

**DESERT WATER AGENCY
FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT**

This Fourth Amendment to Employment Agreement (this "Fourth Amendment") between the DESERT WATER AGENCY (the "Agency") and MARK S. KRAUSE ("General Manager – Chief Engineer") is entered into this ____ day of March 2018.

Except as modified in this Fourth Amendment and the preceding First Amendment, Second Amendment, and Third Amendment, the underlying Employment Agreement originally dated December 2015 ("Agreement") between the Agency and the General Manager – Chief Engineer shall remain in full force and effect.

The parties to this Fourth Amendment agree to the following changes:

Section 4.1 entitled "Salary and Expenses" is hereby amended to reflect a 4% merit increase:

"Section 4. Salary and Expenses.

4.1 Board of Directors agrees to pay the GM-CE for his services rendered a base salary of Twenty One Thousand, Eight Hundred and Thirty-Six Dollars and Sixty Cents (\$21,836.60), effective January 30, 2018 per month in installments at the same time as other employees of the Agency are paid. The base salary will be adjusted annually by the same percentage adjustment provided to all Agency employees for changes in the cost of living, if any.


In addition, the Board shall have the right to grant merit increases as the Board deems appropriate, in its discretion. The GM-CE will be eligible for a discretionary annual incentive award not to exceed ten percent (10%) of his total annual base salary based on the results of his annual performance evaluation. The incentive may be based, in part, on the accomplishment of specific goals set by the Board of Directors that are achieved by the GM-CE. Any performance incentive awarded under this section shall be in a lump sum payment, subject to all legally required wage and employment deductions. Notwithstanding the above, the issuance of any incentive awards is at the sole discretion of the Board of Directors. Any performance pay awarded under this Section shall not become a part of the GM-CE's established base salary going forward.

...

The Agency and the General Manager – Chief Engineer have duly executed this Fourth Amendment as of the date first written above.

DESERT WATER AGENCY

MARK S. KRAUSE

By: 

President, Board of Directors

By: 

**Desert Water Agency
2018 Management Salary Schedule**

MANAGEMENT SALARY SCHEDULE (MONTHLY)					
EFFECTIVE 07/01/18					
POSITION	Step 1	Step 2	Step 3	Step 4	Step 5
General Manager	n/a	n/a	n/a	n/a	22,688
Assistant General Manager	15,911	16,705	17,540	18,421	19,340
Finance Director	15,157	15,911	16,705	17,540	18,421
Human Resources Manager	10,481	11,004	11,562	12,156	12,768

Salary schedule reflects 3.9% Cost of Living Adjustment.

 6/22/18

**EMPLOYMENT AGREEMENT BETWEEN
DESERT WATER AGENCY AND MARK S. KRAUSE**

This EMPLOYMENT AGREEMENT (“Agreement”) is made by and between MARK S. KRAUSE (“General Manager – Chief Engineer”) and the Board of Directors of the DESERT WATER AGENCY, a local governmental entity (“Agency”), hereinafter also referred to as “Board of Directors.” The Parties hereto agree as follows:

Section 1. Employment.

1.1 The Board of Directors agrees to employ said MARK S. KRAUSE as General Manager – Chief Engineer (“GM – CE” or “Krause”), and he agrees and does accept employment as GM-CE upon the terms and conditions set forth herein.

1.2 GM-CE agrees to perform the functions and duties of GM-CE as may be established or directed by the Board of Directors. GM-CE agrees to perform all such functions and duties to the best of his ability and in an efficient and competent manner.

Section 2. Term of the Agreement.

2.1 This Agreement shall be for an initial term of five (5) years, beginning January 30, 2016 and ending January 29, 2021. Subject to the Agency’s right to terminate this Agreement and GM-CE’s employment at any time pursuant to Section 3 of this Agreement, this Agreement shall automatically be renewed for subsequent three (3) year periods unless the Agency provides written notice to the GM-CE no less than eighteen (18) months prior to the expiration of the current term or an extended term that the Agreement will be terminated. Unless otherwise provided for by a subsequent written agreement between the Parties, the terms and conditions of this Agreement shall apply to any extended term of this Agreement.

2.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board of Directors to terminate the services of GM-CE at any time, subject only to the provisions set forth in this Agreement.

2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the GM-CE to resign at any time from his position with the Agency, subject only to the provisions set forth in this Agreement.

2.4 GM-CE agrees to remain in the exclusive employment of the Agency during the term of this Agreement, and he shall neither accept other employment nor become employed by any other person, business, or organization during the term of this Agreement. As used in this section, the term “employed” shall not be construed to include occasional teaching, writing, or consulting on GM-CE’s time off, which may be undertaken by the GM-CE , provided they are conducted with persons, businesses, or organizations not within the agency service area.

Section 3. Termination and Severance Pay.

3.1 GM-CE serves at the will and pleasure of the Board of Directors and may be terminated with or without cause at any time. Consequently, nothing in this Agreement shall in any way affect the Board of Director's right to terminate the employment of GM-CE and this Agreement on an at-will basis, with or without cause, at any time, as provided herein. The Parties agree that the GM-CE is at will and shall not have appeal or so-called *Skelly* rights related to his employment.

3.2 This Agreement shall automatically terminate upon Employee's death, retirement, unforeseen extended unavailability (defined as six months), or permanent incapacity from being able to perform the essential functions of the General Manager position with reasonable accommodation.

3.3 In the event that GM-CE and this Agreement are terminated without cause, Agency agrees to provide GM-CE with severance pay in a lump sum cash payment equal to eighteen (18) months base salary, less wage and employment deductions required by law, (2) final pay cashing out the value of unused attendance bonus plan, vacation, and floating holidays, and (3) continuation of health benefits for nine months or until the GM-CE finds other employment that provides health benefits, whichever occurs first. These terms are subject to reduction as required by Government Code sections 53260, *et seq.* Thus, notwithstanding the above, in no event shall the total cash value of the severance pay exceed the value of the base salary for the remaining unexpired effective term of this Agreement, nor may the continuation of health benefits exceed the remaining unexpired effective term of this Agreement.

3.4 The provisions of California Government Code sections 53243 to 53243.4, as those sections now or hereafter exist are hereby incorporated by reference into this Agreement. Thus, if Employee is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, Employee shall fully reimburse the Agency for any severance pay, paid leave salary disbursed pending an investigation related to the crime, or legal criminal defense funds relevant to the crime.

3.5 In the event GM-CE and this Agreement are terminated for cause, GM-CE shall not be entitled to any severance pay, but Krause shall be eligible for continued benefits as provided below. Termination for cause is defined as follows:

- (a) A willful breach of this Agreement.
- (b) Habitual neglect of duties required to be performed under this Agreement.
- (c) Any acts of dishonesty, fraud, misrepresentation, or other acts of moral turpitude (no pending criminal prosecution need be in effect for termination due to fraud, embezzlement or public conduct reflecting on the Agency; rather the Board must only have a good faith belief based on a good faith investigation).
- (d) Refusal or failure to act in accordance with any legal directive or order of the Board of Directors.

3.6 In the event that GM-CE and this Agreement are terminated for cause, GM-CE will be presented with written notice of the basis for said cause. Upon receipt of said written notice, GM-CE, within five (5) business days, may request a hearing before the Board of Directors. The issue at the hearing shall be limited solely to whether or not there is sufficient evidence to support a finding of termination for cause such that the GM-CE would not be entitled to any severance pay. Under no circumstances shall the GM-CE be entitled to reinstatement as a result of such hearing.

3.7 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of GM-CE to resign at any time from his position with Agency, subject only to the provisions set forth in this Agreement. In the event the GM-CE resigns from his position with the Agency, then the GM-CE shall provide the Board of Directors ten (10) days notice in advance, unless the Parties agree otherwise. In the event the GM-CE resigns, he shall not be entitled to any severance pay, but the Board of Directors shall pay the GM-CE for accrued vacation and attendance bonus plan benefits.

Section 4. Salary and Expenses.

4.1 Board of Directors agrees to pay the GM-CE for his services rendered a base salary of Nineteen Thousand, Four Hundred and Sixty-Three Dollars (\$19,463.00) per month in installments at the same time as other employees of the Agency are paid, commencing January 30, 2016. The base salary will be adjusted annually by the same percentage adjustment provided to all Agency employees for changes in the cost of living, if any.

In addition, the Board shall have the right to grant merit increases as the Board deems appropriate, in its discretion. The GM-CE will be eligible for a discretionary annual incentive award not to exceed ten percent (10%) of his total annual base salary based on the results of his annual performance evaluation. The incentive may be based, in part, on the accomplishment of specific goals set by the Board of Directors that are achieved by the GM-CE. Any performance incentive awarded under this section shall be in a lump sum payment, subject to all legally required wage and employment deductions. Notwithstanding the above, the issuance of any incentive awards is at the sole discretion of the Board of Directors. Further any performance pay awarded under this Section shall not become a part of the GM-CE's established base salary going forward.

4.2 Except for the use of his vehicle for the performance of his duties, for which a vehicle is provided under Section 5.8 of this Agreement, Agency shall reimburse GM-CE, within its budget and upon approval of the Board of Directors, for all actual and necessary expenses incurred in connection with the performance of his official duties. GM-CE agrees to maintain and submit accurate records of all expenses for which reimbursement is claimed.

Section 5. Benefits.

5.1 Vacation. The GM-CE shall receive and use vacation benefits under the same terms and conditions applicable to Agency employees generally.

5.2 Attendance Bonus Plan (ABP). The GM-CE shall accrue and use paid ABP benefits under the same terms and conditions applicable to agency employees generally.

5.3 Retirement. The Agency agrees to provide for participation in and pay all Employer and Employee contributions in the California Public Employees Retirement System (CalPERS). The Agency will enroll the GM-CE in the CalPERS under the same terms as other miscellaneous employees of the Agency who are considered “classic members” of CalPERS. The Agency’s current contract with CalPERS for classic members provides for a retirement benefit formula of 2.5% at age 55, with the highest single year compensation determining the benefit.

5.4 Retiree Medical. The Agency agrees to provide GM-CE with medical, dental, and vision coverage upon his retirement. Such coverage shall extend to the GM-CE’s dependants who are eligible during the time of coverage.

5.5 Deferred Compensation Plans. The Agency will adopt and establish a qualified pension plan pursuant to either Section 401(a) or 457 of the Internal Revenue Code for the benefit of the Employee and will make an annual “matching” contribution in the Employee’s name. The Agency’s matching contribution may be up to the maximum amount of the GM-CE’s contribution permitted under the law. The Agency shall be responsible for all expenses associated with the deferred compensation account during the term of this Agreement, including but not limited to administrative services fees and commissions.

5.6 Disability, Health, and Life Insurance. The Agency agrees to keep in force and to make required premium payments for the GM-CE for insurance policies covering the GM-CE and his dependents the same as are provided to all regular employees of the Agency. The Agency agrees to purchase and to pay the required premium on a term life insurance policy in an amount equal to one (1) times the GM-CE’s annual salary. The Agency also agrees to purchase and to pay the required premium on short-term and long-term disability insurance the same as are provided to all regular employees of the Agency. If required by the insurance provider, the GM-CE agrees to submit once per calendar year to a complete physical examination by a qualified physician of his choice, the cost of which shall be paid by the Agency. The Agency agrees to maintain the GM-CE’s medical records in confidence.

5.7 Membership Dues, Subscription, and License Fees. To the extent the Agency’s approved annual budget designates sufficient funds for the purposes identified in this section, the Agency agrees to pay for the professional dues and subscriptions necessary for the GM-CE’s continued and full participation in national, state, regional and local associations and organizations necessary or desirable for his continued professional participation, growth and advancement, and for the good of the Agency.

5.8 Professional Development. To the extent the Agency’s approved annual budget designates sufficient funds for the following purposes, the Agency agrees to pay registration fees and travel subsistence expenses of the GM-CE for professional and official travel, meetings, and occasions adequate to continue the professional development of the GM-CE and to adequately pursue necessary and/or appropriate official business and other functions for the Agency. Upon the prior approval of the Board of Directors, the Agency also agrees to pay for related tuition, fees, and travel and subsistence expenses of the GM-CE for educational degree programs, short courses, institutes, and seminars that are necessary for his professional development and the good of the Agency.

5.9 Other Leave. GM-CE shall accrue sick leave and shall be provided with holiday leave and bereavement leave as are provided to other regular employees of the Agency.

5.10 Vehicle. The Agency shall furnish Krause with a vehicle and shall provide for the fueling and maintenance thereof. The Agency vehicle shall be used for Agency business and discretionary personal use.

Section 6. Performance Evaluation.

The Agency shall review and evaluate the performance of the GM-CE each year within thirty (30) days prior to this Agreement's anniversary date. Said review and evaluation shall be conducted by an ad hoc committee, the members of which shall be established by the Board of Directors. Evaluation criteria shall be developed and adopted by the Board of Directors.

In addition, the Board of Directors will meet with the GM-CE on or around each anniversary date of this Agreement to discuss and create goals and other metrics that can provide the basis for the Board of Directors determining the subsequent year's performance incentive.

Section 7. Bonding.

The Agency shall bear the full costs of any fidelity or other bonds required of the GM-CE under any law or ordinance. The Agency shall further indemnify and defend the GM-CE for discharge of his duties as required by law.

Section 8. General Provisions.

8.1 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.

8.2 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 Riverside County, California.

8.3 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.

8.4 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.

8.5 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 Agency shall be void.

8.6 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.

8.7 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.

IN WITNESS WHEREOF, the DESERT WATER AGENCY 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.

By: Mark S. Krause
MARK S. KRAUSE

DESERT WATER AGENCY

By: Craig A. Ewing
Craig A. Ewing, President
Board of Directors

APPROVED AS TO FORM:

By: Michael T. Riddell
Michael T. Riddell, General Counsel
Best Best & Krieger LLP