

**EMPLOYMENT AGREEMENT BETWEEN
DESERT WATER AGENCY
AND
ESTHER M. SAENZ**

This EMPLOYMENT AGREEMENT (Agreement) is made by and between ESTHER M. SAENZ (General Manager or GM) 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.

The Board of Directors agree to employ ESTHER M. SAENZ as General Manager, and she agrees and does accept employment as GM upon the terms and conditions set forth herein.

GM agrees to devote her productive professional time to perform the functions and duties of GM as may be established or directed by the Board of Directors. GM agrees to perform all such functions and duties to the best of her ability and in an efficient and competent manner.

Section 2. Term of the Agreement.

- 2.1 Term. The term of this agreement shall be for four (4) years, beginning July 4, 2025, and ending July 3, 2029. Subject to the Agency's right to terminate this Agreement and GM's employment at any time pursuant to Section 3 of this Agreement, and 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 Automatic Renewal. This Agreement shall automatically renew unless written notice of intent to not renew is provided by GM or Board of Directors to the other party six (6) months prior to the expiration of this agreement or subsequent renewal terms, not to exceed four (4) years per renewal.
- 2.3 Board of Director's Right to Terminate. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board of Directors to terminate the services of GM at any time, subject only to the provisions set forth in this Agreement.
- 2.4 GM Right to Resign or Retire. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the GM to resign, or retire, at any time from her position with the Agency, subject only to the provisions set forth in this Agreement.
- 2.5 Exclusive Employment. GM agrees to remain in the exclusive employment of the Agency during the term of this Agreement, and she 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's time off, which may be undertaken by the GM, provided they are conducted with persons, businesses, or organizations not within the Agency service area.

Section 3. Termination and Severance Pay.

- 3.1 At Will. GM 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 Directors' right to terminate the employment of GM and this Agreement on an at-will basis, with or without cause, at any time, as provided herein. The Parties agree that GM is at-will and shall not have appeal or so-called Skelly rights related to her employment.
- 3.2 Automatic Termination. This Agreement shall automatically terminate upon Employee's death, retirement, unforeseen extended unavailability (defined as six (6) months) because of medical or health issues as certified by a healthcare provider, or permanent incapacity from being able to perform the essential functions of the General Manager position with reasonable accommodations. Upon Automatic Termination, GM or estate as applicable shall receive:
- a. Cash out of her accrued vacation hours, unused attendance bonus plan hours and floating holiday hours, as required by law and by the Agency's personnel policies at 100% value.
 - b. The cost of medical, dental and vision insurance (health insurance), COBRA coverage for the GM and/or eligible dependents who were covered under GM's health insurance directly prior to Automatic Termination of the Agreement, paid for the period of twelve (12) months total coverage by the Agency, and ceasing if GM accepts other employment at any time, at the end of the twelve (12) month period, or at the time the GM and/or eligible dependents qualify for Medicare or enroll in other health insurance coverage from another source, whichever occurs first.
- 3.3 Vote to Terminate. At any time during the term of this Agreement or any extension thereof, the Board of Directors reserves the right to terminate this Agreement with or without cause and determine GM's last day of employment in accordance with the terms of this Agreement. The Vote to Terminate shall consist of at least three (3) or more of the five (5) Board Members at a duly called and noticed Board Meeting. The Board of Directors agree, however, to refrain from voting on the issue of GM's termination in a sixty (60) day period immediately following a new Board member's installation so that said new Board member may have sufficient time to apprise him or herself of GM's performance prior to a Vote to Terminate.
- 3.4 Termination Without Cause. GM understands that she shall be subject to dismissal upon no less than thirty (30) days' notice and no more than sixty (60) days' notice, without proof of just cause, for any reason, or no reason, at the discretion of the Board of Directors.
- a. Severance Benefits. In the event the GM is terminated without cause, severance benefits are as follows:
 - i. Severance Pay. The Agency agrees to provide GM with severance pay in a lump sum cash payment (Severance Pay) equal to twelve (12) month's base pay, subject to applicable wage and employment deductions and taxes required by law.
 - ii. Accrual Cash Out. Cash out of her accrued vacation hours, attendance bonus plan hours and floating holiday hours, as required by law and by the Agency's personnel policies at 100% value.

- iii. Health Insurance Premiums. The cost of medical, dental and vision insurance (health insurance), COBRA coverage for GM and eligible dependents who were covered under GM's health insurance directly prior to termination without cause of the Agreement, shall be paid for the period of twelve (12) months total coverage by the Agency and shall cease at the end of the stated period of time or at the time the employee accepts other employment, whichever occurs first.
 - iv. Option to Retire. The GM shall be allowed to immediately retire from the Agency prior to termination without cause if eligible according to the any applicable retirement plan requirements and restrictions.
 - v. Post Termination Retirement. Regardless of whether GM exercises the right to retire before being terminated, or is terminated without cause, GM shall still be entitled to retire post-termination and shall be entitled to the retiree health insurance benefits set forth in Section 6.5 below subject to any applicable retirement plan requirements and restrictions.
- b. Severance Pay is 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 and applicable extensions as of the date of termination.

3.5 Termination for Cause. In the event GM and this Agreement are terminated for cause, GM shall not be entitled to any severance pay.

- a. Termination for cause is defined as follows:
 - i. A willful breach of this Agreement.
 - ii. Habitual neglect of duties required to be performed under this Agreement.
 - iii. 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 of Directors must only have a good faith belief based on a good faith investigation).
 - iv. Refusal or failure to act in accordance with any legal directive or order of the Board of Directors.
- b. Termination Notice. If the GM and this Agreement are terminated for cause, GM shall be presented with written notice of the basis for said cause.
- c. Hearing. Upon receipt of written Termination Notice for cause, GM, within ten (10) 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 GM would not be entitled to any severance pay. Under no circumstances shall GM be entitled to reinstatement as a result of such hearing. If, as a result of the hearing, it is determined there is not sufficient evidence to support Termination for Cause, GM shall be entitled to Termination Without Cause benefits according to Section 3.4 of this Agreement.

- d. Opportunity to Retire. In the event the Board of Directors determines to terminate the employment of GM with cause, before such termination is effectuated, GM shall be given the opportunity to retire from employment with the Agency, if eligible according to the any applicable retirement plan requirements, without any loss of retiree benefits otherwise provided for by the Agency. Regardless of whether GM exercises the right to retire before being terminated, or is terminated with cause, GM shall still be entitled to retire post-termination and shall be entitled to the retiree health insurance benefits set forth in Section 6.5 below as allowed by law.
- 3.6 Resignation or Retirement. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of GM to resign, or retire, at any time from her position with the Agency, subject only to the provisions set forth in this Agreement. Other than in the case of a retirement as provided in Section 3.4.a.iv and Section 3.5.d above, in the event GM resigns, or retires from her position with the Agency, GM shall provide the Board of Directors sixty (60) days' notice in advance, unless the Parties agree otherwise. In the event GM resigns, or retires, she shall not be entitled to any severance pay, unless the resignation or retirement is the result of termination without cause. Upon GM's resignation or retirement, she is entitled to all benefits legally required to be paid at separation, including accrued vacation, attendance bonus plan and floating holiday benefits.
- 3.7 Abuse of Office or Position Conviction. 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 GM is convicted of a crime involving the abuse of her office or position, whether before or after release from employment, GM 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.

Section 4. Salary.

- 4.1 Base Salary. Board of Directors agrees to pay GM for her services rendered a base salary of Twenty-Six Thousand, Two Hundred and Fifty Dollars (\$26,250.00) per month, less wage and employment deductions required by law, in installments at the same time as other employees of the Agency are paid, commencing July 4, 2025.
- 4.2 Base Salary Adjustment. In no event shall the GM Base Salary be less than five percent (5%) more than the highest paid Agency employee. If in the event an Agency employee total salary is more than five percent (5%) less than the GM base salary, the GM base salary shall be adjusted to at least five percent (5%) more than the Agency's highest paid employee's total salary.
- 4.3 Cost of Living Adjustments. The base salary shall be adjusted annually by the same percentage adjustment provided to all Agency employees for changes in the cost of living, if any.
- 4.4 Merit Increases. The Board of Directors, at its discretion, may grant merit increases as the Board of Directors deems appropriate.

- 4.5 Incentive Award. GM shall be eligible for a discretionary annual Incentive Award not to exceed ten percent (10%) of her total annual base salary based on the results of her annual performance evaluation. The Incentive Award may be based, in part, on the accomplishment of specific goals set by the Board of Directors that are achieved by GM. Any Incentive Awarded under this Section shall be lump sum payment, subject to all legally required wage and employment deductions. Notwithstanding the above, the issuance of any Incentive Award is at the sole discretion of the Board of Directors. Further, any Incentive Awarded under this Section shall not become a part of GM's established base salary going forward.

Section 5. Expenses

- 5.1 Business Expenses. The Agency shall reimburse GM, or direct pay by Agency credit card, for all actual and necessary Agency-related business expenses incurred in connection with the performance of her official duties. GM agrees to maintain and submit accurate records of all expenses for which reimbursement is claimed or paid by Agency credit card. Expenses are considered approved by the Board of Directors upon review of expenses by the Board Executive Committee.
- 5.2 Technical Expenses. The Agency shall provide GM with an Agency cell phone or stipend in lieu of an Agency cell phone, laptop computer, iPad and other necessitated technical equipment for the performance of duties. During the course of employment, the Agency shall replace/upgrade these items periodically to keep them in good working order.

Section 6. Benefits.

- 6.1 Vacation. GM shall receive and use vacation benefits under the same terms and conditions applicable to Agency full-time employees generally.
- 6.2 Attendance Bonus Plan (ABP). GM shall accrue and use paid ABP benefits under the same terms and conditions applicable to Agency full-time employees generally.
- 6.3 Other Leave. GM shall be provided with holiday leave and pay, floating holiday leave and pay, bereavement leave and pay, jury duty leave and pay, and other leave and pay under the same terms and conditions applicable to Agency full-time employees generally.
- 6.4 CalPERS Retirement. The Agency agrees to provide for participation in and pay all employer contributions for GM in the California Public Employees Retirement System (CalPERS). The Agency acknowledges that GM is enrolled 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.
- 6.5 Retiree Health Insurance. GM shall be provided with medical, dental, and vision insurance coverage upon retirement in the same coverage amounts provided to Agency employees hired after May 1, 2007. Such coverage shall extend to GM's dependents who are eligible during the time of coverage.

6.6 Deferred Compensation Plan.

- a. The Agency shall adopt and establish a qualified pension plan pursuant to either Section 401(a) and/or 457(b) of the Internal Revenue Code for the benefit of GM.
- b. The Agency shall make matching contribution in GM's name equal to GM contributions to the Agency established Deferred Compensation Plan established pursuant to section 6.6.a.
- c. The Agency shall make a monthly contribution to an Agency established Deferred Compensation Plan of the GM's selection according to the same terms and conditions for Agency full-time employees hired after May 1, 2007, for the purpose of providing a financial supplement for health insurance costs following retirement from the Agency.
- d. The Agency's matching contribution shall not exceed the maximum annual contribution for the Agency established Deferred Compensation Plan, as determined by the Internal Revenue Service.
- e. 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.

6.7 Disability, Health, and Life Insurance. The Agency shall keep in force and make required premium payments for:

- a. Medical, dental and vision insurance benefits covering GM and her eligible dependents.
- b. Term life insurance policy in the amount equal to one (1) time GM's annual base salary in the same manner as provide to all full-time Agency employees generally.
- c. Short-term and long-term disability insurance, in the same manner as provided to all full-time Agency employees generally. If required by the insurance provider, GM agrees to submit once per calendar year to a complete physical examination by a qualified physician of her choice, the cost of which shall be paid by the Agency. The Agency agrees to maintain GM's medical records in confidence.

6.8 Membership Dues, Subscriptions, 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 GM's continued and full participation in national, state, regional and local associations and organizations necessary or desirable for her continued professional participation, growth and advancement, and for the good of the Agency.

6.9 Professional Development. To the extent the Agency's approved annual budget designates sufficient funds for the following purposes, the Agency agrees to pay for:

- a. Registration fees and travel subsistence expenses of GM for professional and official travel, meetings, short courses, seminars and occasions adequate to continue the professional development of GM and to adequately pursue necessary and/or appropriate official business and other functions for the Agency.

- b. 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 GM for educational degree programs and institutes that are necessary for her professional development and the good of the Agency.
- 6.10 Vehicle. The GM shall have the option of being assigned the use of an Agency vehicle or provided a monthly private vehicle allowance:
- a. Assignment of District Vehicle. The Agency shall furnish GM 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. GM shall be responsible for applicable taxes and deductions for the personal use of a District Vehicle according to the Internal Revenue Service.
 - b. Private Vehicle Allowance. In lieu of being provided with the use of an Agency Vehicle as provided in Section 6.10.a, GM may elect to be provided a monthly private vehicle allowance in the amount of \$1,000, less applicable taxes and deductions, for utilizing her private vehicle for business-related purposes. The Private Vehicle Allowance shall be used to purchase, lease, or own and to operate and maintain a vehicle. GM shall be solely responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses related to the purchase, operation, maintenance, repair and regular replacement of said vehicle.
- 6.11 Option to Negotiate Benefits. If in the event the Desert Water Agency Employee's Association is no longer the collective bargaining unit for Agency employees, the GM shall have the opportunity to negotiate the benefits within this agreement identified to be according to the same terms and conditions as a defined class of Agency employees, or as according to the same terms and conditions as Agency employees generally.

Section 7. Performance Evaluation.

- 7.1 The Agency shall review and evaluate the performance of GM 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.

Section 8. Bonding.

- 8.1 The Agency shall bear the full cost of any fidelity or other bonding required of GM under any law or ordinance. The Agency shall further indemnify and defend GM for discharge of her duties as required by law.

Section 9. General Provisions.

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

- 9.2 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.
- 9.3 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.
- 9.4 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 GM and approved by the Board of Directors.
- 9.5 Binding Effect. This Agreement shall be binding upon the inure to the benefit of the heirs at law and executors of GM, but nothing herein shall be construed as an authorization or right of any party to assign her/its rights or obligations hereunder. Any assignment of the rights or obligations of GM hereunder without the express written approval of the Board of Directors shall be void.
- 9.6 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 the full force and effect.
- 9.7 Legal Consultation. GM acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that she has read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her own judgement 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 GM has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

By: 
ESTHER M. SAENZ

DESERT WATER AGENCY

By: 
Paul Ortega, President
Board of Directors

APPROVED AS TO FORM:

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