. The Employee recognizes the desirability of representation in and before local civic and other organizations, and the Employee is authorized to become a member of Board approved local civic clubs or organizations for which the District will pay all expenses. The Employee shall notify the Board of such memberships.

K. Automobile Allowance. The Employee agrees to use his personally owned vehicle for local travel in the performance of his work-related duties. All expenses associated with such use shall be the Employee's responsibility. As consideration for use of his personal vehicle to perform work-related duties, the District shall provide the Employee with a Six Hundred and Fifty Dollar (\$650.00) monthly automobile allowance as well as mileage reimbursement for travel more than two hundred (200) miles outside of District limits in the performance of his work-related duties, as may be amended from time to time. A District vehicle may be substituted in the future as agreed to by both Parties.

L. Other Benefits. Where not in conflict with the provisions of this Agreement, Employee shall be eligible and participate in the same benefits offered to executive-level employees at the Agency, including but not limited to paid holidays and other such ancillary benefits. Nothing about the provision of such other benefits shall be interpreted to prevent the performance of any duty set forth in this Agreement.

SECTION 6. PERFORMANCE EVALUATION.

A. The Board shall review and evaluate the performance of Employee in writing on an annual basis at the Board meeting of every December (Employee's anniversary month). The evaluation will also set forth mutually defined goals to be achieved by the Employee in the subsequent year. The Employee will be provided an adequate opportunity to discuss his evaluation with the Board at the Board meeting. The Employee shall be eligible, if warranted in the Board's sole discretion, to receive a salary adjustment at the conclusion of such evaluation. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement. Failure of the Board to conduct a performance evaluation shall not prohibit the Board from terminating this Agreement in accordance with Section 3 of this Agreement.

B. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the District. Nothing herein shall be deemed to alter or change the employment status of Employee, nor shall this Section be construed as requiring "cause" to terminate this Agreement or the services of Employee hereunder.

SECTION 7. OFFICE HOURS.

Employee shall report to District's offices during normal business hours consistent with the District's executive team schedule and at such other times as may be necessary to discharge his duties, except when away on approved business for the District, as otherwise excused by use of approved leave, or during District-granted holidays. However, Employee agrees and understands that he will report to work when necessary to District operations, regardless of regularly scheduled hours, scheduled leave, or holiday, to the extent such attendance is reasonably possible.

SECTION 8. GENERAL PROVISIONS.

A. Integration. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter hereof. This Agreement wholly supersedes and replaces the terms of any prior agreements, and any rights contained in such agreement.

B. Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose, by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

DISTRICT: Laguna Beach County Water District
Attn: President, Board of Directors
306 Third Street
Laguna Beach, CA 92651

Copy to:
District Counsel for Laguna Beach Co. Water District
Attn: Megan Garibaldi, Esq.
Best Best & Krieger LLP
18101 Von Karman Ave., Suite 1000
Irvine, CA 92612

EMPLOYEE: Keith Van Der Maaten
743 Bayview Ave
Pacific Grove, CA 93950

Alternatively, notices required pursuant to this Agreement may be personally served in the 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 United States Postal Service.

C. Governing Law. This Agreement shall be governed by the laws of the State of California. The Parties agree that venue for any dispute is appropriate in the Superior Court of Orange County, California.

D. Waiver. A waiver of any term or condition of this Agreement shall not be construed as a general waiver by either Party to this Agreement, and either Party shall be free to reinstate any such term or condition, with or without notice, to the other.

E. Amendment. This Agreement may be amended from time to time, as mutually agreed by the Parties in writing. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Employee and approved by the Board.

F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee, but nothing herein shall be construed as an authorization or right of any Party to assign his/its rights or obligations hereunder. Any assignment of the rights or obligations of Employee hereunder without the express written approval of District shall be void.

G. Partial Invalidity. If any provision or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof, shall not be affected, and shall remain in full force and effect.

H. Legal Consultation. Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the LAGUNA BEACH COUNTY WATER DISTRICT has caused this Agreement to be signed and duly executed by its President, and the Employee has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

DISTRICT:

LAGUNA BEACH COUNTY WATER
DISTRICT

By: 
Bob Whalen
President of the Board of Directors

EMPLOYEE:

KEITH VAN DER MAATEN

By: 

APPROVED AS TO FORM:

By: 
Megan Garibaldi, Esq.,
District Counsel

**JOB DESCRIPTION – GENERAL MANAGER
EXHIBIT “A”**

TITLE: GENERAL MANAGER – Exempt

DEPARTMENT: Administration

REPORTS TO: Board of Directors

Definition

Under direction of the Board of Directors; the General Manager is responsible for planning, organizing, directing and coordinating all activities and general affairs of the District; represents the Board's policies and programs with employees, community organizations, and the general public; is responsible for employer-employee relations; and does related work as required.

Duties

- Serves as Chief Administrative Officer for the District and Secretary to the Board of Directors.
- Interfaces with City staff to ensure good working relationships with the City.
- Provides advice and consultation on the development of District programs and policies.
- Oversees development of the Board Agenda for meetings.
- Presents claims to the Board filed against the District and oversees processing.
- Represents the Board's policies and programs with employees, community representatives, and other government agencies.
- Oversees the preparation of the annual budget, making recommendations to the Board on final expenditure levels.
- Has authority to approve expenditures up to \$50,000.
- Maintains continuous awareness of administrative practices and recommends changes which increase the efficiency and economy of District operations.
- Has responsibility for District personnel matters, including recruitment of personnel, employment procedures, grievances, affirmative action, classification and pay, discharges, and employer-employee relations.
- Represents the District before Boards and Commissions.
- Represents the District at water industry, professional association and service club meetings, including conventions.
- Reviews and administers all contracts with/for the District.
- Interfaces regularly with the District's legal counsel on all legal matters of the District.

Typical Physical Activities

Must be able to:

- Travel frequently by airplane and automobile in conducting District business.
- Communicate orally with District Board members, co-workers, and the public in face-to-face, one-to-one, and group settings.
- Regularly use a telephone for communication.
- Use office equipment such as computer terminals, copiers, and Fax machines.
- Sit for extended time periods.
- Carry, push, pull, reach and lift supplies and materials weighing up to 25 pounds.

Typical Physical Activities – continuedMust be able to:

- Have hearing, vision, and eye-hand coordination sufficient to operate office equipment and to maintain good awareness during performance of duties.

Employment StandardsKnowledge of:

- Principles and practices of public administration, including business administration, administrative analysis, fiscal planning and control, and policy and program development.
- Laws, rules, ordinances, and legislative processes controlling District functions, programs, and operations.
- Organization, operations, and problems of special districts.
- Budgeting principles and practices.
- Cost estimating and contract administration.
- Public personnel administration, affirmative action, and employer-employee relations.

Ability to:

- Plan, organize, coordinate, and direct the work of staff to achieve efficient operations and meet program goals.
- Prepare and administer a District budgeting and fiscal control process.
- Collect, organize, and analyze data on a variety of topics.
- Prepare concise and comprehensive reports.
- Oversee the preparation of Board agendas.
- Communicate well during public presentations.
- Exercise leadership, authority, and supervision tactfully and effectively.
- Evaluate and make recommendations on improvements to existing District operations, programs, and services.
- Provide advice and consultation to the Board of Directors on the development of ordinances, resolutions, regulations, programs, and policies.
- Effectively represent the District's policies, programs, and services with individual citizens, community groups, and other government organizations.
- Establish and maintain cooperative working relationships.

Qualifications

- An advanced degree from an accredited university or college in management, business or public administration.
- Possess ten years administrative experience, including five years at managerial level.
- Broad and extensive work experience in a management or administrative position, requiring the responsibility for the formulation and implementation of programs, budgets and administrative operations.
- Possess and maintain a valid California driver's license and a safe driving record.
- Capability of being bonded.