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MANAGEMENT TEAM
General Manager, Vacant
Plant Operations, Mel Liebmann
Collections/Safety/Maintenance, Greg Pease
Engineering, Michael P. Cortez
Administrative Services, Dale McDonald

DISTRICT BOARD
Megan Clark
Ronald Ford
Craig K. Murray
Judy Schriebman
Crystal J. Yezman

Handout

Agenda Item 6

Date January 20, 2022

To: Board of Directors
From: Dale McDonald, Acting General Manager *DM*
Date: January 20, 2022

RE: Correction to Agenda Item 6 – Interim General Manager Agreement

There is a correction to Resolution No. 2022-2236 and accompanying Employment Agreement for Interim General Manager.

Monthly salary references of \$21,094 with hourly equivalent of \$121.70 is hereby corrected in the resolution and employment agreement to \$21,694 with hourly equivalent of \$125.16. The corrected annual equivalent salary is \$260,329.

The corrected compensation is the same monthly salary as the previous General Manager was receiving for performing comparable duties as required by CalPERS. The total fiscal impact is anticipated to be less than \$130,164 for up to 6 months of service as Interim General Manager.

Staff Recommendation:

Board to approve Resolution No. 2022-2236 entering into Employment Agreement for Interim General Manager with Chris DeGabriele, to commence on January 31, 2022, as corrected.

EMPLOYMENT AGREEMENT FOR INTERIM GENERAL MANAGER

This Employment Agreement is entered and effective as of _____ by and between the LAS GALLINAS VALLEY SANITARY DISTRICT (“Employer” or “District”) and CHRIS DEGABRIELE (“Employee”) subject to the following terms and conditions.

RECITALS

This Agreement is made and entered with respect to the following facts:

A. Employer is a public agency and sanitary district organized and existing under and pursuant to the Sanitary District Act of 1923 (California Health and Safety Code § 6400 et seq.).

B. Employer desires to retain Employee as its Interim General Manager beginning *January 31, 2022* subject to the following terms and conditions.

C. Employee desires to accept such employment subject to the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises and conditions in this Agreement, Employer and Employee agree as follows:

1. Employment and Title. Employer hereby hires Employee as its Interim General Manager beginning *January 31, 2022*. Employee accepts such employment subject to the terms and conditions of this Agreement.

2. Term of Employment. The term of this Agreement shall commence on *January 31, 2022*, and shall continue until District hires a permanent General Manager or until it is terminated by either party as hereinafter provided.

3. Duties. Employee shall serve as Employer's Interim General Manager, shall perform the duties described in the job description attached as Exhibit A to this Agreement, and shall be subject to the policies, restrictions and directions provided by Employer's Board of Directors from time-to-time and subject to the consent of said Board of Directors. Employer specifically reserves management and control of all aspects of the District and its business. Employee acknowledges that the position of Interim General Manager is a position of high visibility before the public. Employee shall conduct himself before the public, both during and outside of regular working hours, in a manner that reflects favorably upon Employer. The District shall, at District expense, supply Employee with sufficient personnel and equipment to allow Employee to perform Employee's duties and obligations under this Agreement, including without limitation a cellphone and laptop computer for Employee's use while performing the services under this Agreement.

4. Compensation. In consideration of Employee's performance of the foregoing duties, Employer shall compensate Employee as noted below, unless and until this Agreement is terminated as hereinafter provided. Employee is a California Public Employees Retirement System (CalPERS) annuitant. It is anticipated that Employee will continue to be a retired CalPERS annuitant subject to all CalPERS laws, rules, regulations and restrictions applicable to retired CalPERS annuitants.

Compensation and Benefits

Employee shall receive the following salary for services provided under this Agreement while Employee remains a retired CalPERS annuitant:

a. Hourly Compensation

District shall pay Employee at the rate of **\$125.16** for each hour of service Employee provides to the District until Employee is reinstated to active CalPERS service. This hourly rate is calculated in accordance with CalPERS regulations as follows: \$260,329./2080 hrs. = \$125.16 (rounded). Employee's compensation shall be payable biweekly (every other week) at the same time as all District employees receive their regular paychecks. Employee shall not be entitled to receive payment or credit for, and District shall not pay or credit Employee for, overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement.

b. Employee Benefits

The status of Employee's principal as a retired CalPERS annuitant precludes Employee from receiving any benefits, incentives, compensation in lieu of benefits or other form of compensation in addition to hourly pay. Therefore, while Employee remains a retired CalPERS annuitant, Employee shall receive no benefits, incentives, compensation in lieu of benefits or other form of compensation in addition to hourly pay under this Agreement.

c. Deferred Compensation Plan

As of the date of this Agreement, the District provides a Deferred Compensation Plan pursuant to an agreement or agreements with financial institution(s) qualified to provide such plans under applicable provisions of the Internal Revenue Code. Subject to the terms and conditions of such agreement(s) and the Deferred Compensation Plan thereby established, the District and Employee acknowledge that Employee shall be eligible to participate in said plan while serving as Interim General Manager. All contributions to that Plan shall be made by Employee.

d. Expense Reimbursement

Subject to the policies, restrictions and direction of the District, the District shall pay or reimburse Employee for all reasonable expenses incurred by the Employee in the performance of Employee's duties and obligations pursuant to this Agreement including, without limitation, reimbursement of Employee's personal vehicle expenses, based on actual mileage for such use, payable at the rate established by the United States Internal Revenue Service.

e. No Other Benefits.

Except as expressly provided in this Agreement, Employee shall not be entitled to enjoy or be paid for any other benefits available to other employees of Employer.

5. At-Will Employment; Termination.

a. It is specifically understood and agreed that Employee serves at the pleasure of Employer's Board of Directors. This Agreement and the relationship hereby created may be terminated at any time at the will of Employer, in its sole discretion, with or without cause, subject

to the following provisions of this paragraph.

b. Unless Employer terminates Employee for cause as defined below, if Employer determines to terminate Employee, Employer will first provide Employee with written notice of its decision to terminate or not to further retain Employee. Employer shall not be required to state any reasons for its decision to terminate Employee or not to further extend Employee's employment in said written notice or otherwise. Said written notice shall provide either (A) that Employee's employment and this Agreement shall expire one month after provision of said written notice to Employee, or (B) that Employee's employment and this Agreement are terminated immediately upon provision of said written notice. If said written notice provides that Employee's employment and this Agreement shall expire one month after provision of said written notice to Employee, then during said one month period, Employer shall pay Employee the hourly rate in effect for all hours worked in that ensuing month. Employer shall have the right, in its discretion, to decide whether to terminate Employee's employment and this Agreement on one month written notice or immediately as aforesaid. If requested by Employer, Employee shall continue to perform the duties of Employer's Interim General Manager until the effective date of termination. If Employee is terminated for cause, Employee's employment and this Agreement will be terminated effective immediately and Employee shall receive pay only through the effective date of termination. As used in this agreement, "cause" shall include but not be limited to gross insubordination, dishonesty, embezzlement, violation of State or local requirements pertaining to conflicts of interest or otherwise, or the conviction of a felony or any offense involving a violation of his duties as General Manager.

c. Employee may terminate this Agreement and resign his employment at any time, for any reason, upon one month prior written notice to Employer. This Agreement and Employee's employment shall terminate upon the expiration of the month after Employer's receipt of such written notice. Once Employee gives Employer such written notice, Employee shall not have the right to rescind it without an affirmative vote of the majority of Employer's elected directors in office as of the date Employee requests, in writing, that said written notice be rescinded. Upon receipt of Employee's written notice of resignation and termination of this Agreement, Employer shall have the right to immediately remove Employee from his position as Interim General Manager, or to permit Employee to remain in the position of Interim General Manager for all or any part of the one-month notice period. If Employer elects to immediately remove Employee from his position as Interim General Manager, or to remove Employee from his position as Interim General Manager before the expiration of the one-month notice period, then Employer shall pay Employee the hourly rate in effect for all hours worked in that ensuing period. If Employer requests that Employee continue to perform the duties of Interim General Manager during the one-month notice period and Employee fails or refuses to do so, then Employee shall receive no compensation after the last date upon which Employee actually performs the duties required of him as Interim General Manager pursuant to this Agreement.

6. Employer Property. All correspondence, memoranda, records, files, plans, papers, notes, notebooks, reports, manuals, ideas, intellectual property, trademarks, copyrights, patents, computer software or hardware and other materials (regardless of their form) that Employee receives, creates or produces in connection with this Agreement or with Employee's employment by Employer shall be and remain the exclusive property of Employer. Employee shall immediately deliver all originals of any such materials or matters that are either in Employee's possession or under Employee's control to Employer upon termination of this Agreement or upon request of any officer of Employer. In addition to the foregoing, immediately upon termination of Employee's employment, Employee shall cease using and shall surrender to Employer any vehicle provided for Employee's use pursuant to this Agreement, all keys thereto, all keys to Employer's building, all methods of gaining access to Employer's premises, property

or information, all cellular telephones and radios and all other property of Employer. The foregoing notwithstanding, Employee shall be permitted to retain copies of records prepared by Employee that would be available to any member of the public pursuant to a bona fide request under the Public Records Act, Government Code Section 6250 et seq.

7. **Time And Attention.** Subject to any restrictions upon CalPERS annuitants ~~before Employee is retroactively reinstated to active CalPERS service,~~ Employee agrees to devote sufficient, attention and energy to the performance of his duties under this Agreement, subject to the direction and control of District.

8. **Assignment.** This Agreement is personal in nature and the parties hereto shall not assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

9. **Attorney's Fees.** If any arbitration, or any action at law or in equity, including but not limited to an action for declaratory relief, is brought between the parties to this Agreement, each party will pay their own attorney expenses.

10. **Entire Agreement.** This Agreement supersedes any and all other agreements and amendments to agreements, either oral or in writing, between the parties hereto with respect to the relationship between Employer and Employee, and contains all of the covenants and agreements between them with respect to that relationship. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

11. **Modification.** Any modification of this Agreement will be effective only if it is in writing and signed by Employer and Employee.

12. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

13. **Law Governing.** This Agreement shall be governed and construed in accordance with the laws of the State of California. Jurisdiction for any dispute arising out of or relating to this Agreement shall be exclusively with the Superior Court of the State of California. Venue for any such dispute shall be exclusively within Marin County, California. Any dispute between the parties that relates to or arises from this Agreement shall be resolved within the County of Marin, California, by an arbitrator or arbitrators selected or appointed from the list of arbitrators of the Superior Court of California, County of Marin, or by an independent hearing officer hired through the Marin County, California branch office of the Judicial Arbitration and Mediation Service (JAMS).

14. **Headings.** The headings used throughout this Agreement are used for convenience of reference only and shall not in any way limit or be deemed to construe or interpret the provisions of this Agreement.

15. **Cooperation.** Each party hereto agrees to execute and deliver any documents and to take any other actions that may be reasonably requested by the other party to accomplish the purposes of this Agreement.

16. **Waiver of Breach.** No waiver of any breach of this Agreement shall be effective unless in writing and no waiver shall constitute a waiver of any subsequent breach.

17. **Indemnification.** Pursuant to the requirement of the California Government Code, including but not limited to Sections 825, 995, 995.2, 995.8 and 996.4, as amended from time to time, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim and demand or other claim or legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of Employee's duties as Interim General Manager. Said defense shall be provided by Employer until such time as all legal action on the matter is concluded.

Date: _____

LAS GALLINAS VALLEY SANITARY DISTRICT

Judy Schriebman, President of the Board

Date: _____

Chris DeGabriele, Interim General Manager

RESOLUTION NO. 2022-2236

**RESOLUTION OF BOARD OF DIRECTORS OF LAS GALLINAS VALLEY
SANITARY DISTRICT APPOINTING CHRIS DEGABRIELE AS
AN INTERIM GENERAL MANAGER
Government Code Section 21221(h)**

LAS GALLINAS VALLEY SANITARY DISTRICT

WHEREAS, Government (Gov.) Code section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the General Manager position at the Las Gallinas Valley Sanitary District ("District") became vacant on November 18, 2021; and

WHEREAS, the Las Gallinas Valley Sanitary District Board of Directors ("Board") desires to appoint Chris DeGabriele as an interim appointment retired annuitant to this vacant position of General Manager for the District under Gov. Code section 21221(h), effective January 31, 2022 and

WHEREAS, the Board, the District and Chris DeGabriele certify that Chris DeGabriele has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, an appointment under Gov. Code section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

WHEREAS, an active recruitment began on December 10, 2021 with the announcement of and publication of a Request for Proposals for Executive Search Services to identify potential candidates for the position of the General Manager; and

WHEREAS, this Gov. Code section 21221(h) appointment shall only be made once to fill this vacant position and therefore will end on upon the District hiring of a permanent General Manager or until it is terminated by either party; and

WHEREAS, the entire employment agreement, contract or appointment document between Chris DeGabriele and the District has been reviewed by this body and is attached herein; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for this position is \$21,694 per month and the hourly equivalent is \$125.16 the minimum base salary for this position is \$21,694 per month and the hourly equivalent is \$125.16 as reflected on the Salary Pay Schedule of the District; and

WHEREAS, the hourly rate paid to Chris DeGabriele will be \$125.16 per hour; and

WHEREAS, Chris DeGabriele has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW THEREFORE IT IS HEREBY RESOLVED that the Las Gallinas Valley Sanitary District hereby certifies the nature of the employment of Chris DeGabriele as described herein and detailed in the attached employment agreement document and that this appointment is necessary to fill the critically needed position of General Manager for the Las Gallinas Valley Sanitary District by January 31, 2022 because there is a need to fill the vacant position to prevent stoppage of public business while the executive search is underway.

* * * * *

I hereby certify that the forgoing is a full, true and correct copy of a resolution duly and regularly passed and adopted by the Sanitary Board of the Las Gallinas Valley Sanitary District, Marin County, California, at a meeting thereof held on January 20, 2022, by the following vote of the members thereof:

- AYES, and in favor thereof, Members:
- NOES, Members:
- ABSTAIN, Members
- ABSENT, Members:

Teresa Lerch, District Secretary
Las Gallinas Valley Sanitary District

APPROVED:

Judy Schriebman, Board President
Las Gallinas Valley Sanitary District

(SEAL)