

**AGREEMENT  
BETWEEN THE MARINA COAST WATER DISTRICT  
AND BRIAN LEE  
FOR EMPLOYMENT AS INTERIM GENERAL MANAGER**

This Agreement is entered as of August 5, 2013 by and between the Marina Coast Water District (“District”), and Brian Lee, an individual (Lee and/or “Interim General Manager”). The District and the Interim General Manager are sometimes individually referred to as a “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

WHEREAS, the District is a political subdivision of the State of California formed and existing pursuant to the County Water District Law, California Water Code Sections 30000 and following;

WHEREAS, the District desires to employ Lee to serve as the Interim General Manager of the District; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions contained in this Agreement, the Parties agree as follows:

**AGREEMENT**

**1. EMPLOYMENT OF THE INTERIM GENERAL MANAGER.**

The District, consistent with the provisions of California Water Code Section 30540, appoints and employs, effective June 1, 2013 (“the Appointment Date”), Lee as its Interim General Manager, and Lee hereby accepts such employment. During the term of employment, Lee shall not undertake any employment other than as Interim General Manager for the District.

**2. COMMITMENTS OF THE PARTIES.**

**A. Interim General Manager Commitments.**

**(1) Duties and Authority.**

- (a) The Interim General Manager shall have those powers and perform all of the duties of the General Manager as set forth in the California Water Code, Sections 30580 and 30581, and District policies and procedures approved by the District’s Board of Directors (“Board”) from time to time.

Water Code Section 30540 authorized and requires the District to appoint a General Manager and a Secretary. Section 30542 provides that the General

Manager and the Secretary shall each receive the compensation determined by the Board and shall serve at the Board's pleasure. Section 30543 provides that the same person be appointed the General Manager and Secretary. Section 30545 provides that the General Manager and the Secretary shall give a bond to the District conditioned for the faithful performance of his/her duties as the Board may provide. Pursuant to Section 30579, the duties of the Secretary are to countersign all contracts on behalf of the District and to perform other duties imposed by the Board. Pursuant to Sections 30580 and 30581, the duties of the General Manager are to:

1. Have full charge and control of the maintenance, operations, and construction of the waterworks and waterworks system of the District;
2. Have full power and authority to employ and discharge all employees and assistants at his pleasure, for positions approved by the Board;
3. Prescribe the duties of employees and assistants;
4. Fix and alter the compensation of employees and assistants subject to approval by the Board;
5. Perform other duties required by the Board;
6. Report to the Board in accordance with the rules and regulations as the Board adopts.

(b) Lee shall administer and enforce policies established by the Board and promulgate rules and regulations as necessary to implement Board policies and direct the work of all appointive District officers and departments except those that are directly appointed by or report directly to the Board.

(c) Lee shall also serve as District Engineer as defined in the District's Codes, Policies, Standards and Specifications

(2) Hours of Work.

(a) Lee is an exempt, at-will employee expected to engage in those hours of work that are necessary to fulfill the obligations of the Interim General Manager's position. Lee does not have set hours of work as the Interim General Manager and is expected to be available at all times.

(b) It is recognized that the Interim General Manager must devote a great deal of time to the business of the District outside of the District's customary office hours, and to that end the Interim General Manager's schedule of work each

day and week shall vary in accordance with the work required to be performed. Lee shall spend sufficient hours on site to perform the Interim General Manager's duties; however, Lee has discretion over his work schedule and work location.

(3) Disability or inability to perform.

In the event Lee becomes mentally or physically incapable of performing the Interim General Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the Board may terminate Lee from the Interim General Manager position. If the Board does elect to terminate Lee from the Interim General Manager position due to incapacity, Lee shall be reinstated to his previous employment position of District Engineer/Deputy General Manager.

B. District Commitments.

- (1) The District shall provide Lee with the compensation and benefits, as set forth in Agreement Section 3.
- (2) The District shall pay for or provide Lee reimbursement for all actual business expenses and may provide Lee a District credit card to charge legally authorized and necessary District business expenses.
- (3) The District agrees to pay the professional dues or membership dues and subscriptions on behalf of Lee as may be agreed by Lee and the Board
- (4) The District agrees to pay the travel and subsistence expenses of Lee to pursue official and other functions for the District, and meetings and occasions to continue the professional development of Lee, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the Interim General Manager serves as a member, as well as short courses, institutes, and seminars that are necessary for the performance of General Manager duties, subject to annual review by the Board. Travel and subsistence expenses shall be paid per the District's travel and reimbursement policy.

C. Board of Directors Commitments.

- (1) The Board sets policy for the governance and administration of the District, and it implements its policies through the Interim General Manager.
- (2) The Board recognizes that to meet the challenges facing the District they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the Board commits to spending time each year outside of regular

Board meetings to work with the Interim General Manager and staff on creating and revisiting the District's strategic plan, for setting goals and priorities for the District, and to work on issues that may be inhibiting the maximal achievement of District goals. Likewise, each member of the Board will make sufficient time available to the Interim General Manager each month to provide an opportunity to be briefed on District issues.

- (3) The Board agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the Interim General Manager.

D. Mutual Commitment for Annual Performance Evaluation of Interim General Manager.

- (1) The Board shall conduct an evaluation of the Interim General Manager's performance at least once each year. The Board and the Interim General Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year.
- (2) While performance evaluations for the purpose of mid-course corrections may occur several times during the year; the initial annual evaluation shall occur as soon as possible after the anniversary date of the Appointment Date.
- (3) The annual review and evaluation shall be in accordance with specific criteria and performance objectives developed jointly by the Board and the Interim General Manager. These criteria may be developed during strategic planning and/or goal setting workshops or as defined by the Board and the Interim General Manager during the annual evaluation as they mutually determine are necessary for the proper operation of the District for the attainment of the Board's policy objectives. The Board and the Interim General Manager shall further establish a relative priority among those goals and performance objectives. Such criteria may from time to time be added to or deleted as the Board determines in consultation with the Interim General Manager. The Parties may use an outside facilitator paid for by District to assist them in conducting the Interim General Manager's annual performance evaluation.

3. COMPENSATION.

The District agrees to provide the following compensation to Lee:

A. Compensation and Required Employer Costs.

(1) Base Salary.

- (a) The initial salary for the position of Interim General Manager shall be gross

\$15,833.33 per month (\$190,000 per year), subject to all necessary federal and state tax withholdings.

- (b) Lee shall be paid at the same intervals and in the same manner as regular District employees.
  - (c) The District shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of Lee, unless as part of a general District management salary reduction, and then in no greater percentage than the average reduction of all designated management employees.
  - (d) At least annually, the Board may consider an increase to the base salary or any other component of Lee's compensation.
- (2) Required State Costs. The following costs, to the extent they are applicable, shall be borne by the District:
- (a) Unemployment Compensation.
  - (b) California Public Employees Retirement System (CalPERS). The District contracts with the CalPERS for retirement benefits. The District shall pay the same amount of employer and employee contributions to CalPERS as provided for all other designated management employees of the District.
  - (c) The cost of any fidelity or other bonds required by law for the Interim General Manager.
  - (d) The cost to defend and indemnify the Interim General Manager as provided in Agreement Section 7.E.
  - (e) Workers Compensation.

**B. Basic Benefits.**

- (1) Holidays. Lee shall receive the same paid holidays as allocated to miscellaneous general District employees.
- (2) Leave Allowance:
  - (a) Vacation Leave. Lee shall be entitled to vacation leave of 15 days commencing July 1, 2013 and each year thereafter, accrued on an annual basis. Lee shall be allowed to carry over to the next year any unused vacation leave days from the prior year to a maximum carryover of 480 hours. When Lee has reached the

maximum vacation leave carryover of 480 hours, he shall continue to receive vacation leave paid out in cash at the then current base pay equivalent hourly rate, once per year on the first regularly scheduled payday after July 1<sup>st</sup> of that year.

- (b) Sick Leave. Lee shall be entitled to 12 days per year of "Sick Leave" commencing July 1, 2013 and each year thereafter, accrued on an annual basis. Lee shall be allowed to carry over to the next year any unused sick leave days. When Lee has reached a sick leave carryover of 480 hours, he may elect to receive sick leave paid out in cash at 60% of the then current base pay equivalent hourly rate, once per year on the first regularly scheduled payday after July 1<sup>st</sup> of that year.
- (c) Management Leave. Lee shall be entitled to 10 days per year of "Management Leave", accrued on an annual basis. This leave is treated differently than other leave, in that if Lee is unable to use this leave by June 30th of each year, Lee will be compensated for any unused Management Leave at that time. Such compensation shall be based upon the Interim General Manager's base salary identified in Section 3.A.(1)(a).
- (d) Payments upon Resignation or Termination. In the event that Lee's services as the Interim General Manager services are terminated for any reason, Lee shall be compensated for any unused vacation leave and management leave. Such compensation shall be based upon Lee's base salary identified in Section 3.A.(1)(a).

In the event that Lee's services as Interim General Manager services are terminated for any reason, the Interim General Manager shall be compensated for any unused sick leave at 60% of the Interim General Manager's base salary identified in Section 3.A.(1)(a).

Lee may elect to keep a percentage of vacation leave, management leave and sick leave on the books upon termination of his Interim General Manager services.

- (3) Benefits that Accrue to Other Employees. Lee shall be entitled to all compensation benefits, rights, and privileges accorded to District's designated management employees except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for District's designated management employees or other unclassified/miscellaneous employees, this Agreement shall control.
- (4) Automobile Allowance. Lee shall receive an automobile allowance of \$500 per month, payable on the first pay period of each month, which the District reasonably

understands is sufficient to cover the amount expended by Lee for automobile travel expended in the ordinary and necessary conduct of his position.

#### 4. INSURANCE

Lee shall receive the same health, vision, life and AD&D, long term/short term disability, employee assistance program, and dental insurance coverage available to the designated management employees of the District.

#### 5. SEPARATION.

##### A. Resignation.

Lee may resign from the Interim General Manager position at any time and agrees to give the District at least 60 days advance written notice of the effective date of his resignation, unless the Parties mutually agree to other notice.

##### B. Termination.

- (1) The Interim General Manager is an at-will employee serving at the pleasure of the Board.
- (2) The Board may terminate Lee from the position of the Interim General Manager at any time, with or without cause, by a majority vote of its members. Notice of termination or non-renewal of this employment agreement shall be provided to Lee in writing consistent with this Agreement.
- (3) Upon resignation or termination of Lee as Interim General Manager, Lee will be reinstated to his previous employment position of District Engineer/Deputy General Manager as a full time employee at the classification step last occupied by Lee prior to taking on the position of Interim General Manager. Lee's employment as District Engineer/Deputy General Manager shall proceed as if uninterrupted with no break in employment or benefit accrual.
- (4) Given the at-will nature of the position of Interim General Manager, an important element of the employment agreement pertains to termination. It is in both the District's interest and that of the Interim General Manager that any separation of the Interim General Manager is done in a businesslike manner.

C. Payment for Unused Leave Balance.

In the event Lee dies while employed by the District under this Agreement, Lee's beneficiaries or those entitled to Lee's estate, shall be entitled to Lee's earned salary and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

6. GENERAL PROVISIONS.

A. Term.

This contract shall remain in effect until such time that a separation is executed per Section 5 of this contract. Lee's services as Interim General Manager, if needed, that occur after the term of this contract has expired shall extend the term of this contract to cover said services as if no break in the contract has occurred.

B. Provisions that Survive Termination.

Many sections of this Agreement are intended by their terms to survive the Interim General Manager's termination of employment with the District, including but limited to Sections 4, 5.C, and 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments.

The Agreement may be amended at any time by mutual written agreement of the District and Lee.

D. Conflict of Interest.

- (1) The Interim General Manager shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active District employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) The Interim General Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Interim General Manager's District employment.



E. Indemnification.

The District shall defend, save harmless and indemnify the Interim General Manager against any claim or action to the extent required by, and subject to the limitations contained in, Government Code sections 825-825.6 and Government Code sections 995-996.6. The District may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

F. Severability.

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Jurisdiction and Venue.

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue for legal action concerning any aspect of the Agreement in State Court shall be maintained in Monterey County Superior Court and for an action in Federal Court shall be in the United States District Court for the Northern District of California.

H. Entire Agreement.

This Agreement represents the entire agreement of the Parties, which has been jointly drafted by the Parties, and no representations have been made or relied upon except as set forth in this Agreement which may be amended or modified only by a written, fully executed agreement of the Parties.

I. Notice.

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the Interim General Manager or the District shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

If to the District:

President, Board of Directors  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933-2099

If to the Interim General Manager:

Brian Lee  


\* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate at Marina, California, as of the date set forth above.

MARINA COAST WATER DISTRICT

INTERIM GENERAL MANAGER

By: \_\_\_\_\_  
Thomas P. Moore, President  
Marina Coast Water District Board of Directors

\_\_\_\_\_  
Brian Lee

ATTEST:

\_\_\_\_\_  
District Clerk