

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT
MANAGER OF SOUTH BAYSIDE SYSTEM AUTHORITY**

THIS AGREEMENT made and entered into as of February 14, 2008 by and between the **SOUTH BAYSIDE SYSTEM AUTHORITY**, a California public entity ("Authority"), and **DANIEL T. CHILD** ("Manager");

WITNESSETH:

WHEREAS, Authority is a public entity established by Joint Exercise of Powers Agreement entered into by and among the Cities of Belmont, San Carlos and Redwood City and the West Bay Sanitary District (formerly, the Menlo Park Sanitary District), California, dated as of November 13, 1975 and thereafter amended (collectively, with amendments, "Joint Powers Agreement"); and

WHEREAS, the Commission of the Authority ("Commission") appointed Daniel T. Child as Manager of the Authority pursuant to Section 3.5 of the Joint Powers Agreement effective April 3, 2006; and

WHEREAS, that certain agreement entitled, "Employment Agreement – Manager of South Bayside System Authority," dated as of March 28, 2006 ("Initial Agreement") established the terms and conditions of Manager's employment by the Authority; and

WHEREAS, the parties desire to restate and amend the Initial Agreement as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

1. Initial Agreement Superseded. The Initial Agreement is hereby restated, amended, superseded and replaced by this Agreement.

2. Manager's Duties and Responsibilities. Manager shall perform the duties, carry out the responsibilities and have the rights and privileges, express and implied, of the Manager of Authority pursuant to Section 3.5 of the Joint Powers Agreement and shall perform such other lawful duties and responsibilities consistent with said Section as may from time to time be assigned by the Commission.

3. Employment Date. Manager's employment commenced 12:01A.M., P.S.T., April 3, 2006 ("Employment Date"). Without limitation, implied or express references herein to time of employment shall be measured from the Employment Date.

4. Compensation. Manager's salary shall be established by resolution of the Commission in accordance with Section 12 of Resolution SBSA No. 77-6, the "SBSA Personnel Resolution," as amended, subject to adjustments following performance reviews as hereinafter provided. Manager's compensation shall also include the benefits described in Paragraph 5 and the In Lieu Salary defined and described in Paragraph 12 (Lease-Back) hereof.

5. Benefits. Manager shall receive employment benefits including, without limitation, paid administrative leave, health, dental and life insurance and deferred compensation in accordance with the benefits provided to those officers and employees defined as "Management Employees" in the SBSA Personnel Resolution, as said definition may from time to time be amended or superseded.

Notwithstanding the foregoing, Manager shall be entitled to four (4) weeks of vacation leave per year during the first through fifth years of employment and five (5) weeks vacation leave per year commencing with the sixth year of employment.

Further, Authority shall pay 100% of Manager's member contribution to the California Public Employees' Retirement System ("PERS") together with the employer's contribution. Upon retirement from employment with the Authority, Manager and his dependents shall be entitled to medical insurance coverage, substantially equivalent to the Kaiser Family Coverage in effect upon the date of this Agreement, the premiums for which shall be paid by Authority from and after Manager's retirement from SBSA and for the remainder of Manager's life.

6. Vehicle. Authority shall provide Manager with a passenger vehicle primarily for use on Authority's business; provided that business and personal usage shall be accounted for income tax purposes in accordance with pertinent federal and state income tax regulations.

7. Performance Reviews; Compensation Adjustments. The Commission shall review Manager's job performance annually on or about successive Anniversary Dates, the first of which Anniversary Date occurred under the Initial

Agreement upon the expiration of six (6) months next following the Employment Date. Said reviews shall not unreasonably be delayed. Manager shall be entitled to participate in all such reviews. The reviews shall include consideration by the Commission of adjustments to Manager's compensation, but the Commission shall not be obligated to approve an, or any, adjustment. Adjustments to compensation shall be made in open session of the Commission. "Compensation" herein includes salary, benefits and In Lieu Compensation (defined in Paragraph 12 as Rent Equivalent under the Lease therein provided). The next review date occurring after the date of this Agreement shall be on or about September 1, 2009, prior to which time a salary survey of San Francisco Bay Area wastewater public agency managers shall be conducted. Contingent on satisfactory performance and approval of the Commission, the Manager's base salary then shall be established at not more than 5% less than the second highest salary in the survey, effectively establishing Manager's base salary as the third highest of wastewater agency managers in said Bay Area.

8. Status. Manager shall serve at the pleasure of the Commission, subject to the terms and conditions hereof, and shall not acquire a property interest in employment or a right to continuing employment with Authority. Manager's employment with Authority is expressly limited by, and subject to, the terms and conditions of this Agreement and Manager shall not acquire nor accrue any employment rights or benefits not expressly provided or referenced herein.

9. Termination. Manager may terminate his employment and this Agreement without cause upon giving the Commission not less than thirty (30) days' prior written notice thereof. Authority may terminate Manager's employment and this Agreement without cause upon giving Manager written notice thereof, which notice shall specify the date that Manager shall vacate the Office of Manager and cease performing duties as such ("Vacancy Date"), which date shall not exceed thirty (30) days from the date of the notice; provided, that if no date is so specified, the Vacancy Date shall be the date of the notice. In the event of termination without cause, the effective date of termination ("Termination Date") shall be twelve (12) months from the Vacancy Date. From and after the Termination Date all rights and

obligations of the parties hereto shall thereupon cease, except as to those which may have accrued or have been incurred prior to the Termination Date or expressly survive termination.

If Authority terminates Manager's employment without cause, Manager shall be compensated for severance pay in the form of paid administrative leave (or such other form as the attorney for the Authority shall approve that provides severance pay equivalent in value to that hereinafter specified) from and after the Vacancy Date to the Termination Date calculated at Manager's basic salary (but not including In Lieu Salary) in effect upon the Vacancy Date and payable over the immediately following twelve (12) - month period at the same time as other Management Employees are paid their salaries, less all mandatory payroll deductions.

In the event Manager's employment is terminated for cause, Manager shall receive no compensation beyond the date of termination or other compensation except as may be required by law for certain accrued benefits. The provisions of this Paragraph 9 shall not be deemed a limitation upon termination for cause or upon such other rights or remedies of the parties which may accrue to them, respectively. "Cause" in the context of termination of employment means gross negligence, gross insubordination, conviction of a felony, conduct unbecoming employment with the Authority, professional misconduct that reflects adversely upon the Authority or a material breach of the conditions and covenants of the lease granted under Paragraph 12.

10. Outside Activities. Manager's employment hereunder shall be Manager's sole and full-time employment. However, in light of the indirect benefits to Authority and the communities comprising Authority's service area through participation in activities not necessarily directly related to employment, Manager may elect to accept limited teaching, consulting or other business opportunities; provided, that such activities shall not interfere with Manager's responsibilities and obligations as Manager of the Authority and do not constitute a conflict of interest therewith. Manager shall keep the Commission informed of such activities.

11. Sale/Purchase of Residence. (a) Authority's and Manager's Property Interests. The parties acknowledge that, pursuant to Paragraph 12 of the Initial

Agreement, Authority provided Manager a one-time non-interest bearing lump-sum payment in the amount of fifty percent (50%), but not exceeding \$750,000, toward the purchase price a single family residence, under which Authority acquired an equitable interest and Manager a fee interest in the property. The property so acquired is located at 551 Highland Avenue, Half Moon Bay, County of San Mateo, California, and is more particularly described in Exhibit "A" hereof, incorporated herein. The parties hereby provide for Authority's acquisition of fee title to the Residence and a lease-back thereof to Manager, subject to the terms and conditions of Paragraphs 11 and 12.

(b) Sale/Purchase. Manager hereby agrees to sell to Authority and Authority hereby agrees to purchase from Manager the aforesaid property, including all structures, improvements, fixtures, accessories and appurtenances thereon and thereto (collectively, "Residence"). Transfer of title shall be by grant deed conveying fee title to Authority duly executed by Daniel T. Child and Lisa D. Child, husband and wife (or as otherwise described in the deed by which Manager and his spouse acquired title to the Residence), in form subject to the approval of Authority's attorney.

(c) Purchase Price. The total purchase price upon closing shall be the sum of the principal balance then remaining on Manager's promissory note for purchase of the Residence ("Note"), plus reimbursement for down payment on purchase of the Residence (payable by the Authority under the Initial Agreement), In addition Manager shall be reimbursed for Manager's monthly payments of principal and interest on the Note (\$4,256.81 per month) from April 1, 2007 prorated to closing, plus reimbursement for Manager's payment of property taxes from April 1, 2007 prorated to closing. By way of example, only, the estimated purchase price, calculated for a closing date of March 1, 2008, would be: \$710,000.00 (estimated principal balance remaining on Note) + \$9,180.00 (estimated down payment reimbursement) + \$46,824.91 (estimated reimbursement for principal and interest paid on the Note from the April 1, 2007) + \$13,597.32 (estimated reimbursement for property taxes from April 1, 2007) = \$779,602.23. The parties acknowledge that the foregoing formula and calculation take into account and credits Authority for its

contribution to the purchase price of the Residence under the Initial Agreement and that Authority's equitable interest acquired under the Initial Agreement shall become merged with, and extinguished by, Authority's acquisition of fee title. Authority hereby acknowledges that the purchase price, calculated aforesaid, is the fair market value of the Residence.

(d) Payment. The purchase price shall be deposited in escrow opened for the purchase and lease-back (hereinafter described) in a lump sum amount with no financing to be carried by Manager.

(e) Title Insurance. Authority shall acquire title insurance in its own name upon closing. Authority shall acquire title to the Residence free and clear of all encumbrances except easements, assessments or other encumbrances of record that are approved by Authority. Upon closing, Authority shall notify the County of San Mateo of its acquisition of title for property tax exemption purposes.

(f) Escrow. Authority shall open an escrow account for the sale/purchase of the Residence with a title company of its choosing. The parties shall jointly or by separate documents provide instructions to the escrow officer conforming to the provisions of this Paragraph 11. A certified copy of this agreement shall also be deposited in escrow.

(g) Closing. The sale shall be closed and the deed delivered within sixty (60) days from the date of this Agreement, except that Manager shall have a reasonable length of time within which to perfect title or cure defects in the title, if necessary.

12. Lease - Back. (a) Lease. Subject to the terms and conditions hereof, Authority does hereby lease, let and demise the Residence to Manager and Manager does hereby lease, hire and take the Residence from Authority.

(b) Term. The Term of the lease shall be deemed to have commenced upon April 1, 2007 and shall expire upon Manager's termination of employment with Authority, irrespective of whether such termination is with or without cause; provided, that the initial term shall not exceed ten (10) years; provided further, that if not sooner terminated, the initial term shall automatically be renewed for an additional ten (10) years, the intent of the parties being to avoid ambiguity or uncertainty in expressing the term. Upon expiration of the initial or extended lease term, or earlier

termination of the lease, Manager's tenancy hereunder shall be on a month-to-month basis, not to exceed three (3) months.

(c) Rent Equivalent. Rent payable to Authority by Manager hereunder shall be calculated as a "Rent Equivalent" equal to the amount that Authority's Commission has approved as an increase in Manager's compensation for the year specified hereinafter, which amount shall be credited monthly to Manager as rental for the Residence. Manager acknowledges and agrees that the Rental Equivalent represents income in lieu of an increase in salary ("In Lieu Compensation") corresponding to the years specified. From and after April 1, 2007 the monthly Rent Equivalent (In lieu Compensation) shall be, and is, \$3,000.00, which amount shall remain in effect unless adjusted pursuant to Paragraph 7.

(d) Use. The Residence shall be used and occupied by Manager and his immediate family as Manager's principal residence and domicile. Manager shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Residence.

(e) Condition of Residence. Manager acknowledges and warrants that, by continuing to reside in the Residence under this lease upon close of the escrow described in Paragraph 11, Manager is fully aware of the condition of the Residence and that it is in good order and repair and in a safe, clean and tenantable condition. Manager, having examined the Residence and continuing to reside therein, further warrants that the Residence has no structural defects or other deficiencies that require repairs, remodeling, replacement or refurbishing for which Authority, upon the date of this Agreement or upon the commencement of the term of this lease, would be responsible.

(f) Maintenance. Manager shall be responsible for minor maintenance items of the Residence that cost less than \$250.00 per occurrence, but shall not incur more than \$1,000.00 per year aggregate costs for such maintenance. Authority shall either reimburse Manager for maintenance expenses that exceed \$250.00 per occurrence or that exceed the \$1,000.00 aggregate cost per year limit, or Authority shall provide for such maintenance directly. Except for emergency situations,

Manager shall seek Commission approval prior to expending funds in excess of \$2,500.00 for any repair or maintenance item. Manager shall inform the Commission of any necessary maintenance due to normal wear and tear or other maintenance requirements as they occur for which Authority is obligated to pay. Manager shall be fully responsible for, and pay the full cost of, any maintenance, repairs, remodeling, or other work above and beyond that necessitated by normal wear and tear, or caused by Manager's or Manager's dependants' sole negligence, willful misconduct or intentional abuse of the Residence.

(g) Insurance. Manager shall obtain and maintain, so long as this lease shall remain in effect, tenant's insurance providing coverage against personal liability, premises medical coverage, additional living expense, and personal property (contents) coverage and including property coverage for improvements made by or for Manager, with limits of not less than \$1,000,000.00 for personal liability and premises medical coverage and \$500,000.00 for property coverage. Said insurance shall name Authority, its member agencies and the respective governing bodies, officers, employees, agents and consultants of Authority and its member agencies as additional insureds. The insurance shall be subject to approval of Authority's attorney as to form.

Authority shall obtain and maintain owner's or landlord's insurance for the Residence in coverage and amount(s), or by self-insurance, as Authority shall determine.

(h) Indemnification. Authority shall not be liable for any damage or injury to Manager, Manager's family, guests, invitees, agents or employees, or to any person entering the Residence, or to goods or equipment in or on the Residence, or to any improvements, fixtures, accessories and appurtenances thereto; and Manager hereby agrees to indemnify, defend and hold Authority, its member agencies and the respective governing bodies, officers, employees, agents and consultants of Authority and its member agencies (collectively, "Indemnitees"), harmless from any and all claims, actions or assertions of every kind and nature, arising out of or related to this lease or Manager's occupancy or possession of the Residence,

except claims, actions or assertions arising from the sole negligence or willful misconduct of Indemnitees.

(i) Default. Upon failure of Manager to comply with any of the material provisions of this Lease, other than the covenant to pay rent, or failure to comply with any duties imposed on Manager as lessee by statute (collectively, "Default") within ten (10) days after delivery of written notice by Authority specifying the Default and giving notice of intention of Authority to terminate this Lease by reason thereof, Authority may terminate this Lease. Manager's Default under this lease shall be grounds for termination of employment with Authority for cause.

(j) Abandonment. If at any time during the term of this lease Manager abandons the Residence or any part thereof, this lease shall terminate and Authority may reenter and obtain possession of the Residence or otherwise obtain possession of the Residence in the manner provided by law, and without becoming liable to Manager for damages or for any payment of any kind. Upon abandonment of the Premises by Manager and reentry and possession of the Residence by Authority, any personal property belonging to Manager and left in or on the premises shall be deemed also to have been abandoned, in which case Authority may dispose of all such personal property in any manner Authority shall deem proper without any liability for doing so.

(k) Non-waiver. The waiver, election or non-election by Authority of any provision, remedy or right of Authority under this lease shall not be deemed a continuing waiver and shall not relieve Manager of Manager's duties and liabilities hereunder.

(l) Provisions Survive. The provisions of this Paragraph 12 shall survive termination or other cessation of Manager's employment with Authority and termination of this Agreement to the extent necessary to effectuate the purposes of the lease provisions contained herein.

(m) Successors. The provisions of this Paragraph 12 shall be binding upon and inure to the benefit of the successors, administrators, executors and assigns of the parties.

13. Relocation. Authority reserves the right to require Manager to relocate his residence at the convenience of Authority, in which case Authority shall provide Manager with a residence substantially equivalent in size and quality to the Residence hereinabove acquired by Authority and leased-back to Manager and shall pay all reasonable moving costs incurred by Manager. Further, Manager may propose to the Commission that his residence should be relocated, and if the Commission approves said proposal, Manager shall pay all reasonable moving costs incurred by Manager. In the event of relocation, the parties shall, by amendment or supplement to this Agreement, provide for the terms and conditions of the lease by Manager of said relocated residence.

14. Non-Assignability. Manager shall not sub-contract, assign, sell, mortgage, hypothecate, or otherwise transfer Manager's interests, rights, duties or obligations hereunder in any manner without the express prior written consent of Authority.

15. Amendments; Supplements. The provisions of this Agreement may be amended or supplemented by written agreement approved in the same manner as the initial Agreement.

16. Integration. This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties regarding said subject.

17. Captions. Paragraph and subparagraph headings used in this Agreement are for convenience only, are not part of this Agreement and shall not be used in construing this Agreement.

18. Governing Law. This Agreement shall be construed in accordance with, and the performance of the parties governed by, the laws of the State of California.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first hereinabove written.

SOUTH BAYSIDE SYSTEM AUTHORITY, a
California public entity

By: 
Jeff Ira, Chair

Attest:

By: 
Secretary

MANAGER

By: 
Daniel T. Child

EXHIBIT A

The land referred to is situated in the County of San Mateo, City of Half Moon Bay, State of California, and is described as follows:

Lots 11 and 12, Block 6, as designated on that certain Map entitled, "Map of Highland Park, San Mateo County, California", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California, on January 15, 1906, in Book B of Maps, at Page 2, and copied into Book 4 of Maps, at Page 4.

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